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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
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House of Lords

Wednesday, 1 July 2015.

3 pm

Prayers—read by the Lord Bishop of St Albans.

Oaths and Affirmations

3.05 pm

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

International Students: Post-study Visa

Question

3.07 pm

Asked by ***Lord Holmes of Richmond***

To ask Her Majesty's Government whether they will consider reintroducing a post-study visa for international students studying at bona fide higher education institutions in the United Kingdom.

Lord Holmes of Richmond (Con): I beg leave to ask the Question standing in my name on the Order Paper and in doing so declare my interests as set out in the register.

The Minister of State, Home Office (Lord Bates) (Con): My Lords, the UK continues to have an excellent offer for international graduates wishing to undertake skilled work in the UK after their studies. There is no limit to the number of students who can remain, if they secure a graduate job. The Government have no plans to reintroduce the previous post-study work route, which saw large numbers of fraudulent applications from graduates who remained unemployed or in low-skilled work.

Lord Holmes of Richmond: My Lords, there is an economic imperative: we are pretty much at full employment. We do not just need to attract the brightest and the best from around the world to come to study in the United Kingdom, we also want them to stay and play their part, be economically active and then, when they go home, be great ambassadors for the United Kingdom—what a fabulous example of soft power. Does my noble friend agree that we need to focus on and grasp this economic opportunity, and will he also agree to meet with me and other interested Peers to discuss how we may improve the current situation?

Lord Bates: I am, of course, very happy to meet with my noble friend on this important issue. I agree totally with him that the offer that we have for international students plays a significant part in our economy. They bring experience and investment into our universities. However, I think that there is a problem with the messages that we send to students. In some parts of the world, people say that we put a limit on the number of students but there is no limit on the number of students to bona fide universities. They say that we send out a message that they are not welcome to stay, but we have said that they can stay, providing they are in a graduate-level job, an internship or a doctoral programme; they are genuinely looking for work; or if they are setting up a business. That is the right balance, but we have got to get that message out there and I am happy to meet with my noble friend to discuss how we do that.

Baroness Rebuck (Lab): My Lords, the Royal College of Art, a postgraduate institution in which I declare an interest, launches more new student start-ups than any other UK university. This year, however, its most innovative, international social entrepreneurs and inventors, its design engineers and healthcare innovators, who would have set up UK businesses upon graduation, will now return home instead. Can the Minister begin to assess the loss of enterprise and competitiveness of ending most—and it is most—tier 1 visas for budding entrepreneurs, and also the impact of skill shortages on specialist companies reluctant to deal with the increased red tape and hurdles of tier 2 visas?

Lord Bates: We have a specific tier 1 graduate entrepreneur visa whereby people are encouraged to stay, particularly if they are working in the area of technology, which the noble Baroness is talking about. We have systems whereby people are given 12 months to explore where they can do, in particular, a doctorate degree. I would be very interested to discuss further with the noble Baroness why people are making that decision when the rules have been designed so that the brightest and best can stay here and contribute to the UK economy.

Lord Elystan-Morgan (CB): Does the Minister agree that the time has now clearly come for Her Majesty's Government to say that the number of non-EU students who come to our shores every year—well over 100,000—and whose contribution, culturally and economically, is massive, should be taken entirely out of the immigration equation? Does he also agree that it is only by acting in that simple, straightforward way that the Prime Minister's pledge that immigration would be reduced below 100,000 can be put properly to the test?

Lord Bates: Obviously I respect what the noble Lord says, but we follow the UN guidelines on this. The ONS also follows them when it is producing the statistics, and they are used in the US, Australia and Canada on pretty much the same basis—that is, students are included in the figures. Of course, speaking as a Home Office Minister responsible in your Lordships' House for answering questions on immigration, it would be very convenient if we could lift 140,000 or so out of the statistics, but that would do nothing to tackle the real problem. Last year 135,000 students came here and only 44,000 left, so 91,000 remain. We cannot be serious about immigration without tackling that problem.

Baroness Garden of Frognal (LD): What discussions have the Government had directly with universities to determine from them what impact the closure of the visa route has had on their intake of non-European overseas students?

Lord Bates: I am very happy to meet representatives of the universities. In fact, earlier this year the All-Party Parliamentary Group on Migration produced a very helpful report entitled *UK Post Study Work Opportunities for International Students*, which drew on evidence from universities. I have read it, and it may be helpful to follow it up with universities to make sure that we get the message out on what we are selling and what they should be selling—that is, world-class education, in which we specialise, not low-skilled employment.

Baroness O'Cathain (Con): My Lords, some time ago, as a member of a digital study that we were doing in this House, a group of us went to Imperial College. We were told categorically by graduate students there that they would have to leave within two or three months of finalising their studies. The Minister is saying that they do not have to do that, so why do we not get that message across? I am hearing that from students everywhere, so they are getting misinformation or a lack of information. I think that it would be to the benefit of us all to get that message across.

Lord Bates: Imperial College is a world-leading university and we are very proud of it. I want to be clear on the specific point that my noble friend made. If someone is not going into a graduate-level job, they will have four months following the completion of their course to look for work. If they do not do that but are able to find graduate-level employment, they are able to apply for a tier 2 visa. If they secure a temporary internship, they can stay for 12 months. If they are completing a doctorate, they can stay for 12 months, and if they are setting up a business, they are particularly welcome and can stay longer.

Lord Winston (Lab): My Lords, in the field of science there is no question but that a student is at his most productive and most useful immediately after completing his doctorate. Practically speaking, we are currently training what will be our opposition over the next 10 years, because these graduates are going back to their own countries and developing technology which would be highly useful to the British economy. Surely we need to try to do something about that.

Lord Bates: That is a fair point, and as regards STEM subjects, the noble Lord is absolutely right. We also need to remember that there is a development point. Due to the world-class education that we have, many people come to this country from less-developed economies. The idea of them taking their skills and experiences of British life and culture back to those countries is also an incredibly important part of the soft power that my noble friend Lord Holmes began his Question with.

Lord Cormack (Con): Will my noble friend reflect for a moment and consider the wisdom of putting in writing for every higher education institution what he said to this House this afternoon, so that all potential graduates know what the position will truly be when they graduate?

Lord Bates: Obviously my ministerial colleague has responsibility for universities within BIS. I will certainly talk with him, and also with my honourable friend at the Home Office, James Brokenshire, who has responsibility for this area there, and see if we can do just that.

Royal Bank of Scotland

Question

3.15 pm

Asked by ***Lord Sharkey***

To ask Her Majesty's Government whether they will ensure that any review of their shares in Royal Bank of Scotland examines all options for the bank's future, including alternatives to reprivatisation.

Lord Ashton of Hyde (Con): My Lords, the Chancellor announced on 10 June that the Government intend to begin selling their shares in the Royal Bank of Scotland in the next few months. The Chancellor is acting on independent advice from the Governor of the Bank of England and a review by Rothschild that it is in the interests of taxpayers to begin now to sell our stake in RBS and return the bank to the private sector.

Lord Sharkey (LD): That is very disappointing. We now have an opportunity to break up RBS into regional stakeholder banks. We know that these banks are better at lending to SMEs and more stable, and contribute more to regional growth. Will the Minister agree to publish a proper and full analysis of the comparative merits of different ways of dealing with RBS, including breaking it up into regional stakeholder banks?

Lord Ashton of Hyde: My Lords, it was never the intention of the Government to be a permanent investor in the UK banking sector. At a national level, both RBS and Lloyds are already in the process of divesting part of their UK banking businesses. The Government do not believe that the case for breaking up the core operations of any bank in which the Government have a stake into regional entities meets the objectives of maximising the bank's ability to support the British economy, getting the best value for the taxpayer or facilitating a return to private ownership. The cost of reorganisation would be attributable to the banks and, as a result, would be fully borne by the taxpayer. The significant issue is the trade-off between the costs, which are certain and significant, and the benefits, which are uncertain.

Lord Davies of Oldham (Lab): But, my Lords, as the Minister has just indicated, the bank is involved in restructuring at present and is still awaiting a judgment

in the United States on the mis-selling of subprime mortgages—which takes us back a little while. How can the Government think in terms of having an early timetable for the selling off of this bank? The bank is now trading a long way below the price that the Government paid for it in 2008. Will that not mean that there will be a distinct and significant loss to the taxpayer?

Lord Ashton of Hyde: My Lords, I made no criticism of the Labour Government when they bailed out RBS and made no criticism of the average price that they paid. But of course it is part of the mathematics of selling the bank for a loss that they paid 502p. As to the present price and whether it is being discounted, it is true that there is a law suit from the FHFA in the United States, but our independent advice is that the current share price fully reflects the concerns about any future law suits in that regard.

Lord Lawson of Blaby (Con): My Lords, can my noble friend explain to the spokesman for the Opposition that the fact that the Labour Government grossly overpaid for a bombed-out bank with shares that were virtually worthless should be a matter of shame to him and should not inhibit the Government from doing what is the right thing to do?

Lord Ashton of Hyde: My noble friend has put it like that; I was trying to be a bit more conciliatory.

Lord Campbell-Savours (Lab): My Lords—

Baroness Kramer (LD): My Lords—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, both opposition parties have already asked a question, but the Labour Party fielded its Front Bench first, so, arguably, it should be the noble Lord, Lord Campbell-Savours.

Lord Campbell-Savours: My Lords, is the driver behind this policy the prospect of the price of the shares falling?

Lord Ashton of Hyde: That is not the prospect. Since the policy was announced, the shares have actually gone up. The independent advice we received from Rothschild said that giving a strong signal that it was ready for sale would help the share price. By letting some shares go now, the free float would increase and the benefit to the taxpayer would be increased. The Governor of the Bank of England concurred.

Baroness Kramer: My Lords, the Parliamentary Commission on Banking Standards specifically recommended exactly the study that my noble friend Lord Sharkey described because of the lack of diversity in the UK's banking system. Given that report after report has identified lack of diversity and lack of local banks as the biggest barriers to securing both economic growth and financial stability, why did the Government specifically ignore diversity in the review that they carried out?

Lord Ashton of Hyde: My Lords, we have not ignored diversity. We are committed to increasing competition in banking to improve outcomes for consumers. The Government have an ambitious programme of reforms to increase competition in banking. This includes, for example, divesting both Williams & Glyn and TSB from RBS and Lloyds, creating a seven-day current account switch service, and delivering more data to enable customers to compare which bank is best for them—I could go on.

Lord McFall of Alcluith (Lab): My Lords, the Chancellor of the Exchequer at the time of the bailout promised that all the money expended by the taxpayer would be recovered in full and that there would be a reformed Royal Bank of Scotland. Neither of those promises has been realised. The Royal Bank of Scotland has still to escape the shadows of seven years ago. Why is the Chancellor breaking his promise?

Lord Ashton of Hyde: I do not agree that he is. The Chancellor said two years ago that he would return RBS to private hands. He is doing that. He is increasing competition. RBS has been reformed. The independent advice is that this is the best time to go forward. We have reformed the banking sector completely. I cannot agree with the noble Lord.

Chilcot Inquiry

Question

3.22 pm

Asked by ***Lord Morris of Aberavon***

To ask Her Majesty's Government what progress is being made regarding the publication of the Chilcot Report.

The Parliamentary Secretary, Cabinet Office (Lord Bridges of Headley) (Con): My Lords, in his letter of 15 June to the Prime Minister, Sir John Chilcot indicated that he would only be in a position to provide a realistic timetable for publication once the inquiry had received and evaluated the remaining responses from those individuals who had been given the opportunity to respond to the inquiry's provisional criticism. In his reply, my right honourable friend the Prime Minister said,

"I … had hoped for publication of your report by now and we are fast losing patience".

He also asked for an update from Sir John once the Maxwellisation process had been concluded.

Lord Morris of Aberavon (Lab): My Lords, the Chancellor of the Exchequer also said that people were running out of patience with the inquiry. This must be particularly true of the families who lost lives.

[Lord Morris of Aberavon]
Will the Minister recall that, on 4 February 2015, Sir John Chilcot told a Commons Select Committee that there was,

"a settled body of evidence that may be added to, but it will not be subject to revision".

Is it not deplorable that there was a 13-month argument with the former Cabinet Secretary about the disclosure of notes between Mr Bush and Mr Blair which proved unsustainable? Since Parliament is the ultimate guardian of the independence of any inquiry, and since this one seems incapable of reporting, should not the Prime Minister pull the plug, discharge the committee and, on the basis of the evidence already gathered, come to Parliament for its advice as to a way forward?

Lord Bridges of Headley: I start by saying that I entirely share the noble and learned Lord's frustration, as I am sure do those who served and those who lost loved ones in Iraq. The general gist of his question—in fact, there were several questions rolled into one—was that we should scrap the inquiry. I cannot agree with the noble and learned Lord on that. First, the inquiry is independent of government and, most importantly of all, it has taken a long time to get this far—on that we agree—but it needs to be able to complete its work as quickly as possible so we can learn the lessons. Removing its members from office or stopping the inquiry now is not in the best interests of this work. However, I am sure that those involved in the inquiry will heed the views of your Lordships, especially those of the noble and learned Lord, on how long this is all taking.

Baroness Williams of Crosby (LD): My Lords, it is now more than 12 years since the invasion of Iraq. Does the Minister agree that, increasingly, the impression being given is that people do not want crucial facts to be subjected to public transparency, where they can be discussed and debated? Does he also accept that, as the noble and learned Lord, Lord Morris of Aberavon, said, this situation is particularly unfair to those such as my late and very outstanding friend, Charles Kennedy, who said that, in engaging with the issue of whether we should have invaded Iraq, he found that, regarding possibly one of the most distinguished commissions that has been appointed by this House and the other Chamber, we have no way of knowing what its conclusions are, no way of knowing what it believes to be the sources of the Iraq war and no way of knowing what it believes the consequences of that war were. It is profoundly unjust and unfair to allow this situation to continue. May we ask the Prime Minister to insist that, at the very least, there should now be a report, even though some parts of it may be kept secret for security reasons?

Lord Bridges of Headley: I repeat that I obviously share, as does my right honourable friend the Prime Minister, the frustration that clearly many in this House feel about the length of time this is taking. I draw your Lordships' attention to the letter that the Prime Minister sent to Sir John, in which he asked the Cabinet Secretary to meet Sir John "as soon as possible" to discuss progress on the completion of the report, and said that the Civil Service would continue to assist the inquiry in the "urgent completion" of its work.

Lord King of Bridgwater (Con): My Lords, does the noble Lord recognise that there is across, I think, all corners of this House total impatience with the present situation? We recognise the difficult position the Prime Minister is in, but while it is right to allow those who may be criticised in the report to have the opportunity to make representations and for those to be considered, in any consideration now and in any future arrangements for a commission of this kind there must be a limit on the amount of time that people are allowed to hold up publication of a report. This report is meant to provide an opportunity for lessons to be learned from what happened over Iraq. No lessons have been learned, a lot of years have gone by and further mistakes have been made.

Lord Bridges of Headley: My Lords, on the first point, I draw my noble friend's attention to what Sir John Chilcot told the Foreign Affairs Select Committee in the other place. He said he had seen,

"no evidence … that anyone is trying to delay the publication of the report by holding out from responding or entering into argument about the Maxwellisation process".

As regards the lessons we need to draw from this process, I am sure there will be very many indeed, but I humbly suggest that we do so once the report is completed.

Lord Richard (Lab): My Lords, is not the real problem here that, under the present rules for inquiries, the Maxwellisation process is mandatory? It is not discretionary or left to the chairman of the inquiry to decide who ought to be given the opportunity to respond; it is mandatory and it takes an awfully long time. A committee of this House recently considered the operation of the Inquiries Act and one of its main recommendations was that a Maxwellisation process should cease to be mandatory and should be left to the discretion of the chairman. So far, the Government have refused to take that on board. In the light of what we now know about Chilcot, will the Minister undertake that the Government will look again at whether the rules of procedure for inquiries are up to it and, indeed, whether or not the Maxwellisation process should cease to be mandatory?

Lord Bridges of Headley: I am sorry to disappoint the noble Lord, but I have to refer him to the answer I have just given, which is that we will need to take account of this process and the lessons we might learn once the inquiry concludes. I note that he shakes his head, but this inquiry is independent and it needs to remain independent.

Lord Trimble (Con): My Lords, the underlying problem here is the fact that this inquiry was not constituted under the Inquiries Act 2005. If it had been set up under the Act, as it should have been, the inquiry would have been conducted more efficiently, the Minister setting it up would have had a power to call for it to be concluded and handed over to him, and this problem would not have arisen. Lessons should be learned, and they are contained in the report that the noble Lord referred to. The Government should review their response to that report.

Lord Bridges of Headley: My Lords, once again I have to say that we will have to learn these lessons. My noble friend makes a very valid point, but the inquiry is independent and it is following the process that it has set out.

Lord Dykes (LD): My Lords—

Lord Higgins (Con): My Lords—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): I am sorry, but the House is calling for the next question, so I think we should move on.

Greece
Question

3.31 pm

Asked by ***Lord Higgins***

To ask Her Majesty's Government what part they have played in discussions and negotiations regarding the Greek financial crisis.

Lord Ashton of Hyde (Con): My Lords, these discussions are primarily a matter for Greece and for the euro area. However, it is in Britain's interest to see a stable euro area, and the Government maintain regular contact with euro area member states and other European and international partners on economic issues. As the Chancellor has said, we should not underestimate the impact that a Greek exit from the euro would have on the European economy and the knock-on effects on us.

May I also take the opportunity to correct an error that I made in answer to a question after the Statement on Monday? I said that the UK's share of IMF funding was 15%, whereas it is around 4.5%. I apologise to the House for that error.

Lord Higgins (Con): My Lords, in light of that reply, will my noble friend urge the Chancellor to play a more active role in this matter? It is fortunate that we are not members of the eurozone; however, we have a definite interest in what the eurozone is doing. Not only are we contributing to the bailout through the IMF, but it crucially affects our own economic recovery. The politics of this have become unbelievably acrimonious and complicated, but the economics are very clear. Greece is locked into an uncompetitive exchange rate and it will be condemned to endless financial crises, bailouts and austerity until it leaves. Therefore, will the Chancellor seek to do all he can with our European partners to ensure an orderly exit? In particular, will he reject the view, apparently expressed this morning, that if Greece leaves the eurozone it has to leave the European Union, which would push it into Mr. Putin's arms? Will he also say that the finance that would otherwise be available should be used to ensure a smooth transition to a more competitive exchange rate for Greece?

Lord Ashton of Hyde: My Lords, the Chancellor has been very clear that we have exposure to the eurozone and it is an important market, so we cannot be in any way complacent about the Greek situation. However, it is a eurozone matter and the Chancellor will not involve himself directly. He talks regularly to fellow Finance Ministers and to the heads of the ECB and the Commission; indeed, he said in his Statement the other day that he had spoken to them in the previous 48 hours. The Governor of the Bank of England also made the point that the ECB stays in regular contact with the Bank. Regarding my noble friend's suggestions as to what the Chancellor should tell the eurozone leaders, I can pass on his comments, but I think the Chancellor is very keen to leave them to deal with what is their problem.

Lord Davies of Stamford (Lab): May I ask the noble Lord to go rather further than he did in answer to me on Monday? In the course of the discussions he referred to with our eurozone partners and the IMF, will the British Government be using what influence they have in favour of a revival of the package that Mr Tsipras turned down so petulantly the other day, if the Greek electorate vote yes in the referendum on Sunday? This issue can hardly be avoided in any such discussions. Will the Minister tell us frankly the Government's position on the matter?

Lord Ashton of Hyde: The Chancellor is very clear that he is not going to make that judgment in public. He thinks that the eurozone negotiations should be left to the eurozone parties.

Baroness Ludford (LD): My Lords, on the hopeful assumption that Greece's financial crisis can be resolved, what constructive role can the Minister assure us the UK Government will take as a leading member of the EU—if not of the eurozone—to help resolve Greece's economic crisis, and to help it to build a sound and sustainable economy? Can the Minister assure us that it is in our interest, as well as Greece's, that the UK remains a leading member of the EU?

Lord Ashton of Hyde: The Chancellor is not going to tell anyone what they should be doing, but of course we want the economic situation in Greece to get better, not least for the benefit of the Greek people. That is not a simple matter and it will not happen any time soon, but we are not going to be drawn on advising the Greek people on how they should vote in the referendum, or on what course they should take.

Lord Stirrup (CB): My Lords, discussion of this issue has, for obvious reasons, focused on economic and financial issues, but does the Minister agree that what is going on in Greece is likely to have far wider repercussions, not least for European security in the eastern Mediterranean? This is an issue for us, just as much as for the eurozone countries; therefore, such discussions cannot just be left to the eurozone.

Lord Ashton of Hyde: My Lords, I completely agree with my noble and gallant friend. As the Chancellor said, we hope for the best but we prepare for the worst.

[Lord Ashton of Hyde]
That certainly includes some of the security issues that my noble and gallant friend has mentioned.

Lord Spicer (Con): My Lords, could my noble friend the Minister have another crack at my noble friend Lord Higgins's Question? Does he agree that it would be in Greece's interest if it had a flexible exchange rate that reflected the economy and created a more competitive economy in Greece?

Lord Ashton of Hyde: I am absolutely not going to tell the Greek Government how to deal with their economic situation. It is certainly not my place.

Lord Davies of Oldham (Lab): My Lords, if Her Majesty's Government can play only a limited role in the resolution of the crisis, at least they can do something on behalf of British citizens in Greece and those intending to go to Greece. The Minister gave a very limited answer on Monday to the question of whether our embassy in Greece would be strengthened and help given to those who are bound to find things difficult in getting money from the stricken Greek banks.

Lord Ashton of Hyde: I mentioned on Monday that we will increase the resources available if necessary, and the Foreign Secretary had agreed that. The Foreign and Commonwealth Office has updated its travel advice and we stand by to do everything we need to do to help British citizens go to Greece and enjoy their holidays. We think that it is good for Greece that they continue to do so.

Davies Commission Report

Statement

3.38 pm

The Parliamentary Under-Secretary of State, Department for Transport and Home Office (Lord Ahmad of Wimbledon) (Con): My Lords, with the leave of the House, I shall now repeat a Statement made in the other place by my right honourable friend the Secretary of State for Transport.

"I would like to make a Statement about the Airports Commission's final report, published earlier today. I received a copy yesterday evening and I have had copies put in the Library of the House and the Vote Office. First, I will review the commission's process to date; secondly, I will describe the next steps.

In September 2012, the Government appointed Sir Howard Davies to lead a commission to consider how the UK could maintain its status as an international aviation hub and, in particular, provide capacity in the south-east. I thank Sir Howard for his contribution and his leadership. I also thank his fellow commissioners —Sir John Armitt, Ricky Burdett, Vivienne Cox and Dame Julia King—for their hard work. I also acknowledge honourable Members from all sides of the House who have campaigned vigorously on behalf of their constituents. I am sure they will continue to do so.

There are strong opinions on this issue and it is not easy to resolve. For the Government, the task is to balance local interests against the wider, longer-term benefits for the UK. This report is part of that process.

Over 50 different propositions were considered. In December 2013 the commission shortlisted three schemes for further consideration—two at Heathrow, one at Gatwick. It also made recommendations for improving our existing airport infrastructure, including upgrading transport connections. We are acting on these interim recommendations.

We are working with Gatwick Airport to upgrade the station there. Network Rail is leading a study to improve the rail link between London and Stansted, and Crossrail will soon provide a new direct route to Heathrow.

The commission has also sought views from across the country because the UK's other airports play a big role in our aviation success story—airports such as Manchester, Birmingham, Bristol, Newcastle, Edinburgh and Glasgow. Connectivity to all parts of the UK is something the commission has rightly considered.

The UK has the third largest aviation network in the world after the US and China, but it is congested, and a lack of capacity holds our country back. Since 1990, 12 UK airports have lost their direct links to Heathrow. As Sir Howard Davies says in his foreword to the report:

'Good aviation connectivity is vital for the UK economy. It promotes trade and inward investment'.

As the report points out:

'About half of the British population travelled by air over the past twelve months'.

It also says:

'While London remains a well-connected city, its airports are showing unambiguous signs of strain'.

Meanwhile, hub airports such as Dubai and Istanbul are growing fast.

The commission found that all three shortlisted schemes are credible options for expansion but that the Heathrow Airport Northwest Runway scheme offers the strongest solution. To quote the report:

'Heathrow offers a stronger solution to the UK's aviation capacity and connectivity needs than a second runway at Gatwick'.

The report recommends action to address the impact of any expansion on the local environment and communities, among them a limit on night flights, greater compensation, controls on air quality and a guarantee there will be no fourth runway.

Let me turn to the Government's response. There are a number of things we need to make progress on now. First, we must study the substantial and innovative evidence base the commission has produced. Secondly, we will need to decide on the best way for achieving planning consents quickly and fairly if expansion is to go ahead. Thirdly, we will come back to Parliament in the autumn to provide clear direction on the Government's plans.

This is a vital moment for the future of our aviation industry. Our aviation sector has been at the heart of our economic success and quality of life. All those with an interest in this important question are expecting us to act decisively.

This is a clear and reasoned report. It is based on the evidence; it deserves respect and consideration; and we must act.

I commend this statement to the House."

My Lords, that concludes the Statement

3.43 pm

Lord Davies of Oldham (Lab): My Lords, I thank the Minister for repeating this important Statement, which was delivered by the Secretary of State for Transport in the other place. The Official Opposition join with him in thanking Sir Howard Davies and his team for the vital work they have done since 2012 in producing this very important report.

I take this opportunity to praise Heathrow and Gatwick for the campaigns they have run in recent years which have been educative for the public and have often been conducted with an eye to giving information rather than just propaganda.

This substantial work has got one very important feature. Sir Howard Davies has proceeded to a clear recommendation:

"A new Northwest Runway at Heathrow delivers more substantial economic and strategic benefits than any of the other shortlisted options, strengthening connectivity for passengers and freight users and boosting the productivity of the UK economy".

Aviation plays a very substantial role in our economy and it has the potential to play a greater one. The sector employs hundreds of thousands of people, contributes more than £50 billion to our GDP and pays the Exchequer more than £8 billion every year in tax revenues. But we know that the growth of our aviation sector is at risk. Heathrow has been full for 10 years; Gatwick will become full over the next five. It is therefore quite clear that we need additional capacity. That is the case made by Sir Howard Davies in the report but, as the Minister indicated, there are details regarding the report that we need to consider.

We, as the Opposition, present the following tests which we think need to be met so that the public can have confidence that this is the right way to move forward. The recommended expansion in capacity must go hand in hand with efforts to reduce CO_2 emissions from aviation, allowing us to meet our legal climate change obligations. We also need to ensure that local noise and environmental impacts have been adequately considered, and will be managed and minimised. The benefits of expansion must also be felt in every corner of the country, including any infrastructure, employment and supply chain benefits; regional airports must be supported, too. If these conditions can be met, it is quite clear that it is in the long-term interests of the country to carry out the report's main recommendation. I therefore hope the noble Lord will appreciate that, given strenuous efforts to ensure that these tests are met, the Official Opposition will support the construction of an additional runway at Heathrow.

Lord Teverson (LD): My Lords, this is a worthy report but I suppose we could say, "Here we go again—another report on the airports of south-east England and another recommendation for Heathrow". There has also probably been another not very ringing endorsement of such a report. A Statement that says in almost its last sentence:

"It deserves respect and consideration",

is hardly a ringing endorsement from the Government.

The Liberal Democrat position is very different from that of the Official Opposition, in that we believe there is no need to expand airport and runway capacity in the south-east. One thing to illustrate that is in the report itself, which clearly states that airports in the south-east will reach full capacity in 2040. That is 25 years ahead. We certainly need to plan ahead on major infrastructure projects in this country but some 25 years ago, back in 1990, I was lucky enough never to have seen an email and I certainly did not have a smartphone. I had also never participated in a videoconference, which is perhaps more relevant. Over that time, Stansted, which has capacity, has increased its ability to take extra flights.

Yes, Heathrow is full. As the Minister said, it has been full for 10 years. In fact, it has always been full but you manage businesses, as Heathrow and other airports do, by making sure that your fixed assets are fully used. If you have an asset that is not being fully used, you are not managing it properly. Airport capacity will clearly be used as much as it can be and we will find that at Heathrow, as a prime airport in the UK. We would no doubt quickly find that it was true with a third runway as well.

I now move on to the fourth runway, which the report goes into. There is an illustration here of how the report looks at the future. It says categorically that,

"there is no environmental or operational case for a fourth runway at Heathrow".

If that is the case, I find it difficult to understand why the third is so important, given that Heathrow salespeople, if they are up to their measure, will make sure that the capacity of the third runway is used fully and as soon as possible.

Heathrow is irresistible. Asking for a fourth runway is irresistible to the management of Heathrow, as they asked for terminal 5 after terminal 4. What the report really says is that Heathrow is in the wrong place. If the environmental or operational issues are wrong for a fourth runway, a third runway is clearly wrong now.

On climate change, we can be very proud of a 20% reduction in emissions since 1990, yet airline emissions in the UK have gone up by some two-thirds. Is that compatible or is it a contradiction of policy, given that the Government have, quite rightly, committed themselves to the climate change policies and budgets of the Climate Change Act 2008?

On air quality, page 196 of the report states that,

"none of the schemes improve air quality compared to a scenario where no expansion takes place".

On connectivity, I agree that there is a real issue around regional airports being squeezed out by Heathrow, but the report recommends that the Government should be prepared to use public service obligations. There is nothing in there saying that these should be mandatory.

On noise, the reports states that,

"an independent aviation noise authority should be established with a statutory right",

[LORD TEVERSON]
which sounds very strong, but it concludes with "to be consulted" over noise levels in the west. That is clearly another very weak recommendation.

I have two questions for the Minister. It is said that this autumn's decision will give a clear direction. Will there be an actual decision in October? Most importantly, the Statement says that,

"we will need to decide on the best way for achieving planning consents quickly and fairly if expansion is to go ahead".

Will the Minister confirm that that "if" is still an option?

Lord Ahmad of Wimbledon: My Lords, I thank the noble Lord, Lord Davies of Oldham, for his support for the Statement. I join him in extending thanks to all involved in the report. He and the noble Lord, Lord Teverson, raised issues around climate change. In the short time we have had to digest quite an extensive report, I am sure that both noble Lords will acknowledge that the commission has done a great deal of work on looking at how threats to the environment and to air quality can be mitigated. Certainly, the Government will look at those elements as part of our decision on the report.

The noble Lord, Lord Davies, also raised local concerns and the impact on the local community. Indeed, he may have noted the suggestion in the report for a local community board to be established, which would evaluate the impact of any expansion and its operation. It is not unprecedented: I am sure the noble Lord is aware that Amsterdam Airport Schiphol operates a similar board for local interests. His point about local, regional airports was also raised by the noble Lord, Lord Teverson. Of course, as the Statement said, and as the report acknowledges, this is not just about the south-east and London; it is about the country. The issue of our regional airports is important and the Government will respond accordingly, but the report has dealt with that issue.

The noble Lord, Lord Teverson, asked about October and the question of "if". I am not going to give a commitment at the Dispatch Box on what the Government's decision will be, but the Government have said we will press ahead. My right honourable friend the Secretary of State and, indeed, my right honourable friend the Prime Minister have today both stated the importance of moving forward on this and we will return to the issue with the Government's review in the autumn.

3.55 pm

Lord Spicer (Con): My Lords, the Secretary of State accepted in the other place today that lack of airport capacity was holding this country back. Now that we do not have the alliance, we can rely on the new Conservative Government to implement this particular expansion. Can we now expect the Davies report to be the main determinant of the Government's decision?

Lord Ahmad of Wimbledon: As my noble friend is aware, we commissioned the report in 2012 during the previous Government. I believe that was the right thing to do at that time. The issue of capacity in London and the south-east is something that we have been reviewing and looking at over the last 50 years. This was an extensive report, which looked at more than 50 different options and then whittled them down to the three on which it has reported. Of course, it will be a primary consideration for the Government in thinking about the way we move forward on south-east airport capacity.

Lord Soley (Lab): I have been campaigning on this for years, in the House of Commons and in this House. I remind the Minister that many constituents supported my line precisely because they knew that Heathrow needed to expand if their jobs were to be safe and if the British and regional economies were to grow. I have two very quick, simple questions. First, can the Government make sure they act on this, hopefully by the end of the year? Please do not drag this out, which is what we have done before on so many infrastructure projects in this country. It is an embarrassment for us that we have not achieved this. Secondly, we have to stop this nonsense of taking years to decide whether an airport can expand when what matters is that we put down very tough conditions, as Howard Davies has suggested, on noise and the environment. Those are the issues that trouble people, quite rightly. If we do that, airports should be allowed to expand, because they are amazing economic drivers, locally, regionally and nationally. They are terribly important.

Lord Ahmad of Wimbledon: I share the sentiments expressed by the noble Lord and commend his efforts as an exponent for ensuring that airport capacity meets the challenge not just for our country but for the global role we wish to play. I draw his attention to the penultimate sentence of the Statement I repeated: "And we must act". I hope he takes some reassurance from that. As he rightly pointed out, the commission looked at the conditions extensively and put in various mitigating safeguards covering noise, other environmental issues and, as I said earlier, engagement with the local community. Those will be important factors in the Government's evaluation of the report as well.

Lord Callanan (Con): My Lords—

Baroness Kramer (LD): My Lords—

Lord Gardiner of Kimble (Con): My Lords, it is sensible that the Liberal Democrat Benches should have an opportunity.

Baroness Kramer: My Lords, I declare that I have lived for 20 years under the Heathrow flight path and that I am a member of HACAN. Could the Minister tell us what the anticipated impact is on Manchester and Birmingham airports? The business plan for Heathrow includes a proposal to divert direct flights into those two airports to the third runway, which will have an impact on the northern powerhouse. In addition, my neighbours and I were told when the fourth terminal was approved that there would be no further expansion

at Heathrow. There was then an effort to get a fifth terminal, and we were promised that there would be no expansion beyond the fifth terminal and no third runway. Within six weeks of planning approval, a campaign began for the third runway. Would the Minister tell me whether I am a fool to have believed those assurances from both the airport and the aviation industry, and whether I would be a fool to believe again promises about there being no plans for a fourth runway or indeed about the rather minor mitigations promised, many of which could have been implemented already?

Lord Ahmad of Wimbledon: As the noble Baroness knows, I have great respect for her opinions and I would certainly never suggest that she has been a fool in any respect. The important thing for Manchester is that it will benefit from the engagement and the statements we have made on the northern powerhouse and from the development of HS2. As I am sure the noble Baroness is aware, Manchester itself recently announced £1 billion of investment for Manchester airport and its expansion over the next 10 years.

I emphasise again that it is the Government's opinion—and the commission has evaluated this in its report—that regional connectivity is important in ensuring that our regional airports are part and parcel of the development of our airport capacity nationally.

Lord Callanan: My Lords, I thank the Minister for his Statement. I agree completely on the need to act decisively. He referred to the fact that 12 regional airports have already lost their links into Heathrow because of lack of capacity and that virtually all regional airports are urging the expansion of Heathrow to go ahead. Can I ask him please to ignore the siren voices like that of the noble Baroness who spoke earlier? It can hardly have come as a surprise to her when she bought her House in west London, next to one of the busiest airports in western Europe, that she experiences airport noise. So while it is important to take on board these concerns, please also bear in mind the concerns of the rest of the country, which needs Heathrow to expand to help in particular areas such as the northern powerhouse.

Lord Ahmad of Wimbledon: I thank my noble friend for his comments. I agree with him about the importance of ensuring that whatever decision the Government take in moving forward on what has been a very extensive report reflects the importance of UK plc and regional connectivity. We will certainly review that, and it will be part and parcel of our decision-making on the way forward when we return to this issue in the autumn.

Lord Gordon of Strathblane (Lab): Does the Minister agree that the only way to ensure regional connectivity is to regard airline slots as the national asset that they are and not leave them to airlines to cut regional services and instead introduce more lucrative long-distance services? More capacity will not improve regional connectivity unless it is destination specific.

Lord Ahmad of Wimbledon: As much as we may regard national slots at airports as our national heritage or assets, they are allocated by the EU and are governed by European Union and associated slot regulations. The UK Government are legally prevented from intervening on slot allocation processes—be it at Heathrow, Gatwick or other slot-co-ordinated airports.

Baroness Tonge (Ind LD): I, too, declare an interest as a former chairman of HACAN and a former MP for the constituency of Richmond Park. Some years ago the Prime Minister said that, "no ifs, no buts", there would never be a third runway at Heathrow. Could the Minister tell us what his line is going to be now?

Lord Ahmad of Wimbledon: I am sure that the noble Baroness heard the Prime Minister responding to PNQs, when he said that the important thing was to move forward on the decision. She referred to the comments of the Prime Minister, "no ifs, no buts", but what he was commenting on at that time was a very different proposition for Heathrow. Following this, we made the decision to set up the Airports Commission. It was the Prime Minister's decision and that of the last Government—indeed, the noble Baroness's party were part of that Government. That is what we have now done, and the option put forward for Heathrow now is a very different one from the one proposed in 2010.

Lord Clinton-Davis (Lab): My Lords—

Lord Rowe-Beddoe (CB): My Lords—

Lord Gardiner of Kimble: My Lords, I apologise, but we cannot have two noble Lords standing at the same time. The Cross Benches have not made a contribution as yet.

Lord Rowe-Beddoe: Could the Minister confirm that in his opinion Her Majesty's Government have taken into adequate account the increased security to this capital city of increased flights over its administrative centre?

Lord Ahmad of Wimbledon: My Lords, I assure the noble Lord that the issue of security through aviation—indeed through all modes—is something that the Government take very seriously. Perhaps I speak with a special interest, because I am the Minister for Aviation Security at the Department for Transport.

Lord Clinton-Davis: There can be no doubt that the Davies report has come down in favour of Heathrow, but there are certain details that have to be addressed. Can the Minister say that, in the autumn, the Government will make a firm decision? That is imperative, in my view. The report also stressed that an early decision is absolutely imperative. The delay would be immensely dangerous, particularly since the Government commissioned the report in the first place. It would imperil British aviation, and it would imperil our

[Lord Clinton-Davis]
economic advantages and our situation in the global economy, as well as our standing as a nation. Does the Minister not agree that an early decision is absolutely vital?

Lord Ahmad of Wimbledon: I do agree, and the challenge now is to make decisions that are reflective of what has been a very well-balanced report and are also, as I have said, in the best interests of the country. I assure the noble Lord that the Government will carefully consider the commission's extensive report without delay. By the autumn, I want to get to a stage where we can set out a position to Parliament on the way we want to take forward this work.

Lord True (Con): My Lords, unlike many noble Lords, I have the honour of being elected. I was elected as leader of a council and represent many of the people who will be most affected by this report, so perhaps I might intervene. As I walked around the streets this morning, I sensed anger, dismay and cynicism, but no surprise. I deprecate my noble friend's comment that implied that people in west London are nimbys. They already put up with 40% of the noise pollution from airports in Europe and with air quality that breaches European standards. Whatever position we take in this debate, I would be obliged if the people I have the honour to represent were not spoken of in that way.

My erstwhile noble friend mentioned the Prime Minister's statement,

"no ifs, no buts … no third runway".

Will he forgive me if I thought I heard an "if" and a "but" in his response? That statement was made by David Cameron at a PM Direct event. It was clear and was heard clearly. Will my noble friend use his influence to make sure that that statement is kept before the Government in all deliberations on this question?

Lord Ahmad of Wimbledon: I reassure the noble Lord that, when he gets a chance to read the commission's report, he will find that it has addressed all the concerns that he has highlighted, and it will be a significant part of the Government's decision. With regard to the statement made in 2010 by my right honourable friend the Prime Minister, as I said earlier, the proposal that was in front of him at that time, including some of the concerns that the noble Lord has just highlighted, merited what the Prime Minister said. However, we are quite clear: the commission has now produced its report; it is well balanced and has looked at many factors that the proposition in front of us in 2010 did not consider; and the Government will come back with their view in the autumn.

Lord Shipley (LD): Has the Minister noted the recommendation of the commission that:

"The Government should alter its guidance to allow the introduction of Public Service Obligations on an airport-to-airport basis, and use them to support a widespread network of domestic routes at the expanded airport"?

Given that if the third runway gets the go-ahead, it could be a number of years before it is actually in place, what is to stop the Government altering their guidance to bring it in line with a number of other European Union countries to enable further,

"Public Service Obligations on an airport-to-airport basis",

being delivered?

Lord Ahmad of Wimbledon: The Government consider their public service obligations very seriously, as I am sure the noble Lord knows. It is not that we have not interjected in recent times. For example, the route has been protected from Gatwick to Newquay, as have routes up to Dundee. Where the criteria are met, the Government have exercised their option and met their obligations. We are keen to ensure that public service obligations are, if you like, the backstop, to ensure that any concerns over particular domestic routes are retained.

Lord Forsyth of Drumlean (Con): Does my noble friend not agree that it is wrong to hold the Prime Minister to what he said some years ago when faced with a report that has been carefully considered and that says unequivocally that it is in the national interest for the expansion of Heathrow to go ahead? It is his duty to proceed as recommended. I very much welcome the fact that the Official Opposition have indicated their support for that. Has this thing not been in a holding pattern for far too long? We need to get on with it.

Lord Ahmad of Wimbledon: I thank my noble friend for the first analogy about aircraft and holding patterns. I agree with what he said about the Prime Minister's statement. We are looking at something very different. I stress to all noble Lords that the Government commissioned the report in 2012. It is extensive and covers a range of factors, including mitigating factors, regional connectivity and a raft of other matters. I am sure noble Lords agree that it is right that the Government look at the report's recommendations, evaluate them and come back in the autumn with their response.

Lord MacKenzie of Culkein (Lab): My Lords, is the Minister aware that the largest aircraft coming into Glasgow Airport is the Boeing 777 operated by Emirates, and the number recently increased to two per day? Does he agree that if there is no expansion at Heathrow, the winners are going to be the Middle East airlines?

Lord Ahmad of Wimbledon: The Government will return to the issue of the expansion of capacity across London and the south-east, but as I have said, our decision, which will be put forward in the autumn, will reflect on ensuring the competitiveness of UK plc and the importance of regional connectivity.

Lord Crickhowell (Con): My Lords, I declare an interest in that, 30 years ago, I was rash enough to buy a house in Battersea—a considerable distance from Heathrow—where the noise is excessive, even today. I have one specific question. If this goes ahead, it is proposed that there should be a legal limit on night flights so that they cannot arrive before 6 am. At present they fly though my bedroom window, so to

speak, at 4 am every day because the airlines pay the necessary penalty to do so. During the long time before we go through this long process, why can we not legislate to put a legal ban on night flights straightaway?

Lord Ahmad of Wimbledon: My noble friend is quite right to point out that there are current obligations which will continue until October 2017, but I take his point about the penalties that are paid, and I will take that back to the department.

Baroness McIntosh of Hudnall (Lab): My Lords, I speak as somebody who has taken a fairly hard-line position on expanding airport capacity: I have not been in favour of it. Does the Minister agree that there is no possibility of a meeting of minds between people who take the view that there should be no capacity increase and people who are arguing about where the capacity should be put? Will he assure the House that, since this report is about where additional capacity will be put, the Government will not come back in October, having considered, with a decision not to decide?

Lord Ahmad of Wimbledon: I have never regarded the noble Baroness as being hard line in any respect. I am sure she will agree that it would be inappropriate for me to give a commitment at this time. The Government will evaluate the report, and we will come back on the way forward in the autumn.

Lord Empey (UUP): My Lords, in view of the Minister's Statement and the comments of a number of noble Lords from all sides of the House, can I look forward to the inevitability of government support for my Airports Act 1986 (Amendment) Bill?

Lord Ahmad of Wimbledon: I pay tribute to the consistent tenacity of the noble Lord in presenting his Bill. It has been discussed in this House, and he heard the Government's response at that time.

Lord McKenzie of Luton (Lab): My Lords, the Statement refers to our aviation success story, citing Manchester, Birmingham, Bristol, Newcastle, Edinburgh and Glasgow. Is the Minister aware that London Luton Airport has passenger throughput greater than any of those airports, with the exception of Manchester: currently some 11 million, and there are plans to go up to 18 million? I declare my interest as an advisory member of the board of London Luton Airport.

Lord Ahmad of Wimbledon: When we discuss Bills we always say that lists are indicative and not exhaustive, and that was true of that Statement.

Lord Kilclooney (CB): My Lords, the important issue here is the connectivity of provincial cities with London. Am I to understand from the previous answer that slots are very much under the control of the European Union and not of Her Majesty's Government?

Lord Ahmad of Wimbledon: Certain Heathrow and Gatwick slots are governed within EU and national slot rules.

Childcare Bill [HL]

Committee (1st Day)

4.15 pm

Relevant document: 2nd Report from the Delegated Powers Committee

Motion

Moved by ***Lord Nash***

That the House do now resolve itself into Committee

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): It may be helpful if I report to the House that there have been productive discussions in the usual channels about the next stage of this Bill and that as a result of these discussions we will be looking to arrange the Report stage for October when the House returns from the conference recess.

Noble Lords will be aware that last Friday the Delegated Powers and Regulatory Reform Committee published its report on this Bill and other Bills before the House. We are of course mindful of that report and its recommendations in respect of this Bill and intend to prepare and publish our response in good time before Report, including tabling government amendments where appropriate. Both these points are relevant to our discussions on the amendments that have been tabled for consideration this afternoon. I hope it is therefore helpful to have set them out at this first available moment in proceedings this afternoon.

The noble Baroness, Lady Jones, and I had a helpful conversation last night. We agreed about the importance of making progress with this Bill and the important commitment to children and parents that it makes. I know that all in this House are agreed about that. We also agree that it is important that the voices and expertise of parents, providers, local authorities and employers properly inform the provisions we will make. I know that noble Lords want us to take time to get that right and the noble Baroness, Lady Jones, has raised many questions about it. The noble Baroness asked if I could be specific about the further information that will be available before Report to confirm and build upon the commitment I made in my policy statement that I sent to noble Lords last week. It is our intention to provide a full update to the House on how we will deliver this extended entitlement and also an update on our plans to pilot it in 2016. This will take account of our consultations with parents, providers, local authorities and employers over the summer, the helpful contributions which I anticipate from your Lordships tonight and of course the recommendation of the Delegated Powers Committee which asked for clarity about how we intend to use the powers.

In time for Report, therefore, the House will be able to scrutinise that information and we will respond formally to the Delegated Powers Committee. If appropriate we will bring forward amendments to

[LORD NASH]
the Bill which respond to its recommendations. We will also of course pay careful attention to the views that the Delegated Powers Committee has expressed about affirmative procedure. As noble Lords are aware, it is our intention to consult fully on draft regulations and guidance in the first part of 2016 after Royal Assent. In this regard, I am lucky and extremely grateful that the noble Lord, Lord Sutherland, has agreed to work with me and the department to find a way in which we can take advantage of the invaluable expertise of members of the Select Committee on Affordable Childcare and others in this House to work with us on those regulations in due course to ensure that they are thoroughly fit for purpose.

Meanwhile I am delighted to confirm that we have already deliberated across government on the points raised at Second Reading and by the Delegated Powers Committee about the provision in Clause 1(5)(g) which will allow us to establish a body corporate. The noble Baroness, Lady Jones, has tabled Amendment 18 to remove that provision and I am pleased to inform the House that it is my intention to accept that amendment tonight. I beg to move.

Baroness Smith of Basildon (Lab): My Lords, I apologise for detaining the House prior to Committee but I had given notice to the Government that I would be speaking on this matter. I am grateful to the noble Lord for his explanation. It is unusual when a Minister moves a Bill to be taken in Committee that he makes such a lengthy statement and I think it is an indication of the concern that has been expressed around your Lordships' House that he has chosen to do so today. It is helpful to a degree and I am grateful to him for doing that. Perhaps we would not have had that statement today had it not been for the report from the two committees and our intention to speak today prior to Committee.

This is an important Bill, and we all want to ensure that there is proper and effective consideration of it. However, the way in which the Government have brought forward the Bill has serious implications for how we as a House consider legislation and fulfil our constitutional obligation as a revising Chamber. We cannot revise that which is not there. The primary role of your Lordships' House is effective scrutiny. That Ministers accept so many amendments in your Lordships' House, and propose others following our debates, is evidence that this role is valued by Governments in improving legislation.

At Second Reading, concerns were raised about the lack of detail in the Bill from all sides of the House, including from noble Lords on the Government Benches. Since that debate, both the Constitution Committee and the Delegated Powers and Regulatory Reform Committee have reported. The Constitution Committee today says that this is, "a particularly egregious example" of the kind of legislation coming forward from government, and,

"an example of a continuing trend of constitutional concern to which we draw the attention of the House".

The Delegated Powers and Regulatory Reform Committee, in its report published on Friday, agreed with many of the concerns that were raised at Second Reading and said that it was:

"Unable to understand why the Bill has been presented in a skeleton form only".

Rarely has this House seen such stark criticism of a Government's failure to provide the information needed to allow proper consideration of legislation at the start of a Bill for Second Reading, or indeed for Committee. The Delegated Powers Committee rejected the Government's bizarre assertion in their report that,

"too much detail on the face of the Bill risks obscuring the principal duties and powers from Parliamentary scrutiny".

Surely it is the purpose of this House to examine the detail of a Bill. The committee also rejected the notion that regulations can be published at a later date to deal with what the Government referred to as,

"operational, administrative and technical details".

The committee has been very clear that the use of regulations in this way is "inappropriately wide", "flawed", "vague" and that more detail is essential, otherwise,

"the House will have insufficient information … for a properly informed debate".

Most damning of all, the committee also rejected,

"the Government's attempt to dignify their approach to delegation by referring to a need to consult".

I think we heard from the Minister's statement that the committee is highly regarded by your Lordships' House and by Governments, who rarely fail to give effect to its recommendations. This is not at all a party-political matter—far from it. The committee is cross-party, and we on these Benches support the aims of the Bill. However, for this House to do its job it must have more than the bones of a policy to scrutinise. Our concerns, as the Government will understand, are wider than the Bill. The fact that the Minister has been brought to the House to make quite an unusual statement before the start of Committee today, as welcome as that is, is an indication that the information to date is completely inadequate. Therefore, with the wider concerns that no Government should consider this to be an appropriate approach to legislation or business in your Lordships' House, I would be grateful if he can clarify some points.

The Minister said that there have been discussions among the usual channels, and the Report stage will not come forward before October. I will press him a bit further, as I was not 100% clear about that from the other comments he made. We are looking for guarantees and assurances on just three points about information being available, not by a specific date but prior to consideration on Report. The Minister may have addressed those points in his comments, but I will be grateful if he could confirm, first, that the committee's report is followed up by the Government and effect given to its recommendations to amend the Bill. He said that he would take consideration and take note, but I was not sure if he said that he would bring forward amendments as the committee recommended. Secondly, the draft regulations that were provided for consideration must also be available prior to Report. Thirdly, the most crucial piece of information we require is that the financial report, which is the basis on which this policy will succeed or fail, will be made available before Report.

We do not in any way want to delay consideration in Committee, but we recognise—I think the Minister has gone some way towards recognising it today—that

without this information, despite the best efforts of noble Lords who will take part in this debate, scrutiny will be inadequate. That information is essential for Report, otherwise we could not consider the Bill effectively. Finally, on behalf of the whole House, can we have a categorical assurance from the Government that this will not be their approach to any future legislation?

Lord Wallace of Tankerness (LD): My Lords, further to the comments and concerns expressed by the noble Baroness, Lady Smith of Basildon, I also thank the Minister for setting out the Government's position when he moved that the House should go into Committee. It is helpful that he indicated that Report stage will not be until October, but, like the noble Baroness, I was not entirely sure what he was saying in terms of a commitment to amendments. We will therefore reserve our position with regard to anything that may come forward from the Government after they have given consideration to the many concerns expressed not only in your Lordships' House but also, and particularly, in the committee reports that have been referred to.

This legislation has the hallmark of a party policy announcement during a general election, with the Government now desperately trying to figure out what it means and how to put it together. The comments of the Delegated Powers and Regulatory Reform Committee —which, having recently been in government, I can attest is a committee that Ministers take very seriously indeed—are some of the strongest that I can recall. The noble Baroness said, quite rightly, that it is a cross-party committee chaired by a member of the governing party. When the committee makes comments such as:

> "In our view, the Government's stated approach to delegation is flawed. While the Bill may contain a *legislative* framework, it contains virtually nothing of substance beyond the vague 'mission statement' in clause 1(1)",

it is a strong condemnation which I think shows that the Government have not given the matter adequate thought.

My real concern is that this is not the only Bill where the Government have singularly failed to make a clear case for the policy that they are advancing. People have been watching the proceedings on the Cities and Local Government Devolution Bill. That is a policy that also generally commands support but, nevertheless, we have seen in that case, too, the Government seeking to make policy on the hoof and pass through the revising Chamber legislation that fails to stand up to the most basic test of scrutiny.

I suggest to the Minister that—while it may be past praying for these Bills as they were introduced—tools such as pre-legislative scrutiny might be used more regularly when the Government want to do something that is, at the outset, somewhat unclear regarding the detail of how they wish to proceed. They might reflect on the failure to use the mechanisms available to them for this Bill and ensure that such measures will be taken, where appropriate, in the future.

The Minister said that there had been agreement to make progress. My noble friend Lady Pinnock will indicate today in Committee that we do not want to see this Bill delayed; we want the Government to get their act together and make reasonable progress with a measure that commands, I think, a fair degree of support. Primarily, our position is that we want reassurance that, in the future, this House will not be frustrated in its fundamental role of effective scrutiny because the Bills presented to it have not been properly thought through.

Baroness Andrews (Lab): I want to reinforce the points that have been made by my noble friend the Leader of the Opposition and by the previous speaker. I was critical of the Government on Second Reading because I felt that the Bill that they introduced was, essentially, an abuse of process. Having read the report of the Delegated Powers and Regulatory Reform Committee, I think that I rather understated the case. Now that I have seen the Constitution Committee report, which points to an increasing trend of legislation that is vacant and in fact leaves most of the delivery to regulations, I think that I have been even more restrained. I am grateful for what the Minister has said today because he has responded to many of the concerns that were raised, but I want to press him on a few things.

To pick up on the previous speaker's statement about the mission statement, the nature of the Bill, what the Delegated Powers and Regulatory Reform Committee said is excruciating stuff, advising the Government and officials that Bills are not there to send a message; they are there to implement legislation. I think back on great reforming legislation, such as the National Health Service Act 1946. If it had just sent a message that it would be rather good to have a national health service and left everything to regulations, we would be in a fine mess now, but that is precisely the nature of the trend of legislation that we see in this House, which is a point that has also been picked up by the Constitution Committee. Without knowing the likely impacts of this Bill, it is very difficult for this House to do its job. As my noble friend the Leader of the Opposition said, it is not so much a question of when Report stage is introduced, it is whether we will have the fundamental information that we need to actually test this Bill in this House as we are required to do.

We are in favour of the Bill. Who could possibly be against the expansion of affordable childcare when so much more is needed, when so many parents are not able to access it and when so many children are in need of the sort of quality childcare that lifts their learning and gives them a good start? In this Bill we will be looking for evidence of not merely an increase in capacity but a genuine increase in quality. However, at the moment we do not know whether the Bill will meet its objectives. We do not know whether it will make the situation better or worse, because there is currently a real issue of capacity in the childcare system. Many childcare providers think that at the moment the Bill could reduce capacity. That is why by Report we need a full account of the evidence that has been provided to the Government so that we can make a judgment about how to improve the Bill, how to deliver the objectives and how to get the best possible outcomes for children and parents.

4.30 pm

This is a more general point but it goes to the heart of the arguments that we hear about secondary legislation. The department has consistently argued publicly that

[Baroness Andrews]
speed is of the essence. Frankly, I think that the Minister should be more concerned about sustainability than about speed. Can he explain to the House—with all respect, he has not done so so far—why the Bill was introduced in the way that it was? The policy comes into force in 2017. Why did the Government think that getting the process or the order right would slow down their ability to deliver the policy? Having the evidence, the reviews, the consultation and then the Bill would hardly have been a slower process. We would have ended up with a more secure and sustainable process, not simply a slower one. In particular, the Minister has failed to explain why, in the Select Committee's words, he has put,

"the very heart of what is to be delivered",

not on the face of the Bill but in delegated regulations and therefore beyond the scrutiny of Parliament. That has really exercised the Delegated Powers Committee and it should concern this House.

The department has attempted to argue that the regulations under Clause 1 are operational, administrative and technical in detail, and it has referred to the need to consult. The committee demolished that argument. It is often used but it is a lazy and sloppy argument. The point is that these regulations confer new powers. Some are unspecified and unjustified, referring, for example, to any public body, but they carry the burden of the implementation of the Bill; they are not technical.

Will the Minister accept the recommendations in paragraph 11 of the committee's report and amend the Bill to include greater detail about the nature of the provision? Will he also follow the recommendation of the committee, which has said, quite simply, that it is,

"surprised that the negative procedure is considered appropriate for any of the powers under clause 1"?

Will he give the House an assurance that he will be bringing forward affirmative regulations in each case?

Unless the Minister can accept those two critical recommendations, it will be extremely difficult for the House to have a proper and full debate on Report to test the Bill.

The Earl of Listowel (CB): My Lords, I thank the Minister for this announcement. Having worked with him on the children Bill, which he led through Parliament, I know how very hard he works to listen to Peers' concerns and to respond to them, so I am very grateful to him for this response. I also know that his first ambition is to make a difference to children in this country. I am sure he will agree that, by delaying the Report stage and allowing us to gain more information, we will be in a better position to challenge him and work with him to get the best Bill and one which will make the most difference to children. Therefore, I warmly welcome the Minister's announcement.

Baroness Eaton (Con): My Lords, I find it very surprising that today the Opposition have decided that the Statement on child poverty made in the other place by the Secretary of State for Work and Pensions should not be repeated and discussed here. The Statement details the Government's approach to tackling the root causes of child poverty and improving the future life chances of young people. Instead of debating child poverty as a matter of public importance, the Opposition have chosen to have a debate about procedural matters, when the Government have already made it quite clear that they have responded to their request to defer the Report stage of the Childcare Bill to October.

Baroness Hughes of Stretford (Lab): Would the noble Baroness like to explain to the House the relevance of the point she has just made to the topic under discussion here today?

Baroness Eaton: My Lords, the Minister has already made clear that the concerns of the House were to be brought back at Report in October. However, the issue of child poverty is of great importance to the whole nation. I do not think that the electorate are particularly interested in the finer points of how we reach conclusions.

Lord Harris of Haringey (Lab): Perhaps the noble Baroness can explain why it is in the interests of either this House or the nation for the Government to bring forward legislation without telling the country the detail of what is contained in it. It is a constitutional issue that is being raised now, not a party-political point.

Baroness Eaton: My Lords, I feel that I have made my point firmly.

Lord Tyler (LD): My Lords, I served as a member of the Delegated Powers and Regulatory Reform Committee and want to return for a moment, if I may, to the recommendations in our second report. I very much welcome the response from the Minister this afternoon because I think that it was very helpful, but there are wider issues here. I particularly appreciate the presence of the government Chief Whip, because I am sure he will wish to make sure, through the usual channels, that there is discussion of some wider issues.

I am also delighted to see that the chair of the Delegated Powers and Regulatory Reform Committee is here—the noble Baroness, Lady Fookes. It is probably her drafting that has produced what is, I think, the most critical paragraph in the second report—critical in both senses—which I will put before your Lordships' House:

"We note that the Minister said that 'the introduction of the Bill, with a strong duty on the Secretary of State, sends a clear message to parents and providers about the Government's commitment'. That is not, in our judgment, a proper use of legislation: the purpose of an Act is to change the law, not to 'send a message'".

I think that that is critical to the role and responsibility of your Lordships' House. I therefore think it entirely appropriate—and I welcome the fact that they have given these indications—that the Government are prepared to respond positively to the report as a whole. However, it applies not just to this Bill. As the noble Baroness and my noble friend said, there are echoes here of the committee's first report, which relates to the Cities and Local Government Devolution Bill, where again there were powers in statute, potentially, that are akin to Henry VIII powers, which this House has always been very sensitive to and I hope will always be.

As my noble friend said, in the immediate aftermath of a general election and change of Administration, there is always an absurd rush to legislation, with Ministers desperate to get something done. But it is an affront to the role of your Lordships' House to put before us obviously inadequate legislation. That is true in both these cases. I hope that there will be an understanding, not just in relation to this Bill but in relation more widely to the legislative programme of the new Administration, that there are important implications for the role and responsibility of your Lordships' House. I hope that there will be very careful reading of the first and second reports of the Delegated Powers and Regulatory Reform Committee.

Baroness Massey of Darwen (Lab): My Lords, I thank the Minister for his statement and am very pleased to hear that the noble Lord, Lord Sutherland, will be helping in the progress of this Bill. The noble Lord chaired most ably the Select Committee on Affordable Childcare. It is to this point that I wish to refer, following on from the points made by my noble friend Lady Andrews about the skeletal nature of the Bill and the inadequacy of the deliberations before the Bill came to us.

The Affordable Childcare Select Committee interviewed more than 80 experts in childcare and several academics and parents. It was an excellent committee effectively chaired. I would like to know from the Minister whether the Government have actually read the Select Committee report. Even though the report was presented to this House in February, we have been promised a response only in the autumn. That seems to me to be a very long time for consideration.

If the Government have read the report, does the Minister think that it would be a good basis on which to produce or propose legislation now? The Government have missed an opportunity to produce a really good, solid Bill. They have not done so. They had the opportunity to read the Affordable Childcare Select Committee report with all its recommendations. What will the Government do now about this Select Committee report? Will they take it seriously and why have they not done so already?

Lord True (Con): My Lords, I raised this matter on Second Reading. I was critical of my noble friend on the Front Bench and of the way in which the Bill had been brought forward. This was from the viewpoint of someone who spent rather too long in Whitehall and even longer—13 years—in the usual channels. I repeat what I said: it was not a good way to go about legislating. But I think that the House is at its best when it sheds light, rather than heat, on a subject, so perhaps we should get on and consider it in Committee.

The noble Baroness the Leader of the Opposition was a little bit holier than thou. During all the years I spent toiling in opposition, I remember a fair number of pretty outrageous Bills—indeed, skeleton Bills—that came forward from the other side. I remember in particular a scandalous planning Bill which would not bear much resuscitation. So we have all been guilty and we all agree that the House is at its best and does its duty best when it has the opportunity to consider a Bill in detail. I was grateful for the chance to talk to the Leader of the House yesterday, and to my noble friend, who responded, as the noble Earl, Lord Listowel, said, with the courtesy and consideration that the House expects from him. Clearly, a mistake was made. When a new Government are formed they understandably want to make progress on important matters. Lessons have been learned and I am unequivocally grateful to my noble friend for his response.

There is just one small thing. I do not want to upset my noble friend the Chief Whip, but Report stage is quite restrictive. It is not for me to do the usual channels any more but it may be that, in the light of information we receive, some of the Report consideration could be on recommittal, to enable your Lordships to look at one or two matters, provided that there is no obstruction to the timely passage of the Bill. This is a matter for the usual channels but the House does have that flexibility. I should like to thank my noble friend for the generous, courteous and honest way in which he has come forward with good solution for the House.

Lord Sutherland of Houndwood (CB): My Lords, the Minister's statement has been described as unusual. I welcome unusual statements, especially from Ministers; it is normally a sign that some thought has been given to what is happening, which is much appreciated.

The messages are clear. The Delegated Powers Committee has produced an absolutely vigorous report and comment which mirrors much of what was said at Second Reading. We have the beginnings of a response from the Government and, if I can play a small part in that, I shall be delighted to do so—I assure noble Lords that it will be on an all-party basis, as the Select Committee was.

The critical issues are, first, how much information will be available to the House before Report. That is fundamental to having adequate further discussion. Secondly, in the case of this particular Bill, is a very clear distinction being drawn between primary legislation and regulation? These are the two areas where major discussion needs to be held. I hope that postponing Report will give us time to do that—and I hope that we might even have the odd, additional, unusual statement coming forth to help us in a difficult situation to get a Bill through that we all want to see in good shape so that we can strongly represent it to the country.

4.45 pm

Lord Storey (LD): My Lords, the noble Lord described the Delegated Powers Committee's report as vigorous. That is perhaps a little bit of an understatement. It is true that the Minister is a courteous and honourable person. Those who worked with him on the Children and Families Bill know how anxious he is to keep people together and to get agreement on the things that concern us all. This must be true of the Childcare Bill. It is too important to get it wrong. I am a great admirer of the noble Baroness, Lady Eaton. She and I have served together on a number of local government committees. However, I was slightly disappointed with her disingenuous remarks. Had she looked at the list of amendments, she would have seen that another local government stalwart—the noble Baroness, Lady Pinnock—has tabled Amendment 34 on child poverty.

[LORD STOREY]
Therefore, I ask the Minister: am I right in understanding that these issues will be sorted—to use a common colloquialism—before Report?

Baroness Fookes (Con): My Lords, I hope that the House and the Minister will forgive me if I intervene briefly as the chairman of the regulatory powers committee. I accept that it was a hard-hitting report; none the less, I think that it was a fair one. On the other hand, I welcome my noble friend the Minister's offer to postpone Report stage, and the various ways in which he is trying to put right what I think must be accepted as a mistake. However, I think that all this could have been avoided if one of two ways had been followed by the Government in this matter—either by introducing a draft Bill, where all the details could have been fleshed out, or by the time-honoured method of introducing a Green Paper for consultation, followed by a White Paper setting out broadly the regulations and Bill that they wanted to see. In those cases, we would have had no worries at all.

Lord Nash: My Lords, I am grateful to noble Lords across the House for expressing their support for this extended provision. I have already commented on the Delegated Powers Committee's report and our gratitude to that committee, and the fact that we will reflect very carefully on its findings and bring forward any appropriate amendments on Report. Regulations will not be available until after Report but we will report by then on the findings of the funding review. We will have evidence from the pilots in 2016, before the provision starts in earnest in 2017. We certainly take the report of the Select Committee on Affordable Childcare extremely seriously. We are studying it in great detail and look forward to discussing the details of the Bill with its members on and off the Floor of the House.

The Bill is very clear on what it sets out to achieve. It places a duty on the Secretary of State to make available 30 hours of free childcare for working parents. That pledge was in the Conservative Party manifesto at the general election and is similar to what was in the Labour Party's manifesto. I make no apology for the fact that we are getting on with delivering that pledge. The parents want it, the sector wants to know where it is and is, indeed, pregnant with anticipation for this provision. We have already had 500 responses to the funding review call for evidence. Of course we want to work with the House and our stakeholders to make sure we get the delivery right. I know that there is a lot of good will around the House to help us achieve this and I look forward to working together to do that. Taking all those points into account, I hope that we can now proceed to Committee.

Motion agreed.

Amendment 1

Moved by ***Baroness Jones of Whitchurch***

1: Before Clause 1, insert the following new Clause—

"Consultation and reviews

In order to ensure that the duty in section 1(1) can be implemented effectively, the Secretary of State shall, before the end of 2017—

(a) arrange for the following to be conducted and completed—

(i) a review of the cost of providing childcare;

(ii) an impact assessment for the provisions of section 1;

(iii) a consultation with parents and childcare providers;

(iv) a review of the 2016 pilot scheme;

(v) the taskforce on childcare led by the Minister for Employment in the Department for Work and Pensions;

(b) arrange for a report on each of the pieces of work under paragraph (a) to be laid before Parliament; and

(c) publish and make available for consultation a draft of any regulations which the Secretary of State intends to make under section 1."

Baroness Jones of Whitchurch (Lab): My Lords, these are crucial amendments that seek to take forward our concerns, which have just been set out by my noble friend Lady Smith. As we have just discussed, they echo the concerns identified around the House at Second Reading, which have been endorsed by the damning report of the Delegated Powers and Regulatory Reform Committee, and further endorsed today by the Lords Constitution Committee.

Noble Lords will recall that at Second Reading there was broad consensus that we supported the principles behind the Bill but were concerned about whether it was workable and affordable. More fundamentally, there was a concern that we were being prevented from carrying out our essential scrutiny role effectively. I could cite a number of quotations from noble Lords around the House to endorse that argument, but I know that we all recall the frustration that we felt at the time. The Minister was not able to provide any reassurance because, as he said, the plan was to carry out the reviews and then publish the regulations in light of their conclusions—in other words, a long time after the Bill had left this House. We have since received a letter and a policy statement from the Minister, as well as his helpful statement today, but I would still like further clarification on what we will have before us on Report. This is what our amendments are attempting to tease out.

I gathered from the policy statement that it was proposed to consult parents, providers and employers, beginning in the summer, as well as to have a public consultation that would not take place until 2016, and that outcomes from both would feed into the draft regulations, which would be published after that. I am just checking the timescale that the noble Lord is now proposing, in light of what I read in the policy statement. Then, in September 2016, the pilot schemes will take place, so there will also be conclusions from these. I gathered from the noble Lord today that on Report we would have details of what the pilot schemes would do, but not their conclusions.

The policy statement also said, and the noble Lord echoed this today, that in the autumn the Government will produce their response to the affordable childcare report. As my noble friend Lady Massey has said, it would be helpful to have the Government's response to that before Report. I am not sure that the Minister clarified that that would be the case. He said that there would be discussions with the noble Lord, Lord Sutherland, and others, but a thought-through response to that report would be very helpful.

We then have the government task force on childcare, which I think we are also calling the funding review, to which my noble friend Lady Smith referred. As she said, the whole Bill will stand or fall on whether we get the funding right. Is the noble Lord saying that all the work on that review will be completed by September, in time for Report? It seems a very big piece of work to get it right—not only to consult all the providers but to look at the financial implications and at where the money will be drawn from to pay for any additional places. I am impressed if that is the case, but it would be helpful if the Minister could clarify that.

We also have the Minister for Employment chairing a childcare implementation task force—which I think is different, but the noble Lord will be able to clarify this—to look at the options for extending entitlement. However, as we discussed last night, it seems from the 10 Downing Street website that that task force's report is not to be made public. Perhaps the noble Lord could clarify whether we will ever see it.

There is then a full economic impact assessment, which we will not see until 2016. Then, as we talked about, there are the final regulations and guidance. I am just trying to tease out in a little more detail which of these we will see on Report, because I would have thought—and this is what the Delegated Powers Committee report said—that most of them would be very helpful before we get into the detail of the Bill.

In essence, this is a topsy-turvy Bill. We are doing everything in the wrong order. As the noble Baroness, Lady Fookes, said, it would have been sensible to have reviews and pilot schemes and publish a more detailed Bill after that. Amendment 1, is, in effect, a sunrise clause: it puts a logical process of consultation and review into the Bill and enables both Houses to play a proper role in scrutiny before the Bill is enacted.

At Second Reading, the Minister argued that it was important for the Bill to be published early so that parents could plan for 2017. Crucially, our amendment would not alter that start date, but would give an opportunity to address the many concerns that parents and providers are raising about who will be entitled to the free childcare and how it will be funded, so that, by 2017, parents will have a much clearer picture of what is on offer to them. I hope that noble Lords will see the sense of the amendment. It is very much in keeping with the recommendations of the Delegated Powers Committee and it would underpin our right to scrutinise the intent and detail of the Bill more rigorously.

Amendment 27 is quite straightforward and essential, and again builds on the recommendations of the Delegated Powers Committee. As it stands, Clause 2(2)(d) is a Henry VIII power that gives widespread powers to the Secretary of State to amend, repeal or revoke any regulations made under the Bill. By removing subsections (4) and (5) and replacing them with our amendment, all the regulations in the Bill would need to come to each House for approval, so there would need to be an affirmative, rather than a negative, process. We believe that this safeguard is necessary because of the lack of clarity in many of the regulations proposed.

In their policy statement, the Government sought to make a virtue of the lack of detail in the regulations proposed, arguing that the reviews and the consultation should take place first. We of course agree that consultation, evidence-collecting and analysis should take place before the legislation is finalised, but we are not prepared to hand over so much detail of the legislation, both primary and secondary, to the Secretary of State when so much is yet to be decided. We believe that that is bad policy and bad scrutiny.

The Delegated Powers Committee's report was clear on this. It said:

> "In our view, the Government's stated approach to delegation is flawed. While the Bill may contain a legislative framework, it contains virtually nothing of substance beyond the vague 'mission statement' in clause 1(1)".

It went on to recommend that the affirmative process,

> "should apply on the exercise of all powers conferred by clause 1".

We agree with this recommendation and our amendment would give effect to it. I am not sure whether the Minister's statement today confirmed that. Again, I would be grateful if he could clarify that. Amendments 40, 41 and 42 are then consequential on Amendment 21.

Given the lack of detail, on which all noble Lords commented at Second Reading and again this afternoon, I hope that these amendments will provide some reassurance and a vehicle for taking the Bill forward. I hope they will receive widespread support. I beg to move.

Baroness Pinnock (LD): My Lords, I am very new to this process of scrutinising legislation. All the detailed procedures and processes that more experienced Members of this House know about, and the intricacies of how a decision is made, are a bit new to me. What I do know, though, is this: there is in front of us, for a very important change to legislation, a Bill that comes to just over three pages. The amendments that have been tabled across your Lordships' House come to 13 pages, which is a very telling ratio.

What we have in the initial case is something that is extremely lacking in detail and substance, when we need detail and substance. The Bill is not about a Conservative manifesto commitment; I am concerned not about the Government's manifesto commitments, but about the impact of the final legislation on children and their families. So much is lacking in the Bill that we have no idea what the impact will be and whether it will be affordable or accessible for all young people. Which families will be able to take advantage of the 15 hours of additional free childcare that is on offer? We know none of these things. We do not know whether there is sufficient capacity in the sector to provide these additional 15 free hours.

In my other capacity, as a local councillor, representing families and their children, I would have to say, looking at this, that I do not know what is on offer, and whether I would be able to access and use it. We have before us a lost opportunity of immense proportions. Everybody across this Committee can agree that an additional 15 hours' free childcare is very important to families and to children of preschool age, but we cannot get it right in the first instance. It is shameful that we are at this stage.

5 pm

Before we get to Report, we ought to have all the information we need. I do not want to be part of a system that agrees legislation without all the information. I cannot believe that that is what we are being asked to

[Baroness Pinnock]
do. I urge the Minister to do what he can to encourage those who do these things to make sure that we get all the information we need so that we can properly scrutinise what is on offer and, in the end, provide something of value and substance.

First, I want to make it absolutely clear that, on this side, we are very supportive of the outline of the Bill, which is the 15 hours' additional free childcare. Secondly, we do not want to see any unnecessary delay. Thirdly, we want the wording to be right so that no one slips through the net because the detail of the legislation is inadequate.

That leads me to be very supportive of the amendment of the noble Baroness, Lady Jones, which seeks to get all that information upfront so that we can look at it and, as is our duty, make a proper decision about the contents of the Bill. It is not about the principle but the detail. The detail matters for children and their families. I urge the Minister to reflect very carefully on the lack of detail before us, and to make sure that we get it on Report so that we can do what we should be doing, which is to scrutinise the detailed content of this important piece of legislation.

The Earl of Listowel: My Lords, I rise to speak to Amendment 29, and first declare my interest as a newly appointed vice-chair and parliamentary representative of the Local Government Association. I omitted to thank the Select Committee and the Opposition for their part in ensuring that we have this thinking space before Report on this very important Bill. I absolutely agree with the noble Baroness, Lady Pinnock, and I was pleased to hear the passion in what she has just said.

I do not think it a good thing if a newly elected Government with a manifesto commitment and with a majority should feel timid about taking action. I very strongly opposed the Academies Bill, which was introduced under the coalition Government. I do not feel it is wholly redeemed, but I think a Government have to be fairly bold, and maybe do new and dangerous things. Sometimes those can have very good outcomes. In what became the Academies Act, I think the power given head teachers has been a very good thing.

I think it is a difficult balance for a new Government. They need to assert themselves, they should not be too timid, but for something as important as this—and I totally agree with the noble Baroness—time, thought and consideration are vital. I am happy that we have had this opportunity for extra thinking time.

In my amendment, I call for a commission to be set up:

"Within two years of the coming into force of",

the Act, which will look,

"with particular regard to value for money",

in childcare provision. Under the amendment the commission would appoint,

"the Children's Commissioner for England … a representative of the Institute for Fiscal Studies, and … a representative of the Nuffield Foundation",

to look at value for money in the childcare sector. I have done this because I have been rather shocked in the past to see from international comparisons of the cost of childcare how expensive it is in this country. I am concerned that the taxpayer is not getting value for money.

I must apologise to the Childcare Minister. In a recent meeting when he briefed us on the Bill, I am afraid that I put words into his mouth which he did not use. He did not refer to his concern that the cost of childcare in this country is higher than in other nations; that was a concern expressed by his predecessor in the other place, his colleague Elizabeth Truss. I apologised to him for that but he did point out that childcare provision in this country has been part of a piecemeal process. Over the years, it has been rather reactive and there has not been a strategic view of what we should be doing, so I hope that your Lordships might think this a worthy consideration.

One particular concern I have is that while parents are the drivers here—the money goes to where they choose to place their child—I know from research that they will often choose price over quality. That is absolutely understandable when you are desperate for childcare, but because we all know that quality is so important, we may need to think of other ways of funding the way the market works to ensure that there is more of an incentive to improve quality, rather than simply to have extra provision.

I will also speak briefly to my colleague and noble friend Lord Sutherland's amendment, 38A. I do not have it in front of me right now but, having looked at it briefly, I felt that he had made a very helpful contribution in saying that there should be a longitudinal study of the impact of early years childcare. The development of children who experience early years provision is fundamental. I am sure that my noble friend Lord Northbourne will raise the question today of what happens in early childhood, and particularly how the relationship between mother and infant is mediated by early years care. That is fundamental to how we make mature relationships as adults. So much of the security and success of our relationship with our partners and children depends on what happens in early childhood. Perhaps we can get more information on this long distance between infancy and the ages of 25 or 30, when we start to make our own families, and even look at the next generation on. It would be really helpful to have a study to look at the impact of this, so I welcome my noble friend's amendment.

Lord Sutherland of Houndwood: My Lords, I believe we are in a much better place now than we were during Second Reading and I thank the Minister for the part he has played in that. I also thank the usual channels, who I am sure were not silent when critical issues came up.

That being said, there are still some major issues and some of these amendments deal with them very well. Pro tem, until we see how much information we will have before Report, I would be inclined to give my support to Amendments 1 and 27—particularly Amendment 27, because we need to be clear that the regulations that do not come before this House deal only with practical constitutional matters. In principle, I give my support to both these amendments and we will see how things develop between now and Report. Effectively, the Government are under detailed scrutiny

here and I encourage the Minister to do all he can to work with the good will around this place to bring about a successful conclusion.

That being said, I will refer briefly to my own Amendment 38A, which is quite different from the others. It recognises the fact that excellent work of a longitudinal nature has been done—for example, in the EPPE and EPPSE reports—with the encouragement and sponsorship of the Department for Education under two different Governments. That is something we welcome. We should look at the value of that work, which was evident to the Select Committee, with a view to continuing with a similar evaluation of what Government policies bring about. The EPPE study takes children from the age of three. This legislation might alter that age and, if so, is an additional reason to look for the ways in which early education impacts on later educational opportunity.

I am looking for an indication from the Minister that the department still attaches great importance to building up this long-term database of how well or ill any particular policy might be working.

Lord Northbourne (CB): I am grateful to my noble friend Lord Listowel for mentioning that we were going to speak together and I apologise to the Minister for being a minute or two late—I did not realise that there had been a slight rehash of the timings. My Amendments 4 and 7 dare to ask, in this company, whether childcare is always the right answer for all children and all parents. I shall, of course, come back with those questions when this matter returns. I understand that we are not discussing these things in any detail today so I shall not press my amendments.

Baroness Andrews: My Lords, I have a few comments. First, Amendment 1 raises a lot of the issues that we began to talk about in our previous discussion on the way the Bill is managed. Again I tell the Minister that we are very grateful for the flexibility he has shown under the circumstances.

Amendment 1, in the name of my noble friend Lady Jones of Whitchurch, creates an opportunity for the Minister to give us a bit more information on the timetable in general. He has said clearly that we will have the results of the funding review before Report. It would be really useful if he would spell out, as far as he is able at this point, some sort of road map for the process as it will run over the next three to six months. There are so many reviews and all manner of different things happening. There are the pilots—I, for one, do not know much at all about those. Is it possible to set out the department's working timetable, and perhaps put a copy in the Library, so that we can reflect upon it as we come back at various stages of the Bill? That would be very helpful.

Secondly, there is a contrast between the amendments in this group. Some are probing into the workability of the process itself and then there are two, in the names of the noble Earl, Lord Listowel, and the noble Lord, Lord Sutherland, which raise much more fundamental questions about impact and longitudinal issues. We need a proper debate on what we actually know about the impact of childcare, in terms both of learning and social skills. At the moment we have a rather random collection of evidence about impact, much of which is from the agencies themselves. It would be extremely useful, given the investment that is going into this and given the expectations raised by doubling childcare, if we could have some thorough, systematic research on impact, as the noble Lord, Lord Sutherland, suggests in his amendment.

I do not want to labour the point, but I am reminded that there is a contrast between the way the Bill has been introduced and the way previous childcare legislation was introduced. If we go back to 1999 and look at "Meeting the Childcare Challenge", that was a very detailed road map for increasing the supply of childcare, which went along with tax credits, with start-up capital, with revenue funds and with the extension of after-school care. There was a very clear prospectus as to what was going to happen and how it was going to be funded. We should bear in mind that past massive changes in provision have been planned carefully. Some studies on not just the value for money of what we are getting, but the impact on educational achievement in particular, are long overdue. For example, a recent report from the National Literacy Trust on reading shows an increasing, not decreasing, gap between the achievement of boys and of girls from disadvantaged backgrounds, after all the effort that has gone into investing in boys' education. We really need to know what we do not know, as well as what we do know.

5.15 pm

Baroness Howarth of Breckland (CB): First, I thank the Minister for his letter, which raised a number of issues in my mind but which was at least helpful in resolving some others, and say that I support Amendment 1. I believe that I heard the Minister say in his introduction that he had had useful discussions with the noble Baroness, Lady Jones, and that some of the issues that he outlined in his introduction were going to come forward in any event. Despite all the difficulties that have gone before—I am glad I am not taking a political view—this gives us a really good opportunity to take a strategic view of childcare at the moment. I want to be absolutely clear about the who, the how and the what as we go through the amendments. We have a number of amendments, which we will discuss later, about what a working parent is, who in a range of other groups, such as disabled groups, might qualify for extra childcare and how that will be delivered. Will it be on an educational or a childcare basis? The Sutherland report pointed out clearly that there are difference in those two things. What will it be? Who will deliver it? Will it be delivered by childminders as well as within that educational framework?

If we could understand, through these reports, the answers to some of the issues that the amendment moved by the noble Baroness, Lady Jones, raises, we would have a good opportunity to settle funding, cost and consistency issues. Those are among the main difficulties across the country for those trying to access childcare—you only have to move across a county border to find you pay twice as much for childcare as you did in the previous county, which can cause great difficulties, particularly with a mobile workforce. I hope that as we go through the amendments we will get answers to these questions and that we will stop,

[Baroness Howarth of Breckland]
if you like, the procedural issues—we have made enough of those. We now have some baseline information from the Minister, and maybe we can move forward and get further information so that, by October, we know which parents will qualify and can understand what they will get and where they will get it from.

Lord Storey: First, I apologise to your Lordships for not being able to speak at Second Reading. I will speak to Amendments 1, 29 and 38A. I very much agree with the comments of the noble Baronesses, Lady Andrews and Lady Howarth, but am very nervous of phrases such as "value for money" and "best value" in local government. It has to be about what is best in terms of provision. We have seen early years childcare grow over the last two decades. We have seen the Labour Government, the coalition Government and now the Conservative Government all doing something about early years, but we have not really thought about how it is going to look and how we want it to work. I find it concerning, for example, that three-quarters of our nurseries are, as we know, independent. There is nothing wrong with that, but we know that of those independent nurseries only half have a qualified teacher on the staff. We also know that, when there is a qualified teacher, the learning experience for those children is far greater than otherwise. So it has to be about the quality of the provision, for me.

I wonder about the effects of having those extra 15 hours. It might be great for working parents, but how do they affect the child? I will give an example. Schools will have nurseries, where children will go for part-time provision for three hours a day, Monday to Friday. So you can see a system arising now whereby the working parent will take the child to the childminder and the childminder will then take the child to the school nursery for three hours. With the extra 15 hours, they cannot use the school again, because it is a different set of children in the afternoon—not in every case but in most cases—so they will look for a different provider for the afternoon session. Then the child will go back to the childminder to be taken home to the parent. So there will be four different regimes or experiences of childcare, and I really wonder what the effect will be on those children. We need to look closely and calmly not just at the extra resource and provision, which we all welcome, but at how we ensure that there is quality.

Lord True: My Lords, this is very much a debate on Amendment 1, and I welcome it—it must not be another Second Reading debate—but the points in the amendment seem to be the essence of good governance. Even if my noble friend is unable to accept the amendment, I am sure that he would be the first to say that government will be constantly reviewing the cost of providing childcare and constantly consulting. I am already grateful for the assurances that I have had that he will consult childcare providers. So in that sense the spirit of it is agreed. Of course, I agree with the noble Lord, Lord Sutherland, that longitudinal and technical study is extremely important. Without going over where we have been before, policy should be founded on consideration of good information and be brought forward in due process, and we are moving towards that.

I have one mild stricture for the noble Baroness, Lady Pinnock. She said that she did not care about what was in the government manifesto. That is a perfectly reasonable personal thought, but I think Mr Lloyd George from her Benches reminded this House that it ought to have a care for the manifesto of a newly elected Government. So I know that she does not oppose this Bill, but I hope that it is not going to be a doctrine that we hear from the Liberal Democrats—that they do not care too much what the elected Government have promised.

I wanted to probe further on regulation. I shall read *Hansard* very carefully tomorrow. My noble friend does not necessarily have to reply in detail; it may be something that he wants to give further thought to. But on the question of regulations—maybe draft regulations, not the final regulations—the fact is that the wrong regulations under this Bill, and under its wide powers, could drive small, private and voluntary settings out of existence, just as the wrong sort of heat drives our trains off our railways, it seems. That will be one of the concerns that I express as we go through the Bill. It is reasonable for Parliament to want to avoid the wrong sort of regulations on behalf of those whom we represent. Of course, I declare a particular interest as the leader of a local authority that may have to implement those regulations and as the husband of a provider who may have to respond to them. I hope that between now and October my noble friend will see if we can show a little bit of ankle on the regulations, because some of them could be literally life and death, not only to businesses and voluntary organisations but to the hard-working women, if I may use that phrase—they are predominantly women—who work in these settings, many of them part time. So I would be grateful for the most that he can do to help us on regulations.

In the amendment proposed by the noble Earl, Lord Listowel, of course I agree that value for money is important. Once upon a time, Her Majesty's Treasury was very interested in value for money before any policy came forward; now it seems that we are looking into affordability once the policy has been published. The value-for-money argument has another aspect to it that I hope we will not lose sight of. I recognise that the Government are committed to this principle. However, this policy, we are told, is going to be funded by taking away benefit from people earning more than £150,000 a year who are provident enough to save for their retirement. That money is going to be given to another set of people, many of them earning more than £150,000 a year, who, you might say, are not provident enough to put a bit of money aside to pay for childcare for their children. That could be a bit of a merry-go-round, to use a phrase that we have heard lately.

As the policy evolves, I hope that we will consider whether the state, the Government and the taxpayers are getting the best value for their money—not only what parents get in terms of providers; that is an issue of quality. This looks potentially—we shall see—to be a very expensive policy with a very substantial dead-weight cost involved in it of paying for a lot of people for something that they pay for already.

I do not expect an answer but I hope that that thought will inform a little the consideration of the implementation of the policy. Having slightly enlarged

on the noble Earl's Amendment 29, I hope that that aspect of value for money will be kept in mind as development of the Bill goes forward.

Lord Nash: My Lords, in this group, I will speak to Amendments 1, 27, 40, 41 and 42, tabled by the noble Baroness, Lady Jones, and the noble Lord, Lord Touhig, and to Amendments 29 and 38A, tabled by the noble Earl, Lord Listowel, and the noble Lord, Lord Sutherland. I will attempt to flesh out a sequence of events and a road map which the noble Baronesses, Lady Jones and Lady Andrews, spoke about. I will write to noble Lords about this and place a copy in the Library well before Report.

The Government are committed to delivering the provisions in the Childcare Bill in a way that is flexible, affordable and high quality for parents. A number of amendments in this group refer to specific activities that have been discussed with reference to the Motion to move the Bill into Committee and that were covered in the policy statement published last week. As I clarified on Second Reading, the Government are reviewing the cost of providing childcare and have committed to increase the average funding rate paid to providers. It is essential that the rate that we pay is fair for providers, value for money for taxpayers and consistent with the Government's fiscal plans. I agree with the noble Earl, Lord Listowel, in Amendment 29 that value for money must be a consideration for all aspects of government spending, and the early years should be no different. The extension of the free entitlement is a significant government investment.

Last month, the Government launched a call for evidence as part of the funding review and, as I have said, we have already had more than 500 responses. As I have also said, we will report back on the review's findings by Report and will then be able to say a lot more about the delivery model. I can confirm that we want childminders to be able to deliver the extra 15 hours of childcare, as they already deliver the universal 15 hours.

On 25 June, I wrote to noble Lords with an assessment of the impact of the Bill on the UN Convention on the Rights of the Child, child poverty, the public sector equality duty and the family test. The collective conclusion of these assessments is that the extension of the free childcare entitlement will have a positive impact for children and families. I can confirm to noble Lords that the Government will publish a full impact assessment on the extent of free entitlement when draft regulations are published for consultation in due course.

The Government want to engage with parents, providers, local authorities, employers and representative bodies about how parents currently access childcare and how it is delivered. This will begin shortly. We want to hear what is important to parents in choosing a childcare provider, and their views on how the extended entitlement will best meet their childcare needs.

5.30 pm

I am pleased to say that we have already received a number of great offers from voluntary and community organisations to host events for parents and providers. They include groups representing and supporting disabled children and their parents. It is the Government's intention also to work closely with employer organisations, such as the CBI, to ensure that we listen to employers' views about how the entitlement could work best.

The Government will roll out the extended free childcare entitlement in certain areas under pilots from September 2016, in advance of full implementation from 2017. I was pleased that so many noble Lords welcomed this intention on Second Reading. A number of local areas have approached the Government to register their interest in taking part. This is a really positive sign of the engagement of the childcare sector in the new entitlement. We are currently considering where early implementation of the extended entitlement should take place, including the number of areas and the locations to ensure geographic balance. The areas will test out the important operational details for delivering the extended entitlement and provide a source of intelligence to support the Government in refining the systems to deliver the entitlement. As I said, we will provide a full update on our plans for piloting ahead of Report.

I welcome the reference to the childcare task force which the Prime Minister announced on 1 June. The task force is chaired by the Minister of State for Employment, with significant cross-government representation from the Department for Education, the Department for Work and Pensions, HM Treasury, the Department for Business, Innovation and Skills and the Cabinet Office. The establishment of the task force demonstrates how seriously the Government take the implementation of this policy. It is a cross-government ministerial group co-ordinating childcare work across government. The noble Baroness, Lady Jones, is right that it will not produce a report. It is there to drive implementation of this policy and other policies, such as tax-free childcare, so that we can deliver on our commitments.

All the activities that I have described will feed into the development of draft regulations and draft guidance. These will be subject to public consultation in 2016. Therefore, I do not believe that each activity listed in the amendment requires the production of a separate report to Parliament. Although I am in agreement with the noble Baroness that a certain sequencing of activity is required to ensure that the Government implement the extended free entitlement in the most effective and efficient way, I do not believe that the detail of this activity needs to be set out in the Bill. Indeed, I hope noble Lords will agree that it is important that a number of these steps take place now, in parallel with these debates, and do not wait until the Bill is passed. The call for evidence as part of the review into the cost of providing childcare is already under way, and the consultation with parents, providers, local authorities, employers and representative bodies will begin in the summer. I believe that the sooner the Government begin listening to the views of those accessing and providing childcare the better it will be. This is the key to ensuring that we can deliver the entitlement in the best way for working families.

I have listened carefully to noble Lords' specific concern that it is important that Parliament is able to scrutinise the detailed secondary legislation that will underpin this Bill. I recognise and greatly value the

[LORD NASH]
expertise that noble Lords can offer as the Bill progresses through this House and beyond. Draft regulations will be published for consultation, and I look forward to comments from and engagement with members of the House's Affordable Childcare Committee and others on those draft regulations. The noble Lord, Lord Sutherland, and I have spoken about the best way for my department to support that. In relation to the comments of my noble friend Lord True, we have no intention of setting up a situation where we drive any providers out of business. On the contrary, we want to encourage the sector to grow and flourish.

Evaluating the impact and benefit of programmes such as the free entitlement is extremely important, and I welcome the amendments tabled by the noble Earl, Lord Listowel, and the noble Lord, Lord Sutherland, on this issue. The noble Baroness, Lady Andrews, referred to the importance of this evaluation. The highly influential Effective Pre-school, Primary and Secondary Education project, to which the noble Lord, Lord Sutherland, referred, ran between 1997 and 2014 and demonstrated the benefits of high-quality early education on children's outcomes. I hope that noble Lords will welcome the Government's building on this with the new longitudinal study of early education and development commissioned by the Department for Education to update our evidence. This is a large-scale longitudinal research project that will follow the progress of more than 5,000 children from the age of two, assess the quality of provision and quantify the impact.

The study will also offer insights into the perspectives and experiences of childminders and of children with special educational needs and disability. The study is particularly relevant to Amendments 29 and 38A and will specifically examine the impact of providing funding for early years education to two year-olds from lower-income families. The reviewers will also be working with settings to collect cost information and to estimate the value for money offered by different ways of delivering government-funded early education. The first reports are expected to be published later this autumn with the final report in 2020.

The Government also welcome evidence gathered by others. The specific membership of the commission proposed by the noble Earl, Lord Listowel, in Amendment 29 reflects previous, informative evaluations carried out in this area. *The Impact of Free, Universal Pre-school Education on Maternal Labour Supply,* a report from the Institute for Fiscal Studies, is a great example of this type of work. The Nuffield Foundation report published alongside the IFS report was a welcome addition to the increasingly rich evidence base about the early years. This report was of course carried out before many of our reforms, such as the two year-old entitlement, had been introduced, and looked specifically at the impact of funding early education on child outcomes rather than the impact of early education per se.

The Children's Commissioner in particular has a strong role in reporting on government policies which impact on all children, including in the early years. Under the Children and Families Act, as noble Lords will recall, the primary function of the commissioner was strengthened to promoting and protecting children's rights, and the wide range of work that she carries out ensures that the rights of children are at the heart of what we do. This external consideration is valuable and must continue. However, I believe that setting out a requirement to produce this work through a commission would limit the scope and flexibility to report at the most appropriate time and with the most appropriate focus.

I hope that I have reassured the noble Baroness, Lady Jones, and the noble Lord, Lord Touhig, that the Government will complete a number of steps to ensure that parents, providers, employers and Parliament are engaged in the development of the extended free childcare entitlement. I also hope that I have provided the noble Earl, Lord Listowel, and the noble Lord, Lord Sutherland, with sufficient reassurance that although the Government recognise the value of evaluating significant programmes such as this one, it is not necessary to place it in primary legislation. I therefore urge the noble Lords not to press their amendments.

Baroness Jones of Whitchurch: My Lords, I welcome the proposals of the noble Lord, Lord Sutherland, and the noble Earl, Lord Listowel. I was also very interested to hear what the Minister said about the research that is taking place and I will look at that in some detail in *Hansard* in due course. I will also scrutinise very carefully the wording of the information that the Minister has now provided about the timeline and I welcome his suggestion of a road map. I think that would help all noble Lords to understand what we can expect on Report.

The critical issue here is not an October deadline. I am grateful that the noble Lord has offered that but it is more important to get the information right than to tie ourselves down to an artificial date. Whether it is October or November does not matter. What matters is that we are furnished with all the information that the Minister is now saying that we will get. I would hate to think that some of this work is being rushed to meet an artificial deadline, so I will just put that marker down, but if it can be ready by October, that is fine.

A number of noble Lords have said that we have had the procedural discussion and the procedural row and I agree with that. We are keen to move on with the detail of the Bill now so let us put the process behind us. I look forward to the information the noble Lord has given and will give in the follow-up letter and I hope that we can go forward on that basis.

I have one last caveat. The Minister talked about the draft regulations. Again, I need to check exactly what he said, but our Amendment 27 says that the regulations should be affirmative, which is an important principle. It is what the Delegated Powers Committee recommended and I hope the noble Lord will take that on board so that we can have a proper opportunity to debate the regulations, not only in draft form but in their final form, before they are put on the statute book. With that caveat, I beg leave to withdraw the amendment.

The Earl of Listowel: My Lords, before the amendment is withdrawn—I apologise for being slow off the mark—may I make a brief comment? I thank the Minister for

his careful response, which I appreciated, and for your Lordships' comments on my amendment.

On my noble friend's amendment, I take it that the longitudinal study referred to by the Minister will finish fairly early in the children's lives. It seems that our discussion is about longitudinal studies that are focused mainly on the educational outcomes and maybe a little on child development. The EPPE study terminated at either 16 or 18, but here it may be slightly earlier.

My concern is that we need some means to think about the long-term impact of early years care. We are becoming more and more aware of the importance of a secure attachment in the early years. I visited the Anna Freud Centre over quite a period and spoke to professionals at Coram. To give an example of the importance of a secure early attachment, they have developed a means of assessing potential adopters. With that tool, they can learn about the adopters' own experience of their early childhoods, and from that discussion they can assess how secure the child that would be placed with them is likely to be. To simplify grossly, if the adopters have had a secure attachment in their own lives, it is likely that they will be able to give a secure attachment to an infant placed with them, even if that child is quite challenging, because they had a very good experience early in life. This is a very important thing to keep in mind.

I am sorry to bore your Lordships with this—I mention it so often—but in this country about 22% of boys and girls are growing up without a father in the home and, according to the OECD, we will overtake the United States in a few years. It is of course deeply distressing for children when their parents separate, and hugely economically costly for us as a nation when families break down.

I am sure many of us would feel reassured if there was research that looked at the experience of early years provision and the early years experience of childhood and connected that with the success of family relationships down the road. Maybe the Minister will think about that, and then we can discuss it at another point. I thank noble Lords.

Amendment 1 withdrawn.

Amendment 2

Moved by ***Baroness Massey of Darwen***

2: Before Clause 1, insert the following new Clause—

"Welfare of children in the delivery of childcare under this Act

(1) In exercising her duties under this Act, the Secretary of State shall—

(a) hold the welfare of all children as paramount in the delivery of childcare in England;

(b) promote the progressive development of persons and institutions which provide childcare;

(c) promote the effective execution by local authorities of their childcare duties under Part 1 of the Childcare Act 2006;

(d) ensure that childcare provision under sections 1 and 2 provides valuable early years education and contributes to closing gaps between children from disadvantaged backgrounds and their peers; and

(e) ensure that childcare in early years settings should provide caring and positive experiences which support children's development and prepare children to thrive at school and in later life.

(2) In this Act "welfare" in relation to childcare means the welfare of children in childcare in so far as it relates to—

(a) physical and mental health and emotional welfare;

(b) protection from harm and neglect;

(c) education and recreation; and

(d) social and economic welfare."

Baroness Massey of Darwen: My Lords, in moving Amendment 2, I shall not go through each point but there are other important amendments in this group.

First, I thank the Minister for responding to concerns about the UN Convention on the Rights of the Child in the annexe to his correspondence entitled "Considering the Impact of the Childcare Provisions". Of course, the UN Convention on the Rights of the Child states that the welfare of the child should be paramount. The Minister quotes Article 18 with regard to assistance of parents and legal guardians, and Article 3, on the best interests of the child. I add that UNICEF's summary of that article states:

"When adults make decisions, they should think about how their decisions will affect children

That is a fundamental issue behind my amendment.

Of course I support getting parents into work, and I support the increase in free childcare. However, children are at the end of this. I think the noble Lord, Lord Storey, was in the same territory: children should be at the end of any deliberation we might make. The Bill as it stands is very adult-centred, and I want to redress the balance and put the focus back on to children and their needs, in particular with a specific provision to close the gap between children from disadvantaged backgrounds and their peers.

Eligibility for working parents and the problems about eligibility will be discussed later, so I will not go into them now. Nor will I go on and on about the wonderful report of the Affordable Childcare Select Committee, chaired by the noble Lord, Lord Sutherland, although I have to say it is a good read. It is packed with research, options and recommendations from providers, parents and employers. Importantly, that report also has children and their welfare at its heart. It shows that children in deprived areas tend to get worse childcare than those in affluent areas and that early years provision attached to a school is generally of a better quality. The committee also recommended that the Government should reprioritise and focus on children who are most in need of high-quality childcare. As we go on, prioritisation may become important and we should discuss the options.

5.45 pm

I suggest, as did my noble friend Lady Jones, that the Bill is the wrong way round—"topsy-turvy", I think she said. A Bill on childcare should look first at the best interests of the child. Childcare and early years provision should help disadvantaged children—and, of course, all children. This is the best interest of the child. We see in a report published last week, and referred to earlier, that there are serious challenges

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with regard to early literacy skills, particularly with boys. Fundamentally, and worryingly, early disadvantage can mean less chance of success later in life. I therefore want us to state in the Bill, loud and clear, that the welfare of the child is paramount and to go on from there. It is only by doing this that we will make real differences. I beg to move.

The Earl of Listowel: My Lords, Amendment 4 in this group would insert "high-quality" into Clause 1(1). Amendment 6, which we will come to later, similarly inserts those words into this subsection. It also asks the Secretary of State to produce a strategy for developing high-quality care within six months of the Bill coming into force and lays out that the strategy should include,

"a target for the number of graduates in the early years workforce"—

I am not sure whether it is a particularly helpful target so I will not discuss it—

"a target for the proportion of managers of early years settings who are a graduates, and … a plan for increasing the number of nursery schools to a specified level".

The reason I tabled this amendment is, in part, the same reason that I gave earlier: what happens at the very beginning of our lives affects our adulthood to a huge degree. This is something of which we are becoming more and more aware. The intimacy that we experience in childhood is very much what allows us to have intimacy as adults. If that experience of intimacy as a child causes fear and disquiet, then, as an adult, we may find it difficult to be intimate with others, which has a huge impact.

Quality is really important. I was grateful for the opportunity to speak to the Childcare Minister and to hear, for instance, that he is looking at sharing early years practitioners with schools, perhaps in reception. I hope that a strategy will look at these innovative ideas so that perhaps it would become normal for early years practitioners to move into primary school education and for primary school practitioners to move the other way. It would greatly enrich learning in primary schools; a really good understanding of child development—which can be developed in particular by working with and observing infants—could be really helpful for primary school teachers. Anna Freud said so to a group of teachers back in the 1930s or 1940s. As a teacher, your job—or an important part of it—is to understand child development, recognise when the child has strayed from the normal course of child development and know how to bring that child back on to their proper developmental course.

That notion is important. We might also look at a strategy of co-training—something that I know has been discussed in the past—whereby early years professionals train with health visitors, mental health nurses, social workers and family support workers to strengthen their understanding of, and develop a respect for, what others do so that they can work more effectively. It is a multi-agency way of getting the best outcomes for children.

The noble Lord, Lord Storey, alluded to concerns about the number of graduates leading early years provision and the evidence that we are unlikely to get the outcomes that we want if graduates—I think they have to be the right kind of graduates—are not leading settings. I had some acquaintance with the manager of a Montessori school in London. She was an Oxbridge graduate and we had many interesting conversations about her work. I was struck by how very thoughtful she is. Clearly her children must benefit from the degree and depth of thought that she gives to her work.

I have mentioned previously one element that is really important in a nursery setting and that is the "key person"—a designated early years practitioner who is responsible for each child. In a sense, the key person is the guardian of secure attachment while the child is placed in a nursery. However, there are two difficulties with that. First, it can be quite distressing for the key person from an emotional point of view because they become quite attached to the child and the child becomes attached to them. If they move on or there is a break in the care, the child will be upset, as will the key person. So, from an emotional point of view, there is pressure on them not to really engage with and care for the child. Secondly, some parents will be jealous that their infant is forming such a close relationship with someone in the early years setting. These things have to be thought through very carefully so that the child does not grow up in a sterile, unemotional environment but in a rich, warm environment. That is why I have tabled my amendment, and I look forward to the Minister's response.

Baroness Tyler of Enfield (LD): My Lords, I shall speak to Amendment 20 in my name. However, before doing so, I want briefly to lend my support to the amendment in the name of the noble Baroness, Lady Massey. I feel that it is a very important amendment as it provides a necessary rebalancing in the Bill between the needs of the child—we heard the statement about putting the child at the heart of the Bill—and those of working parents. Both are important but we have to think very hard about how those two interests and sets of needs can be best balanced.

The amendment to Clause 1 in my name would require regulations to set out the quality standards that childcare providers must adhere to in order to deliver the 30 hours of free childcare. Essentially it is about the quality of the childcare to be provided and it is a probing amendment.

While it is encouraging that the quality of childcare is gradually improving—we heard about this at Second Reading—there are still insufficient numbers of high-quality free entitlement places for three and four year-olds and disadvantaged two year-olds, resulting still in too many children attending poor-quality settings or being unable to access provision that meets their individual needs. Some 15% of disadvantaged two year-olds are attending settings that have not been judged good or outstanding by Ofsted. We know that this position is particularly stark both for children with special educational needs and disabilities—we will come later to amendments that focus on that group of children—and for disadvantaged children. I thought that the Affordable Childcare Select Committee report—I declare an interest as a member—was particularly strong in pointing out that childcare provision in deprived areas is less likely to be good or outstanding than that in affluent areas, compounding the disadvantage that already exists.

We know that current quality standards for early education and childcare are set out in statutory guidance for local authorities. However—this is my key point—it seems to me imperative that the expansion of free childcare to 30 hours does not in any way undermine recent progress in improving the quality of the free entitlement. The early years foundation stage and a robust Ofsted inspection process have both been central to improvements in outcomes for young children in recent years. While the Government acknowledge in statutory guidance that high-quality provision has the greatest impact on children's development—that is very welcome, particularly for the most disadvantaged children—they have not restricted the delivery of the free entitlement solely to good and outstanding providers due to a shortage of high-quality places.

It is unclear to me—hence this probing amendment—whether the Government plan to use regulations underpinning the Secretary of State's new duty to prescribe the quality standards that childcare providers must meet in order to be able to deliver the 30 hours of free childcare. I always like to look on the bright side, so it seems to me that the Bill presents an opportunity to secure quality standards for the additional 15 hours of free childcare and, at the same time, to strengthen existing quality standards for the free entitlement for three and four year-olds.

Very much in that spirit, perhaps I may ask the Minister some questions. First, will regulations be used to place quality requirements on providers of the additional 15 hours of free childcare? Secondly, can the Minister provide assurances that all childcare settings providing the additional 15 hours will be required to be judged good or outstanding in their most recent Ofsted inspection, to deliver the early years foundation stage and to have all staff holding or working towards a level 3 qualification? Thirdly, will the Government consider using the introduction of the additional 15 hours of childcare to raise the quality of the current free entitlement? Finally, can the Minister provide any assurance that the Government will develop, publish and implement—I am sure that many people in this House would be happy to help on this—a strategy for expanding on and improving the quality of the early years workforce, building further on the recommendation in Professor Nutbrown's report and, in particular, on the recommendation that there should be graduate leadership in all settings, including, most importantly, those in disadvantaged areas?

Lord True: I wish to speak to an amendment that I have in this group. I follow entirely the comment of the noble Baroness, Lady Massey, about the need for things being child-centred. My noble friend was kind enough to embarrass my wife by saying that she was Montessorian of the Year, so I am obviously particularly attached to the Montessori system, which is quintessentially child-centred.

I will not repeat the remarks that I made at Second Reading but I think that, as the Select Committee said, there is a little bit of a risk of a conflict at the heart of the Bill. It is presented by my noble friend as an Education Minister but much of the rationale is that it is an employment measure. Indeed, the Minister for Employment is creating a task force that is intended to enhance the take-home pay of a two-owner household doing whatever the regulations—when we see them—will define as work. We do not know quite what that is, but we know that it is work done outside the home or work done inside the home, other than anything to do with caring for the children, as far as I can see. At the same time, we are moving from 15 to 30 hours and bringing in something that was never there before—a barrier against women who stay at home and provide that affective affinity which is so vital. Heaven knows, my mother was never a graduate—she did her bit in the war—but I do not like to think there was anyone better than her at providing childcare. I hope that we can find a way in going forward with this policy to explore whether that barrier is necessary. It will be costly in terms of administration for local authorities, and potentially to providers, and potentially socially costly in what it says about the role and enormous social, and therefore economic, contribution made by mothers who stay at home.

I fear that increasingly, given the comments I have received since the remarks I made at Second Reading. I have had a number of emails from groups and individuals about what I said at Second Reading about not venturing to put in second place the role of the mother who stays at home and cares for a child. That has certainly struck a chord. We must have care as we tread forward. If we really do believe in a big society, is that a big society that we wish to build? I unashamedly think that that is a marvellous phrase of the Prime Minister's, and I strongly support the principle.

6 pm

Regarding the nursery education provision, surely it must include children in families were one partner does not work but instead devotes her time—or his time, in some cases—to childcare. That role is absolutely fundamental and I worry, not about an iron curtain but about the net curtain that is slightly coming down. Is that for reasons of cost? We do not know because we have not yet explored all the business of costs. If cost is the reason, there is a question of choice. The noble Baroness, Lady Massey, slightly hinted at that when she said that we should perhaps explore this issue as things go on. It may be that, if there is limited extra cost, we should skew that extra spending, as we discussed at Second Reading, towards areas of disadvantage, those in most need, those with special needs and so on. It is simply a question.

My amendment is framed far too widely and can easily be swatted down by my noble friend. It is intended only to provoke a debate on how this Bill contributes or does not contribute to addressing the relationship between one set of carers and another.

A new report has just been released by the social policy charity CARE, *The Taxation of Families — International Comparisons 2013*. It says that the tax burden placed on one-earner married couples in the United Kingdom with two children and an OECD average wage is about one-third higher than the OECD average. I have not had time to analyse and explore that, but if it is true, in this context, what we arguably would not need is a new provision that further assists two-earner families while ignoring one-earner families.

[LORD TRUE]

This is a manifesto commitment and we will support it, but can we in some way extend inclusion? The importance of affective relationships between stay-at-home parents and their children links to what my noble friend said entirely correctly at Second Reading: the formation of attachments at an early age is crucial, so we must support them.

Even the *Guardian*—not my normal reading, my Lords—had a comment piece last week by Alice O'Keefe entitled, "Stay-at-home mums are heroes. The left should stand up for them more". I agree with that, actually—take note, editor of the *Guardian*. Alice O'Keefe said that,

"mothers – and fathers – who prioritise staying at home and caring for their families are a valuable and grossly undervalued asset to society. Rather than focusing solely on pushing women out to work"—

and this is a woman writing in the *Guardian*—

"we should be making space for them and their partners to enjoy a stable and happy family life".

I agree with that and hope that this Bill does not close the door a little on those people in the generous provisions that we all want to make.

My amendment is really designed to remind people outside this House—this House does not need any reminder—and perhaps in another place to reflect, as this policy discussion goes forward, not only on the balance between education and employment, between enhancing income and enhancing love, learning, socialisation and the formation of character, but on the balance between one-earner families and two.

My right honourable friend the Chancellor of the Exchequer may be looking at this area overall and bringing policies forward in his Budget to address what seems to be a potential gap in this measure—we do not know. If so, it is one further reason why it is good to have a delay so that as the Bill progresses, we can look at the overall fiscal, social and educational climate in which we advance childcare, as well as the narrow measure before us.

I add just one final thought before ending wearying your Lordships: please let us not overregulate. I wholly endorse everything that was said about quality. But by making more and more graduates in nursing, have we guaranteed that everyone in our hospitals is cared for? There are some things that are instinctive. By making every teacher in every maintained school have qualified teacher status, have we guaranteed axiomatically that all teaching that goes on in our schools is good? As we aspire to quality, I ask that we do not rush to regulation uniformity, which may not answer some of the deeper questions about how we deliver true quality in providing child-centred care for the future.

Baroness Howarth of Breckland: My Lords, I will be, as I usually am, brief. I am not going to make the speech that I was going to make as I think that it has already been made by other noble Lords and Baronesses. I just want to make some points that I think have not been made and, if possible, take up one or two points with the noble Lord, Lord True.

I primarily want to support the noble Baroness, Lady Massey, in ensuring that, whatever we decide in this Bill, the child's needs are paramount. Having heard him on previous occasions, I am quite sure that the Minister will agree that the child's needs must be paramount. The problem is how to implement that. Listening to some of the points made by the noble Lord, Lord True, I felt that there was a conflict between the suggestion that there should be universal provision for every child and the need to meet the needs of children who have more deprivation or disability than the general population. I am quite sure, even on my poor economics maths, that the Chancellor of the Exchequer will not have the funding for universal provision. I therefore hope that, when we get to some kind of pilots, we do not just look at the employment issues.

I know that this is a manifesto commitment and absolutely understand how it has to be met by the Government. However, I think that there is a risk of making things worse for some groups of children. If some families who are earning good funds—I think that the noble Lord, Lord True, was right on this—take up the 30 hours and are already paying for half of it, that means that there will be less finance available for those young people and children, two year-olds and upwards, who are not yet getting proper provision. Knowing some of the parents in those groups as I do, I appreciate that they do not always even know how to access that provision. I know that the Government are keen to improve information so that they can access it.

Those are the points that I wanted to make in seeking the Minister's assurance that, despite the manifesto commitment that this is about employment and getting more women into work, the child's needs will be paramount. I agree that quality is not always about qualifications. Having interviewed many staff down the years, I know that some of the best qualified have probably been some of the least caring. Then again, some of the most caring have not had the skills to actually implement the caring. It is about having an understanding of the two. I think that we could get more for less with a more strategic approach across the whole. I hope that the Minister will, in some of the reviews that are being undertaken, take that overview of it all. The way in which funding is given and the range of different funding—for example through tax credits and the universal credit—is such a jigsaw for families. Just to rationalise that would make a difference both to access for families and to finances generally.

Lord Sutherland of Houndwood: My Lords, I want to focus briefly on one word in the amendment proposed by my noble friend Lady Massey—the word "paramount". It will make a huge difference as to how choices are made when it comes to implementing this Bill. There will be hard choices of a financial nature, about commitments to manifestos and about the kind of care provided. As a principle, it may read like motherhood and apple pie, but it is not. "Paramount" is saying where the final commitment will be. For example, is it the case that paramount considerations will lead to children in deprived areas or children with special needs being favoured if there is a shortage of money? The word "paramount" begins to put an edge on this and that is why I support this amendment.

Baroness Pinnock: My Lords, I support what the noble Lord, Lord Sutherland, has said. As the noble Baroness, Lady Massey, said, the focus of this Bill must be on the quality of provision for the child. I made that point on Second Reading. It is most important that we keep our focus on the quality of the provision for the children whom the Government are going to spend money on by providing additional hours of childcare.

The one word that I noticed was missing from the Bill was the word "quality". When you are dealing with the very youngest members of our society, you would think that any additional provision made for them would have the word "quality" attached to it. When I read the Bill, it struck me that the focus or driving force behind it was not the needs of the child but the needs of the parent. That is why I passionately support these amendments. We need to shift the focus back on to what is done for the child. It would be wonderful if we could rename this Childcare Bill, which has all the connotations of care rather than anything else, the "Early Years Care and Education Bill". Within the additional 15 hours for which the Government are paying we want to see not just aspects of care, but aspects of early years education as well. That would bring with it the qualities proposed by both the noble Baroness, Lady Massey, and my noble friend Lady Tyler. I hope the Minister will take those two points on board.

6.15 pm

Lord Touhig (Lab): My Lords, the Minister and I have something in common: we are both in celebration mode. I believe that it is his wife's birthday. Unfortunately, business in this House prevents him from being with her this evening but I am sure that we would all want to send her many happy returns. For my part, I have to leave before the Committee finishes its business tonight. My youngest daughter is getting married in the morning and I have to catch a train to Wales this evening.

I turn to Amendment 2. My noble friend Lady Massey posed a key question when she spoke on Second Reading on 16 June. She asked:

"Who is the Bill for?".—[*Official Report,* 16/06/15; col. 1115.]

The more I see and try to understand this measure, the more I begin to wonder that myself. The noble Baroness said that any Bill with "child" in the title must reflect—as set out in the UN Convention on the Rights of the Child—that the rights of the child are paramount. I share her view. Good childcare should be child focused and offer learning and developmental opportunities. Otherwise, what is the point of it?

I share the fear expressed by the noble Baroness, Lady Pinnock—a blunt-speaking Yorkshirewoman if ever there was one. On Second Reading, she said that the Bill's focus was on providing means to encourage women into work. While that might be laudable, the primary focus must be on its impact on children's lives and not just on the future of the labour market. If, in the end, all we get from this Bill is a very costly system of babysitting and nothing else, we will have failed every family who wants the opportunity of meaningful, progressive and fully rounded childcare in which the child's development can be the central objective.

Amendment 2 gives us an opportunity to persuade the Government to refocus the Bill and put the child at the heart of this measure. It places a specific duty on the Secretary of State to promote childcare and underpins that by requiring the Secretary of State to,

"promote the progressive development of persons and institutions which provide childcare".

Those objectives go hand in hand. The first without the second would be worthless.

That brings me to a key point highlighted in the report of the Select Committee on Affordable Childcare, chaired by the noble Lord, Lord Sutherland of Houndwood. Paragraph 25 stated that the Committee and its witnesses were concerned,

"about the lack of coherence in the Government's stated objectives for childcare policy".

Witnesses appearing before the committee had flagged up the trade-offs necessary to achieve the separate policy strands. These were highlighted as,

"improving child outcomes, narrowing the attainment gap, and facilitating parental employment".

The committee concluded, after listening to witnesses, that there was no evidence,

"to suggest that the need for such trade-offs was … acknowledged by Government".

It formally asked the Government to clarify,

"how competing aims between the policy strands are prioritised, and what mechanisms are in place between Government departments to address the necessary trade-offs".

Could the matter have been resolved and perhaps a different paragraph 25 put in the report? If the then Exchequer Secretary and now Employment Minister, Priti Patel, had turned up to give evidence it might have been. However, like some latter-day Louis XIV, she wrote to the noble Lord, Lord Sutherland, and said:

"I have concluded that it would not be appropriate for me to attend".

I do not know the lady—I know nothing ill of her and I am sure she is a very good person. However, it is becoming typical of the attitude of this Government to refuse to submit Ministers to the scrutiny of Parliament. If we cannot hold the Executive to account, who will? That is why we come here every day. Ministers and the Government must understand the need to co-operate with the House, with noble Lords, and not to resist our legitimate scrutiny role. I believe that the noble Lord, Lord Sutherland, spoke for all when he wrote back to the Minister expressing his disappointment that the Minister refused to attend. He went on to say that what is best for child development may not be best for enabling parents, and especially mothers, to maintain their attachment to the labour market.

I have been greatly encouraged by the response that the Minister gave at the start of this debate. He is clearly wanting and willing to engage with the House and with noble Lords on all sides to make this a better Bill. I invite him to assuage the fears expressed by my noble friend Lady Massey and other noble Lords and state without equivocation that this Bill is about childcare—a childcare service that is centred and focused on the child. The benefit of helping parents into work is a bonus, but it should not be the main objective of the Bill.

Baroness Evans of Bowes Park (Con): My Lords, I shall speak to Amendments 4, 7, 15, 20 and 33 regarding the quality of childcare and early years education. I thank the noble Baroness, Lady Massey, the noble Earl, Lord Listowel, the noble Lord, Lord Northbourne, my noble friend Lord True and the noble Baronesses, Lady Tyler and Lady Pinnock, for tabling these amendments and for leading the debate on this important issue. I also thank other noble Lords for their contributions.

First, I will reassure all noble Lords that children are at the heart of our thinking in this area and that they will always be at the forefront of what we are trying to do. The Government are committed to driving up the quality across early years provision for all children and ensuring that the current early education entitlement is of the highest quality. The current entitlement ensures that all three and four year-olds can access 15 hours a week of quality early education free of charge to prepare them for school and improve their life chances. It also ensures that children are kept safe and well and that their individual needs are met. The purpose of this Bill is to build on the popular current package and to help families further by reducing the costs of childcare and supporting parents to work.

A number of noble Lords rightly focused on the needs of deprived families, but we all know that work is a key route out of poverty, which is why that is a focus of these measures. We are clear that the extended entitlement is intended to help families by reducing the cost of childcare and supporting them to work. We want to make sure that this is delivered in ways that meet the needs of working families and their children. We think that it is important that the extended entitlement is flexible for parents to access and can be delivered by a range of providers. But again—this point was made by many noble Lords—what is of equal importance is the quality of childcare and the impact that it has on child development. It is absolutely imperative that childcare is delivered in a safe, secure and welcoming way that contributes to a child's welfare and development. Of course, a large number of parents already use significantly more than the 15 hours of formal childcare that are provided. All a child's time spent in such registered early years settings is looked at by Ofsted.

I turn first to Amendments 2, 4 and 20. The quality and welfare standards of all early years childcare, and this Government's expectation of providers to deliver it, is already set out in regulations under the existing Childcare Act, and, crucially, through the requirements of Ofsted's regulatory and inspection regime. Ofsted has announced a new, improved common inspection framework to come into effect from September this year, which will bring more consistency to inspection approaches across education and registered early years settings assessed under the early years foundation stage statutory framework. There will be an increased focus on children's outcomes and the quality of teaching and learning, and on whether appropriate continuous professional development to improve staff practice is in place. Once again, I stress that children's welfare and safety remain paramount and are key elements of the inspection regime.

The noble Baroness, Lady Tyler, asked about the strategy for workforce improvement. We are committed to ensuring that we provide a clear and overarching framework of regulatory accountability and high-quality standards for childcare providers, alongside raising the bar on the calibre of staff via more demanding qualifications and qualification entry requirements. Within this framework, childcare businesses are incentivised and supported to self-improve. We think that this is the right approach for a largely private market and respect the fact that professional practitioners and owners of settings are best placed to recruit and retain a workforce that delivers the childcare that the Government, but, most importantly, parents, want.

The Government therefore are continuing to support the development of the sector by providing £50 million of funding through the early years pupil premium to support providers to raise the quality of provision for disadvantaged children, including supporting workforce development, £5 million to teaching schools to work with local providers and £5.3 million to voluntary and community sector organisations this year, many of which will focus on the upskilling of the workforce by offering training and development.

The noble Baroness, Lady Tyler, also asked about quality being reflected in the regulations. This was a key theme that ran through many noble Lords' contributions. As we have said, we are talking to parents about their requirements for taking up the new entitlement, including quality. These views will be reflected in the regulations that we will consult on in 2016.

I turn to Amendments 7 and 15. I thank the noble Lord, Lord Northbourne, for raising this issue. I think that we can agree on the importance of attachment in early childhood and its implications for long-term social and emotional development. International and UK studies have shown that the foundations for virtually every aspect of human development are laid in early childhood. What happens to a child from the womb to the age of five has lifelong effects on many aspects of health and well-being from obesity, heart disease and mental health to educational achievement and economic status.

The environment for a child in their early years is fundamental to their development and for secure emotional attachment. We know that infants become securely attached to adults who are consistently sensitive, loving and predictable in social interactions with them. With the security of knowing that their primary care giver is emotionally available, children grow in confidence and explore the surrounding world, including the learning opportunities of nursery and school. The Government are committed to supporting the promotion of developing secure attachments between young children and their parents. As well as increasing the number of health visitors, we have raised the standards of qualifications, including the introduction of early years teachers and early years educators and we want to ensure that practitioners have a strong understanding of child development issues such as attachment.

The early years foundation stage sets the standards that all early years providers registered on the early years register must meet to ensure that children learn and develop well and are kept healthy and safe.

The statutory framework also recognises that good parenting and high-quality early learning together provide the foundation that children need to make the most of their talents and abilities as they grow up, and, of course, continuity of care is very important. I reassure noble Lords that Ofsted inspectors will take into account the need for the well-established key person system mentioned by the noble Earl, Lord Listowel, among others. It will help ensure that children form secure attachments and promote their independence and well-being. While I recognise the intentions behind the amendments I have discussed so far, I hope that we have sufficiently reassured noble Lords that they will agree to withdraw them.

I turn to the amendment spoken to by my noble friend Lord True, who raised the position of parents who choose to stay at home. I assure him that the Government recognise that it is a matter of choice for parents to decide whether they want to work or not, and that we have already implemented additional support for such parents, such as shared parental leave. The new marriage allowance will allow people who are married or in a civil partnership to reduce their partner's tax by up to £212 a year. I understand his concern that for many parents the choice to stay at home, offering their own quality of care and love to their children, will be the right one to make. He will also be aware that those families are, indeed, entitled to the first 15 hours for three and four year-olds and to the 15 hours for two year-olds from disadvantaged homes. All in all, that adds up to a substantial package.

The principle that the additional entitlement is for working parents is, however, an important one, which I have already mentioned. It offers greater choice to parents who wish to work additional hours and for those who may wish to return to work, and it supports the Government's goals of supporting hard-working families, reducing the cost of living and ensuring that fiscal goals can be met. However, it does not stop anyone choosing to stay at home and access the other support that I have outlined. I hope that the noble Lord is reassured by that and will feel able to withdraw his amendment.

In conclusion, the Government are committed to ensuring that childcare places are of high quality, as these have lasting benefits for children. The safety and welfare of children remain paramount. Children are at the heart of what we are seeking to do. I hope that noble Lords have been reassured by my responses and I ask them not to press their amendments.

Baroness Massey of Darwen: My Lords, this has proved to be a very important and stimulating discussion on these amendments. I thank noble Lords for their support for the notion of high-quality, child-focused childcare, and the Minister for her response. However, I would be reassured if the words "paramount", "important" or whatever appeared before the notion of children, because my problem is that I do not see the importance of the child being paramount on the face of the Bill, and I would like it to be there.

However, as I say, this has been a very interesting and important debate. Developmental stages have come up time and time again—that is, children's personal, social and academic development—and high-quality childcare, from whichever source it comes, that responds to the child's needs. I very much agree with the noble Baroness, Lady Howarth, who talked about a strategic approach, recognising that children are different. Many noble Lords spoke about this. Children have varied needs. As many noble Lords said, this may, indeed, require hard choices.

I mentioned earlier the report highlighting that some boys not only have poor literacy but are miles behind at a very early age. We need to focus on children who require special help; their needs are paramount. If the welfare of the child is at the forefront, as the noble Baroness has just said, I think that needs to be spelled out in the Bill, preferably at the beginning. That would reassure me. I beg leave to withdraw the amendment.

6.30 pm

The Earl of Listowel: I apologise for being slow to my feet this evening. Before the noble Baroness withdraws the amendment, may I make a few comments on what the Minister has said, since we are in Committee? I am very grateful to the Minister for her careful reply and for her reference to the importance of the key person in the nursery. I am also grateful for everything I have heard about the improving educational qualifications of staff and the encouraging inspection reports from Ofsted.

What troubles me, and I think may trouble other noble Lords, is the concern that this is a very low-paid workforce of mainly very young women. I recently visited a nursery near here and met a couple of young women who had just started working there. I learned of their history: they were abused themselves as children. I do not know how good their experience was of recovering from that. However, childcare staff are often young women who are poorly educated and may well have had poor emotional experiences themselves growing up.

With respect to levels of maternity in young people in care or leaving care, I believe that research was carried out 10 or 15 years ago which highlighted that about a quarter of girls were getting pregnant before leaving care, and a further quarter shortly afterwards. Young women who have had a poor experience of childhood are often attracted to the idea of having a baby, and perhaps to working with young children, because they seek love—the love that they never had—and they hope that through having a baby or caring for a child they will receive that love. Sadly, what they learn is that the child needs to be loved by them, and that responsibility quickly becomes too much for them. Perhaps that is part of the reason why so many children who grow up in care go on to have children who are taken away from them and placed into care again.

I am going to make it my job to visit a few more early years nurseries before Report to reassure myself that the improvements that the Minister described are taking place. Given the realities of the workforce, I find it surprising that we are moving forward in the way that the Minister describes. However, it may be that this is such a vocational line of work that there are young women attracted to it who have great capacity

[The Earl of Listowel]
for it. That might be one reason why we are seeing such an improvement, despite the low pay and low status of the work.

I do not expect a response from the Minister, but I wanted to flag that up as a concern.

Amendment 2 withdrawn.

Clause 1: Duty to secure 30 hours free childcare available for working parents

Amendment 3

Moved by ***Baroness Jones of Whitchurch***

3: Clause 1, page 1, line 3, leave out "The Secretary of State" and insert "Every English local authority"

Baroness Jones of Whitchurch: My Lords, at Second Reading several questions were asked of the Minister as to why it was necessary to have a system of dual responsibility for delivering the free childcare allocations, with the proposed duties seemingly being shared between the Secretary of State and local authorities. However, I do not believe that we received a satisfactory answer at the time; I have scoured the policy statement and there does not seem to be an explanation in that document either.

Under the terms of the Childcare Act 2006, the duty for delivering the existing 15 free hours of childcare currently resides with local authorities. It seems that overall, despite the pressures they are operating under, they have done a good job. In the previous debate, the Minister cited a delivery figure of 95% take-up of free entitlement, which, given the geographical and financial variations that they are operating under, seems pretty impressive.

As I understand the proposals, it is not envisaged that this duty will be repealed. Indeed, in response to a question at Second Reading from the noble Baroness, Lady Eaton, about the local authorities' role, the Minister said that,

"as my noble friend rightly says, local authorities play a very important role. We fully intend and need them to continue to do so".—[*Official Report*, 16/6/15; col. 1130.]

So we are now faced with a potentially farcical situation in which local authorities will be responsible for delivering the first 15 hours and the Secretary of State will be responsible for the next 15 hours, even though the local provider is likely to be one and the same organisation. This arrangement will simply blur the lines of responsibility. It will confuse parents and providers alike and will provoke a blame game when things go wrong. I do not think that anyone understands the logic of this; I hope that the noble Lord will shed some light on the matter.

In the mean time, our amendment provides a simplified, streamlined structure in which the duties of local authorities are extended to cover the full 30-hour package. I hope that all noble Lords will see the sense in our proposal. I beg to move.

Baroness Pinnock (LD): I shall speak to Amendment 31 in my name. Before I do so, I declare my interest—since it is pertinent to local authorities—both as a councillor and as a newly elected vice-president of the Local Government Association. I concur entirely with the noble Baroness, Lady Jones, about the confusion in implementing free childcare provision if local authorities are responsible for the first 15 hours and the Secretary of State is responsible for the next 15 hours.

However, our amendment focuses on a different aspect. We are asking for a new clause to be inserted into this Bill, to enable local authorities to be a provider of last resort. We do so for a number of important reasons. When I visited the Minister this morning, I noticed a big sign on his door that included the phrase "closing the gaps". We all know, from our own research and from references already cited by many noble Lords this afternoon, that early years are extremely important in ensuring that children start school on a level playing field. We as a society must do our best to ensure that children who come from less advantaged homes have that gap closed before they start their formal education.

We are concerned that where children are less advantaged, either in homes where they are vulnerable or in areas where there is considerable deprivation, it is much less likely for vibrant private sector provision to be established, particularly when there will be 30 hours of free childcare. We already know, from evidence provided at Second Reading, that many private providers rely on additional funding, outside those free hours, in order to make their businesses financially viable. We need to give special focus to those areas of the country and those families that many Members of the House are already most concerned about, to ensure that children in those areas and families have the same opportunities and access as children from more advantaged areas. In those places where there are no viable providers from either the private or the voluntary sector, the local authority should be given the opportunity to close that gap to enable children to take advantage of the 30 hours that would be on offer. One of the reasons for doing this is because, sadly, many Sure Start children's centres are either closing their doors or decreasing the number of hours that they are open for children from these very families. In many cases the buildings are there and could be used by local authorities by commissioning from the voluntary or private sector, but certainly provision should be made for children from less advantaged backgrounds.

As we have heard from the noble Baroness, Lady Jones, local authorities already have a duty of sufficiency. Enabling local authorities to bridge that gap would give them the opportunity to ensure that there is a sufficiency of places for all children in our country to take advantage of the additional 15 hours of free childcare—or "early years care and education" as I am going to start calling it. As we heard in the debate on the previous group of amendments, that is probably the most important thing we can do: to focus on children who come from less advantaged areas and vulnerable families and give them the right start in life. Let us really do what it says on the Minister's door and do our best to close that gap.

Lord Nash: My Lords, I shall speak to Amendments 3 and 31, regarding the model of delivery for the additional entitlement. I thank the noble Baronesses, Lady Jones and Lady Pinnock, and the noble Lord, Lord Touhig, for raising this important issue and bringing their considerable experience to the debate. I thank the noble Lord, Lord Touhig, for his congratulations to my wife on her birthday and reciprocate by congratulating him on his daughter's impending marriage. I initially thought that Thursday was a rather odd day to get married, but then I remembered from personal experience that, given the Welsh' legendary reputation for hospitality, a Welsh wedding can easily start on a Thursday and run right through to the Sunday night. The noble Lord will certainly have the weather for it.

There are many views about the best way to deliver childcare for working parents, including those in the excellent report from the affordability committee, chaired by the noble Lord, Lord Sutherland. We believe that we should take stock of all such views before setting out the delivery model for the additional 15 hours. That is only right and proper in a consultation process.

With respect to Amendment 3, the noble Baroness, Lady Jones, and the noble Lord, Lord Touhig, no doubt have in mind existing legislation under the Childcare Act 2006 that places a statutory duty on local authorities to secure early education free of charge for eligible children. The amount currently prescribed under that duty is, of course, 15 hours a week for 38 weeks, although this can be stretched over more weeks per year when parents wish and providers offer the option to do so.

As the noble Baroness, Lady Jones, said, delivery of the current entitlement has been phenomenally successful. Statistics published last week show that more children than ever before are taking up their entitlement. Around 1.3 million three and four year-olds now access the entitlement—some 96% of all children of those ages. Furthermore, around 157,000 two year-olds have been reported as taking up a free place—some 58% of those eligible. This is excellent progress for a programme focused on those least likely to participate in formal childcare. I put on record my gratitude to all those in local authorities and elsewhere who have worked to ensure the early success of the programme.

The Government are currently looking at the lessons that can be drawn from the existing delivery model for the free early education entitlement and considering the simplest and most efficient way to deliver the additional 15 hours of free childcare to working families, many of whom will already be paying for additional hours or provision outside the free entitlement. The extended entitlement must be delivered in a way that is flexible for parents and providers, and funded through an efficient mechanism that, as the noble Baroness, Lady Pinnock, said, reaches those who are disadvantaged in particular. Doubling the free entitlement is, however, a significant change for the system and it would be remiss of us not to pause at this early stage in the process and ask stakeholders, including local authorities and noble Lords, whether they have views about alternative approaches to delivery that could work, and that could deliver the quality, flexibility and efficiency that we want to see.

6.45 pm

However, I would like to reassure the noble Baronesses and noble Lord that the Bill gives the Secretary of State powers to deliver the new entitlement through local authorities. The Government think that it is right for the primary legislation to put the duty to secure the extra 15 hours on the Secretary of State in the first instance, to demonstrate to parents the importance we attach to providing free childcare provision and to give them confidence that the Government will deliver on their manifesto commitment. We intend to build on the existing entitlement that local authorities provide, but will take account of the views of parents and providers to ensure that the additional 15 hours is provided in as effective a way as possible.

Between now and September we will consider carefully the simplest and most efficient way to deliver the additional 15 hours of free childcare, including understanding the view of parents on how this new entitlement should be delivered. This process will be led by the Minister for Childcare and Education and the Government's task force on childcare. I am sure that the learned views of this House will provide important contributions to those considerations.

In Amendment 31, the noble Baroness, Lady Pinnock, has proposed that local authorities should be able to provide childcare themselves when no other provider is willing to do so, or when they consider it appropriate. This is analogous to existing provisions under the Childcare Act 2006, which we do not intend to amend. The noble Baroness is concerned about whether there will be sufficient capacity to cope with the new entitlement in all areas. The provider market is large and diverse and we are confident that it will respond effectively to any increase in demand that the new entitlement will require, although in many circumstances the new entitlement will replace provision that parents are already paying for. The market has responded very effectively to changes before, including the increase in the number of hours for three and four year-olds and the introduction of the entitlement for some two year-olds in the previous Parliament. But, as with other amendments in this group, it is right that we consider carefully the delivery options and the implications for all concerned.

I hope that I have reassured the noble Baronesses and noble Lord about any concerns that they had and that they are able not to press their amendments.

Baroness Andrews: Can I ask the noble Lord something that is slightly puzzling me? I understand that, under Section 6 of the 2006 Act, local authorities are required to provide sufficient childcare as far as is reasonably practical, but I also understand from research that has been done that many local authorities are not undertaking childcare sufficiency audits, which obviously means that they will not provide sufficient childcare. Given the new responsibility given to the Secretary of State, is that the sort of thing that he will be able to require local authorities to do?

Lord Nash: I will have to write to the noble Baroness with a more detailed answer, but that is certainly something that we will take away and examine in detail.

Lord True: My Lords, as a local authority leader I am obviously grateful for the way that my noble friend responded. I understand precisely what he said about flexibility. At the moment, local authorities have to deliver the universal entitlement, the conditional entitlement and the targeted benefit for two year-olds. This will be another, different category of support. He is quite right to say that that needs to be thought through. I am not going to alarm the House as I once alarmed Whitehall by pronouncing the dread word "voucher", but there are all sorts of ways that these things can be looked at.

I am worried that as a House our gift to Lady Nash is detaining my noble friend Lord Nash here at great length, but the only thing I would say, given this opportunity, is that local authorities will not find this easy. I agree with the permissive approach that my noble friend has endorsed and I am grateful for that, but just to inform the House, I asked my officials what it would potentially cost to extend provision to 30 hours across our existing maintained sector. Because of the constraints on building and taking a reasonable view that the regulations will not be less demanding than existing ones, capital investment would be more than £6 million for our maintained schools. That was in a local authority with a low proportion of maintained to private and voluntary provision.

While I understand the aspiration of the noble Baroness to enable local authorities to come forward, I think the Government and the House need to understand that the resource constraints on local authorities in filling such a gap would be considerable.

Baroness Jones of Whitchurch: I thank noble Lords —we have had a good short debate. I understand the point of the noble Lord, Lord True, that, although we can recognise the success of local authorities' involvement until now, this would be a new challenge for them. Of course, if you follow the logic of that through—I think the noble Lord was making a bid for some extra money when he talked about the capital costs—there is no guarantee that the Secretary of State or local authorities will have the extra money to fund some of that capital build that we all know would be necessary.

I have listened very carefully to what the Minister said, but I have to say that he was not very persuasive on this matter. He said that they are consulting. I understand, and we agree with the need to consult, but if that is the case, how come this is very specifically in the Bill when everything else could or could not be part of regulations?

My key concern is that the Minister did not address the complexity of running a parallel system. The noble Lord did not respond to the question of whether local authorities would still be responsible for the first 15 hours. As I said in my opening remarks, it appeared that they would be responsible for the first 15 hours, so making somebody else responsible for the next 15 hours does not seem to make sense at any level.

I shall withdraw the amendment, but I think this is something that needs a great deal more thinking through before we get to Report. I beg leave to withdraw the amendment.

Amendment 3 withdrawn.

Amendment 4 not moved.

Amendment 5

Moved by ***The Earl of Listowel***

5: Clause 1, page 1, line 4, after "working" insert "or homeless"

The Earl of Listowel: My Lords, I rise to speak to Amendment 5, and to Amendments 8 and 9.

I want to include homeless families. I want them to have the offer of 30 hours' high-quality childcare each week. More than 90,000 children in England are living in temporary accommodation, and more than 2,000 families in England are living in bed-and-breakfast accommodation. These are the worst figures in seven years.

I do not know who is to blame for the current situation, but we seem somehow not to have produced enough housing. As a landlord, I know how challenging it is to be a landlord. I feel how badly we, as a nation, have all let these wonderful families down by not providing adequate housing for them. I think there can be some ambivalence about social housing. I have heard a couple of colleagues say, and I understand their concern, "If you offer social housing, then young women will have babies in order to get on the housing list, and we will be creating a culture of dependency". My response to that is "Perhaps some might". There is the other perverse situation in which women may bring up children on their own because, in order to get a home, the father has to live separately. On the continent, they seem to be more humane, and they do produce sufficient housing. In Italy, Germany and France the rate of teenage pregnancies is lower than ours. They do not have as much family breakdown as we do. So, experience elsewhere suggests that that ambivalence about providing adequate housing for our people is not necessary. People, families, need decent homes if they are to thrive and do well and secure employment. That is the context of the amendment.

Many years ago, I went with a health visitor to a number of households in Redbridge, in east London. One had damp running down the walls, another had a flooded basement that the landlord would do nothing about. In one, bizarrely, the lavatory was somehow part of the shower arrangement. The mother slept with her child in her bed. The provision was overcrowded and of poor quality.

I have also spoken on a number of occasions with mothers in temporary accommodation. Barnardo's used to run a project called Families in Temporary Accommodation, managed by John Reacroft. I was fortunate to speak to those mothers about their experience. What I gathered from them is the isolation they have experienced: they might well be placed many miles away from their community, their family, their friends, and they might have to make a number of bus journeys to get where they need to go. Of course, there was also the uncertainty in their lives resulting from living in temporary accommodation.

I therefore encourage the Government to accept this part of the amendment, so that such children can get respite from an unstable and chaotic situation at home, and can have the stability of a hopefully high-quality nursery placement. I ask the Minister to consider asking the Education Secretary if there might be some ministerial discussion about the issue of homeless families, and what the Department for Education thinks needs to be done in this area.

The next subsection of the amendment is concerned with families with children at risk of significant harm. Visiting a nursery some time ago and being told that one of the mothers was a heroin addict helped me to think a little about this issue. Many of these parents will be addicted to either drugs or alcohol, so the benefits for them of having access to 30 hours' free child care would actually be for the siblings of those three year-olds. Often, it is the siblings in an alcoholic or drug-addicted family who look after the younger children, so the elder children can get a break from having to worry about and care for the younger children. If the parent is taking part in a drug or alcohol programme, that allows them to immerse themselves in that programme and to build new relationships—their old relationships would probably lead them towards a drink or a drug—and to take a full part in the therapy offered, develop new activities and move on.

The family drug and alcohol court, which the last Government were so good at supporting strongly, is helping many families across the country to get off drugs and alcohol. Children who are at risk are, thanks to this work, able to remain with their parents. It has about a 50% success rate. A judge follows a family throughout a year and ensures that the parents give up their addiction and they can keep their children. I encourage the Minister to consider offering this opportunity to families with children at risk.

I turn to my proposal for literacy and numeracy courses. Perhaps it is a bit hard to define what those courses should be, but the research is very clear. I pay tribute to the work of many years by the National Institute of Adult Continuing Education and the Workers' Educational Association, and to the recent report that my noble friend Lady Howarth of Breckland chaired for NIACE, which shows the benefits of family learning. It is so important to educational outcomes that parents be given the opportunity to learn, as well. When they start placing their children in education, they begin to want to learn, too. I am afraid that one can find, especially with very underprivileged families, that when parents are not given that nutrition and nourishment they may get resentful of their children, who are. I remember hearing of one mother—no, I will not go into the details of a rather painful story. However, it is very good to nourish both parents and children.

7 pm

I am taking too long but, moving on to foster care, research has shown that not enough foster carers make use of early years provision. This is something their children could benefit from, so I hope this offer would encourage foster carers to make greater use of early years provision. Perhaps we could save some time here: will foster carers get the 30-hour entitlement? Are they classed as working people? I will hear later what the Minister has to say on that.

Research has shown that many of the young children coming into care—the under-fives—have mental health issues which are not properly identified. There is the opportunity of being in a high-quality early years setting, where those missed mental health issues may be identified. It is so important for foster carers to have all the possible incentives to continue in what they do—for instance, in 24/7 social work support and their really good support for clinical psychologists. This should be seen as another service that should be offered to our foster carers because we want to retain them and to attract the best. We want to recruit more foster carers, although I am afraid that the Minister and I were a little responsible for putting a stress on local authorities with the "staying put" amendment. Allowing young people to remain with their foster carers to the age of 21 rather reduces the supply of foster carers to young children. We could help support the recruitment of foster carers by bringing this provision in.

I am taking far too long but I am coming to the last of my subsections. It is on care leavers, who have often been abused as children. Many care leavers have a positive experience of care and move on to do very well in their lives, but may have had abuse before entering care. Many of them have unfortunately experienced many discontinuities in care. The report from the Centre for Social Justice of about two months ago highlighted that many left care feeling isolated and went on to have unhappy lives. I have already mentioned that many young women in care, and leaving care, will become pregnant and choose to have their babies. That is problematic when so many of them go on to have their children removed, so it would be really helpful to offer this provision to care leavers, in order to give those children and mothers the extra support they might need. With that, I beg to move.

Baroness Jones of Whitchurch: My Lords, I want to propose Amendment 11 on the definition of a working parent, which adds our suggested categories to the list proposed by other noble Lords. In his response to the Second Reading debate, the Minister said that "working"—and by this we assumed that he meant "working parent"—

"will be defined as the equivalent of eight hours per week, will include self-employed work, and that lone parents will be able to access the entitlement".

He added that,

"more detailed criteria will be subject to consultation in due course".—[*Official Report*, 16/6/15; col. 1128.]

As we have discussed, we have not yet seen the more detailed criteria that will be the subject of that consultation, so on this basis we are helping the noble Lord along in this process by making some more helpful suggestions.

We discussed the report of the Delegated Powers Committee earlier. I thought it made a telling comment, because the Government had stated that their intention in the Bill was to send,

"a clear message to parents and providers about the Government's commitment".—[*Official Report*, 16/6/15; col. 1130.]

[Baroness Jones of Whitchurch]
In its response, the Committee said that it did not feel that the purpose of an Act was to send a message. I do not think we are sending much of a message to parents anyway if they do not know what the qualification criteria will be for this free childcare. Our objective behind Amendment 11, which by its very nature is a probing amendment, is to make the eligibility as simple but also as widespread as possible. Through this amendment, we want childcare to be available, free of charge, for qualifying children for a period equivalent to 30 hours in each of 38 weeks in any year for parents who: are not in work but are receiving job training; are,

"the main carer for a family member";

or are on zero-hours contracts. More than that, we want by this amendment to ensure that "working parents" includes parents who have had their contracts,

"unexpectedly ended through no fault of their own".

This is a point well made by the Child Poverty Action Group, which argues that generous rules should be established for parents who place their children in childcare when in work but subsequently lose their jobs through no fault of their own.

The Government have so far reached a definition of working parents without conducting any consultation on or assessment of how many children would miss out on the Bill's provisions. At Second Reading, the Minister stated that a working parent is a parent who works a minimum of eight hours per week. Then in the policy statement issued later, he added an important detail refining the definition of a working parent as one who works a minimum of eight hours per week earning the national minimum wage. That leaves even more questions to be an answered. For example, what happens in the case of parents earning below the national minimum wage? Although that is illegal, as we know, employers in disadvantaged areas often practise this. The Government have been given plenty of evidence of this illegal practice for some years now and have done very little about it. If the aim of this policy is to get parents back into work, surely it should be extended to parents on jobseeker's allowance who are receiving training to get back into work. Alternatively, parents may be engaging in regular voluntary work as a means to build experience and their CV while seeking paid employment. Has the Minister any thoughts on how these categories of parents can be supported with childcare?

Parents on zero-hours contracts do not have a set number of hours to work a week. There are some women and some men whose shifts are cancelled at short notice—that day, and there is no work and no pay. These parents would not meet the eight hours per week criteria. Will they be penalised by this measure? Would they become criminalised if they had already filled in a form expecting to work eight hours per week but, due to circumstances beyond their control, were unable to do so? We also have a growing number of carers, with more and more people giving up their jobs or cutting back on hours to care for a family member. Have the Government accounted for the care sector in the delivery of the additional hours of free childcare?

These questions and many more are being left unanswered, so I hope that the Minister can confirm that he is taking on board the many examples we are all giving this evening, and come back with some further examples which embrace many of these wider definitions that we have been spelling out.

Baroness Massey of Darwen: My Lords, I shall speak briefly to Amendment 25. I support the amendments in this group, which look at what constitutes a working parent. Here, I would maintain that grandparents can fulfil that definition of a working parent if they are looking after a child or children, and they should get the same childcare opportunities as working parents. I will explain why in a moment. Grandparents are bringing up children because the parents of the child may be dead, in prison or addicted to alcohol or drugs. For grandparents, the welfare of the child is so paramount that many put their own lives on hold. They need and deserve support.

The issue of grandparent, or general kinship, care has been discussed in relation to many Bills over the past 10 years at least. I became aware of the issues facing kinship carers, particularly grandparents, when I chaired the National Treatment Agency for Substance Misuse. I met many grandparents who were suffering hardship. It is estimated that 300,000 children are being raised by relatives and friends—and I mean raised full-time. They are doing a job: they are looking after and bringing up someone else's child or children. An estimated 60,000 kinship carers have dropped out of the labour market to bring up children. Many have decreased their working hours or their income. One reason is the high cost of childcare. Other kinship carers, usually grandparents, have retired from work. They and their grandchildren would benefit from extra free childcare. I know what they are already entitled to, but if they are not working the new provisions in the Bill will not apply. Many kinship carers are under severe strain and could be helped, as could the children they are bringing up, by more hours of childcare.

I met a grandparent a couple of years ago who used to work but gave up when her daughter died of a drug overdose. She took over responsibility for three children, aged between one and four, left with her one midnight. She was exhausted and needed more space for herself, and the children needed more stimulation than she could give. She was not helped by the bureaucracy of her local authority, from which she had little help or support. In a recent survey, 95% of kinship carers said that they had experienced at least one unmet need for support. Kinship carers have few rights, few specific services and a complex and confusing system to negotiate. The woman I just spoke about said, "I ought to be reading to my grandson but I have to spend my time filling in forms". According to a survey by Family Lives, most feel that parenting is more challenging than it was a generation ago.

I am talking about committed carers, devoted to their grandchildren or relatives, who have taken over in a family crisis. They save the taxpayer about £750 million a year. Surely, these carers should be given support. Being able to access free extra childcare would make a huge difference to their lives and the lives of the children in their care.

Baroness Pinnock: At Second Reading, I raised considerable concerns about the lack of a definition of working parents. I welcome the contributions so far, which have tried to expand the definition of working parents that the Minister gave at Second Reading, which is now written in the policy statement he provided at the end of last week. If the Government's aim is to enable more people to go out to work by providing additional free childcare, I think we need a wider definition than that the Minister provided.

I am particularly concerned about people who go into education and training. They, too, ought to qualify for the additional 15 hours' free childcare. We know two things. One is that many young parents have missed out, somewhere along their route through life, on accessing further education or training, either by choice or not. We also know that skill levels in this country are not as high as we would like them to be. One of the best ways back into the workforce is by gaining extra skills or qualifications through further or higher education. The Government ought to be enabling and encouraging this to happen by including parents in education or training in their definition of working parents. I urge the Minister to consider that addition seriously.

7.15 pm

More broadly, I suggest that another entry point for a parent who has been out of the workforce caring for children is through an apprenticeship. The Government rightly encouraged apprenticeships—I am proud to say that my party promoted this strongly during our period in government—as a way of gaining skills and getting back into the workforce in secure jobs. It seems beyond debate that a parent in an apprenticeship ought to be part of the definition of a working parent in the Bill. We know from the figures for apprenticeships that many apprentices are parents in their late 20s going back into the workforce. Including them in the definition of a working parent would enable many more parents to get skills and training via apprenticeships.

It would be unfortunate if we were to exclude people who are on so-called zero-hours contracts and unable to say that they can work eight hours a week. These parents are often on low incomes, because the jobs on offer on such contracts are often poorly paid. They are the very people who would benefit from additional access to free childcare. They are working; they will not be able to substantiate the hours that they work, but they ought to be included because it gives them a route back into the workforce. The Minister has already described this as important because of the additional income it brings to the family.

I strongly support what the noble Baroness, Lady Massey, has said about carers. She talked in particular about grandparents raising children. I would extend that to parents who are caring, for example, for elderly parents who need particular care. They are, in many ways, working; they are just not paid for it. I hope that including them in the definition will enable them to do it without penalising their children. That is my fourth category.

The fifth category I should like to see added to the definition of working parents is those who do voluntary work. If someone has left school at the earliest possible moment with limited qualifications and has never gone into work but has had a family, one route back into gaining skills and learning what it is like to go to work is via voluntary work. There are many bodies around this country that encourage people, particularly those in less advantaged areas, to work in local charity shops or luncheon clubs to help them get a feel for what it means to go out to work. Again, we can encourage that if we include it within the definition of a working parent. That would focus our care on those most disadvantaged families in the most deprived areas and would show the degree of care and compassion that I hope we can achieve through the Bill and its implementation. I hope the Minister will seriously consider those aspects and broaden the definition to include some of the things that we have raised this evening.

Baroness Howarth of Breckland: My Lords, I have a very straightforward and simple question for the Minister. When I first read the Bill, I was struck by the phrase "working parents". Do the Government really mean working parents or do they mean those with parental responsibility? One of the things the Minister will know about family construction in this country is that nuclear families, with two parents and two children, are at a minimum. I spent my life in the children's court system looking at extraordinarily complex types of families. People with parental responsibility might be kin such as grandparents, aunts or other relatives, or they might not be directly related but have been given some sort of kinship care prior to adoption. There is a whole range there and I hope that the Bill, at some point, will make it clear that this is about those with parental responsibility. That would end the debate about a whole range of the issues that have just been raised.

Lord True: My Lords, the noble Baroness makes a very interesting point. I will intervene on a slightly different tack. I have tried to present myself as friendly and caring so far, and I hope I am, but we have of course just heard a debate which has lasted half an hour with a range of different aspirations. Some are very worthy, including those on behalf of the homeless, grandparents and people with wider parental responsibilities, and some relating to whether different types of things are work or not. I have not counted how many categories have been suggested by your Lordships, but there are probably 10 and maybe 12, each of which has to be assessed and policed by somebody. I do not want to try my noble friend again, but this problem of defining the frontier and policing the entitlement arises from what I called earlier the net curtain between the so-called working and the so-called non-working—although there are wider issues in relation to broader parental responsibility.

At the moment we have a beautifully simple system: someone comes with a child of three or four; the providers simply tell the local authorities the numbers; a return is made; and money is given to the providers and paid over. Each one of these aspirations requires a different sort of assessment, probably by a different part of the public sector. It may even touch people who do not touch the public sector—there are sad cases of people who are deeply involved in caring but

[LORD TRUE]

very hard to reach. I venture to say to the Committee that trying to get everything into one bottle will be extremely difficult. If the Minister wishes to keep the net curtain as he goes forward, there may be wisdom in trying to find different types of authority with the entitlement to do the assessment rather than putting it through.

I would prefer to keep it simple. Universal benefits are much simpler, although a means test can be applied if it is wanted. But I recoil with some fear, not particularly from the point of view of the local authority but from thinking about public administration, the ethical doubts and challenges, the frontiers that have to be defended, the rows and the unintended injustices that will occur from having too complex a system where it is hard to define the frontiers between working and non-working in a way that is perceived as "fair" and therefore sustainable. I believe that this debate illustrates the point I have been trying to make about public policy: good intentions, unless we are very careful in framing the regulations, will lead us into some very difficult places—and I hope that they never become dark ones.

Lord Nash: My Lords, I will speak to Amendments 5, 8, 9, 11, 25, 26 and 33. This group covers a range of amendments on eligibility. I appreciate the intentions of noble Lords in laying these amendments and seeking further clarity on the definition of "working parent". Perhaps I can clear up one point immediately, on whether a parent is someone with parental responsibility. This is defined in the Bill, in Clause 1(12)(a), which states that a,

"'parent', in relation to a child, includes any individual who … has parental responsibility for the child".

The Government's intention with this new entitlement is to support hard-working parents with the cost of childcare and to enable them, where they want, to return to work or work more. As I announced at Second Reading, parents working eight hours per week, including those who are self-employed, will be entitled to this additional provision.

The noble Earl, Lord Listowel, is well known for championing the case for support of the most disadvantaged, and he is absolutely right to do so. The Government provide a wide range of support to all families, especially the most disadvantaged. All families are of course entitled to 15 free hours of early education for three and four year-olds. Recognising that some children were missing out on the benefits of early education, we extended this to the most disadvantaged two year-olds. In particular, I know that the noble Earl will have welcomed that this includes looked-after children. We have been encouraging local authorities to ensure that as many of these children can benefit from the support that is available

The noble Earl raised the important issue of homeless families. I empathise of course with the practical challenges that such families face. Housing authorities and children's services work together locally to ensure that the needs of children in homeless families are met. The Housing Act 1996 places a duty on authorities to co-operate with social services where children may be homeless intentionally or threatened with homelessness intentionally. However, I will be very happy to meet with the noble Earl on this matter. The Government are committed to supporting vulnerable groups such as care leavers. Our statutory guidance makes clear that local authorities, through the pathway planning process, must assess the needs and ambitions of their young people and set out how they will support them.

Amendment 9, in the name of the noble Earl, Lord Listowel, would include parents,

"on courses to improve their literacy or numeracy".

The noble Baroness, Lady Jones, and the noble Lord, Lord Touhig, and the noble Baronesses, Lady Pinnock and Lady Tyler, have, in separate amendments, also proposed that parents engaged in education or training or undertaking voluntary work or work experience for a minimum of eight hours per week should also qualify. As I have explained, the intention of this additional entitlement is to support working parents. If parents work at least eight hours per week, they will qualify regardless of whether they are engaged in education, training, voluntary work or additional work experience.

It may help the Committee if I explain the support that parents who are studying may already receive, in addition to the existing free entitlement. Parents who are under the age of 20 and are studying a publicly funded course are eligible for the Care to Learn scheme. This can provide vital financial support for childcare costs of up to £175 per child per week. For parents over the age of 20, discretionary learner support and childcare grants may also be available, depending on the nature of the education and training that parents participate in.

Where a child is deemed to be at risk of suffering or likely to suffer significant harm, the local authority has clear duties to investigate and to safeguard and promote the child's welfare. This might include the provision of access to childcare provided by the local authority as part of a wider support plan.

Where a child is looked after, the local authority must make arrangements for their care, which might include support for childcare. The local authority must provide a fostering allowance which covers the full cost of caring for the child. For this reason, foster carers are not eligible for additional support through tax-free childcare or child tax credits for children who have been placed with them. We of course value the important role that foster carers undertake in looking after some of our most vulnerable children. However, whether foster care is considered work under the eligibility criteria for this additional childcare support is more complicated. I would welcome a further conversation outside the Chamber with the noble Earl on this issue.

I now turn to Amendment 25. The noble Baroness, Lady Massey, has rightly recognised the important role that grandparents play in the lives of children. In particular, some willingly and unselfishly accept the role as main carer for their grandchildren at a time in their lives that they should be able to dedicate to themselves after bringing up their own children. When grandparents have parental responsibility and meet the requirements that they are working, I hope the noble Baroness will be delighted to hear that they, too, will be eligible to benefit from the new entitlement. This will allow them to maintain their work or increase

their hours so that they can support their grandchildren, safe in the knowledge that they will be well looked after.

7.30 pm

The noble Baroness, Lady Jones, the noble Lord, Lord Touhig, and the noble Baronesses, Lady Pinnock and Lady Tyler, raised the question of those on flexible and zero-hours contracts. Those contracts can help parents effectively balance work and family commitments, and are an important contribution to a flourishing labour market. Noble Lords will wish to be aware that under the tax-free childcare programme, eligibility will be assessed over an entitlement period of three months, allowing for variations in income week by week. I should like to reassure noble Lords that it is not our intention that parents on flexible contracts, or those on zero-hours contracts who meet the criteria, or those who lose their job unexpectedly, should be disadvantaged compared to those with regular working patterns, and we will therefore consider the technical detail of how this should operate and provide further information once we have done so.

The noble Baronesses have proposed that parents who are apprentices should be included within the entitlement. Apprenticeships benefit employers and apprentices themselves and are essential to helping our economy to prosper. Apprenticeships are paid full-time jobs of at least 30 hours with training, and therefore will quality for the additional childcare support.

The Government place considerable value on the important role that volunteers provide in our communities and in many parts of the social fabric of society. Where volunteers otherwise meet the eligibility criteria, they will be able to access the new entitlement.

The noble Baroness, Lady Jones, the noble Lord, Lord Touhig, and the noble Baronesses, Lady Pinnock and Lady Tyler, raised the important issue of carers. Under tax-free childcare, carers receiving carer's allowance will be entitled to support where they are part of a couple and one parent is working.

In proposing their amendments, the noble Baronesses and noble Lords mentioned many important groups. The Government's overall package of support already provides for their needs in the ways I have described. The main objective of the new free entitlement, which the Government intend to take into account when considering eligibility, is to support parents into employment. We also want to ensure that the rules are as clear and easy to understand as possible. On this basis, it is the Government's intention to broadly align eligibility for the additional entitlement with that of tax-free childcare. It is, however, important that we consider each group carefully to ensure that the Government's core objective for the policy is met and that the interactions between the other benefits that they may be receiving are well thought through. As a result, we intend to consider further, taking into account all your Lordships' helpful contributions, and will return to the House on Report. I therefore hope that, for all the reasons that I have outlined, noble Baronesses and noble Lords are persuaded not to press their amendments.

Baroness Jones of Whitchurch: Can I ask a very simple question? The Minister did not specifically refer to the very telling comments from the noble Lord, Lord True, that, if you have too complicated a system with all the bureaucratic checking that needs to take place, it is a burden on the public bodies that have to do it—but also there is a cost involved. Is the funding review or one of the other reviews that is taking place going to look at whether having a universal system would not be a whole lot simpler than some of the tiers that we are now trying to put into place? I am not expecting an answer now, but it would be useful to know at least that these factors are being considered again.

Baroness Massey of Darwen: I apologise, because I know that everyone wants to get to supper, but I have a clarification point. In the Childcare Act 2006, which is quoted in the Bill, it says that,

"'parent' means a parent of a young child, and includes any individual who … has parental responsibility for a young child, or … has care of a young child".

Did I understand the Minister to say that grandparents would still have to be working grandparents or that they would qualify because they would have parental responsibility or care for a child? Many of them are not working because they are too old or they have retired. Could he clarify that for me?

Lord Nash: They would have to be working.

The Earl of Listowel: My Lords, I thank the Minister for his careful reply and his kind offer of a meeting to discuss homeless families and the status of foster carers. I note particularly what the noble Lord, Lord True, said about the complications of making such amendments possible. I beg leave to withdraw the amendment.

Amendment 5 withdrawn.

House resumed. Committee to begin again not before 8.35 pm.

Litter

Question for Short Debate

7.35 pm

Asked by ***Lord Cormack***

To ask Her Majesty's Government what steps they are taking to tackle litter in both urban and rural areas.

Lord Cormack (Con): My Lords, I am very glad to have this opportunity to ask Her Majesty's Government what steps they are taking to tackle litter in urban and rural areas. I express my thanks at the outset to all those noble Lords who have put their names down to speak in this debate, and look forward to hearing their contributions. I am particularly glad that my noble friend Lord Marlesford, who has made this very much his own subject in the past, is taking part, and that my

[LORD CORMACK]
noble friend Lord Gardiner, who has done so much to advance the cause of the countryside over so many years, is to respond.

Those of you who know me will know that I am not a natural for Glastonbury—at least not for the festival. I was having a conversation about this extraordinary extravaganza, and somebody said to me, "The people who go there are the sort of people who care about the planet". When I saw the photographs on Monday or Tuesday morning of the enormous piles of rubble and rubbish left behind by the revellers, I could not help but reflect that we judge people by what they leave behind. It was symbolic of a problem that is very real in our towns and countries. When I go to the early service at Lincoln Cathedral on a Sunday morning, which I do whenever I am there, it is a very rare Sunday morning when I do not observe rubbish between our home in Minster Yard and the cathedral. That is not because Minster Yard is badly kept—it is most scrupulously kept—but because revellers on a Saturday evening have seen fit to deposit all manner of detritus in a particularly lovely and holy place.

Again, one thinks of so many of our country lanes defaced, the verges absolutely obliterated in some cases by all manner of nasty things. Before I moved to Lincoln, I was for 40 years, as some of your Lordships know, a Member of Parliament in south Staffordshire. I lived for some 35 years in and near the lovely village of Enville. It was rare to drive around the country lanes without seeing discarded sofas, refrigerators and mattresses that had been fly-tipped by people, frequently over a weekend, and which cost a great deal of money to remove. This detritus is a product of carelessness but, much more than that, of selfishness—and, sometimes, of malevolence.

I was very glad when the Commons Communities and Local Government Select Committee produced a hard-hitting report just before the end of the last Parliament—so close to the end of it that the Government have not yet got around to replying to it. I am sure that they will; maybe my noble friend will be able to tell us when. It really was a sobering report to read, referring to England—because it was specifically concerned with England—as a "litter-ridden country". About a month later, that very attractive and important magazine, *Country Life*, which has delighted people for well over a century, began its campaign against litter. It described the United Kingdom as,

"one of the filthiest countries in Europe".

The first article was illustrated by a graphic picture of Loch Long in Scotland, showing the shore of the loch completely dominated by discarded rubbish and rubble.

Some 30 million tonnes of rubbish are gathered up from our towns and cities every year, enough to fill Wembley Stadium four times over. We have to remember, too, the nature of much of the rubbish in our streets. A cigarette butt, I am told, takes 12 years to break down completely; a plastic bag takes 20. Another graphic statistic appeared in a *Country Life* article, which said that it is reckoned that there are,

"46,000 pieces of plastic in every square mile of ocean".

That is a terrible statistic, particularly when you think of the implications for wildlife. So many sea birds die as a result of ingesting bits of plastic. It really is a commentary on the carelessness of our age—carelessness in the worst possible sense: that people do not care.

It is not that there are no powers on the statute book to deal with these issues; indeed, there are a number. The Department for Environment, Food and Rural Affairs produced, again in March this year, a splendid account of what the responsibilities of councils and other public bodies are in clearing up litter and rubbish. It is an impressive document. It has been reprinted in an excellent brief that the Library has produced for noble Lords who may be taking part in this debate and others who are interested but cannot be here, of whom I know there are a good number. It illustrates that most of the powers are there but they are just not being properly enforced. So few on-the-spot fines are administered to those who discard their rubbish in the streets, very often from car windows. It is possible for people to be fined £2,500. I appreciate that that sanction cannot easily be applied to a careless child—I will say a little more about that in a moment. But we should enforce such things, and the department itself should hold councils to account for what they do.

We should also be considering anti-social behaviour orders—ASBOs—for those who deface our towns, cities and countryside in this way. We should be considering the confiscation of vehicles that have been found guilty of being used for fly-tipping. We should consider a takeaway-food tax for those who sell takeaway food and do not deal properly with what happens afterwards—there are exceptions, such as McDonald's, which has a proud record of playing a part in tidying up the environment. There are other measures that can be taken. The call of the Commons in its Select Committee report for a national clean-up day ought to commend itself to the Government.

I have often talked in your Lordships' House about the importance of citizenship and community service for our young people. I would like all of them, when they leave school, to have done some community service and to be given a citizenship certificate, which underlines not only their rights but their responsibilities; and one responsibility that we have to inculcate into the young is care for the environment. I should very much like to see the Government place a real emphasis on this issue; this would mean my noble friend talking to our noble friend Lord Nash and others. If there is to be a moral and a message from this brief debate, it ought to be: "Don't fling it, bin it". We need to inculcate this attitude into people of all ages, but particularly into the young, who can often be the best disciplinary influence on careless parents.

I am glad to have had this brief opportunity to introduce this subject of great importance, and I very much look forward to your Lordships' contributions.

The Earl of Courtown (Con): My Lords, I remind noble Lords that there is a five-minute limit on speeches in this debate. If the timer says five, you are on your sixth minute, so you are going on too long.

7.45 pm

Lord Judd (Lab): My Lords, I am glad to follow the noble Lord, Lord Cormack. He is a decent, civilised man who cares desperately about the qualitative

dimensions of life in Britain. He is right to have drawn attention to the scale of the challenge. Litter is not limited to the countryside; it is there in cities as well.

I live in one of those beautiful valleys of England. Just like the noble Lord, if I stroll up the lane that goes past our house, I pull rubbish out of the hedge. I can return home with a black sack full of rubbish. It is appalling. One thing that strikes me is that so often people say, "Something should be done about it", rather than start by saying, "Could we do something about it?". I find it very interesting that people give immense attention to the care and beauty of their own gardens, but if they step out of their gardens and into the lane beside their homes, they do not even think of picking up unsightly bottles or waste that has been thrown away.

Of course, we all have a responsibility. It is not a matter of political doctrine. In any kind of society that challenge would arise. In our little London flat, we have a basement entrance, and we are constantly picking up the rubbish that has been casually thrown into our basement by passers-by. Do not let us think that there is a social division about this. So-called yuppies, upwardly mobile people, are just as likely to do it as anybody else. There is an issue here, I believe, about style. There is almost a style in discarding your rubbish. If you are in a car and the window is open, you flick your cigarette. If you are crossing the road and you are having a last puff, it is almost ballet to watch the last few puffs and then throw the cigarette away. There are things like that. But I am so glad that the noble Lord emphasised the responsibility of food and drink producers and suppliers, because they should take very carefully the example of those who have a responsible approach and not, by their means of packaging or whatever, aid and abet this process.

Sometimes, of course, it is carelessness. Down this lane that I have described, we have the coast-to-coast cycle trail. Sometimes there are people there enjoying the beauty of our valley, not realising, as they think, "This is just a small bit of rubbish we're discarding here", what that accumulates into being—and, indeed, that it endangers the beauty of the valley.

The points that the noble Lord raised are very important, but we have to look behind it all. The issue has become more challenging because we live in a society in which consumerism has eclipsed citizenship and people are almost thinking of the countryside as something beautiful that is just a consumer good, not as something that is part of their responsibility as a citizen. With great respect to the noble Lord, I do not think that it is just about teaching about responsibility to the countryside. It is a matter of emphasising the whole concept of citizenship and what it involves.

We live in an age of profound acquisitive individualism, selfishness and greed. If we are going to get that right and get the issue of litter right, we have to have other values. I have never had a doctrinaire stand against the market, but the market is simply not enough in these spheres. We have to have other absolutes which must be there in our approach to society, education and government. It is essential. Without them, we are lost. This issue is desperately urgent, but it is a symptom of far deeper issues and challenges in society.

7.51 pm

The Countess of Mar (CB): My Lords, I, too, am grateful to the noble Lord, Lord Cormack, for bringing this very important subject to our attention this evening. I recognise that the noble Lord's question is about litter and that there are distinct definitions for litter, fly-tipping and detritus in the code of practice issued under Section 89(7) of the Environmental Protection Act 1990. I hope that the Minister will be tolerant when I digress occasionally from litter to fly-tipping, for both are obnoxious. I will also concentrate on rural rather than urban areas, for it is these with which I am most familiar.

I am frankly appalled that, as a nation, we seem to have become inured to the sight of vast amounts of paper, cardboard, plastic, bits of clothing, cans and bottles of all descriptions that litter the sides and central reservations of our major roads and motorways. Equally, lay-bys and railway embankments are the repository for old sofas, mattresses and bags of litter. Some of these are the responsibility of the Secretary of State, although I am not sure whether this relates to transport or Defra—perhaps the Minister will clear that up—and others are the responsibility of local authorities. Fortunately, these eyesores are not so obvious at this time of the year when Mother Nature does her best to hide them under verdant spring and summer growth, but the autumn and winter reveal all. As a frequent traveller on both road and rail, I sometimes feel ashamed to be British. What visitors to this otherwise beautiful country must think of us, I dread to think.

As the noble Lord, Lord Cormack, pointed out, there are plenty of legal provisions to fine litterbugs—but first catch the offender. Fly-tipping is usually carried out at night and it is difficult to detect the offenders. According to the ENCAMS—Keep Britain Tidy—survey, it costs an average of £800 to clear up each incident on private land. Defra estimates that it costs private landowners £150 million a year. Out of 852,000 reported incidents of fly-tipping reported last year, there were only 2,000 convictions. How do you catch and give an on-the-spot fine to someone hurling litter from a car travelling at 70 miles per hour on a motorway, or even stop a lorry with an insecure load dispersing litter over a considerable distance? There are too few policemen to impose the law, and too few citizens who can be bothered to report perpetrators, though I note that two individuals were fined £4,500 between them in Bedfordshire last Monday as a result of reports from members of the public. In this instance fines, or the threat of a fine, clearly did not work.

How can we change littering behaviour? First, we need to clear up the worst areas, as is outlined in part 1 of the code of practice. We must stop hiding behind dubious health and safety rules as an excuse for doing nothing. If an area is clean and tidy, the tendency to drop litter must be reduced. When I was young, we used to be confronted by signs that ordered: "Take your litter home". I recall anti-littering campaigns in schools. As the floor of my car sometimes demonstrates, the lessons that I learned when young have never been forgotten.

I wonder just how many know about Keep Britain Tidy and what it does. If it is to be effective, its profile needs to be raised. I agree that there have been periodic reminders—Mrs Thatcher, as she then was, was seen

[The Countess of Mar]
picking up rubbish in a London park—but there needs to be a concerted campaign to highlight some of the awful damage caused to wildlife and farm animals that might ingest or get trapped in litter dumped on roadsides or in fields; to highlight the cost to local authorities and individual landowners of clearing up behind dirty, lazy people; and to prick the consciences of those who deliberately defile our countryside with their rubbish. For example, could use be made of the overhead signs on motorways to remind people that litterbugs are offenders as well as offensive? There are working parties of young volunteers who clear our beaches. Could not the same be done for other areas where littering is bad, so long as there are sufficient safety measures and supervision? If the volunteers are local, they will take a pride in their patch and want to keep it as nearly pristine as they can.

There needs to be a culture change so that, like the Japanese, Scandinavians, Germans, Austrians and Singaporeans, we learn to appreciate our environment. While the Government can provide some incentives, I wonder whether the Minister agrees that it is up to every one of us to play our part. Will the Government look at what happens in these other countries with a view to adopting some of their successful practices?

7.55 pm

Lord Marlesford (Con): My Lords, my noble friend has done very well to secure this debate because the subject needs debate and action. We should be ashamed of ourselves. Litter is quite unnecessary and is therefore inexcusable, but the Government are much to blame. I shall give an example. Whitehall knows little and cares less. Ministers were pathetic during the coalition Government. I hope that with a Tory Government we will get something better done.

I shall tell the House a little anecdote which illustrates the difficulties of dealing with Whitehall on such matters. From 1995, I campaigned for an electronic record of all firearms similar to the long-established vehicle licensing system at Swansea. The Home Office said it was unnecessary and too expensive. In February 1997, with all-party support, I got an amendment to the Firearms (Amendment) Bill for that purpose. The Home Office opposed it, but the late Emily Blatch, who many of us loved and who was the Minister, rang me to say it was a good idea and she would accept it. It became part of the Act which came into force in October 1997. The Home Office was having none of it. It set out to sabotage it using the usual "Yes Minister" techniques. I persisted over many years with the support of a series of Home Office Ministers in this House. Those on that roll of honour include Lord Williams of Mostyn, the noble Lords, Lord Rooker, Lord McNally and Lord Bassam, the noble and learned Baroness, Lady Scotland, and my noble friend Lady Anelay. Eventually the Home Office gave way after 10 years. The complete system that I wanted, linked to the police national computer, went live on 22 September 2007. It works extremely well—I check with the police from time to time to make sure it still does.

Now we have another "Yes Minister" game about littering from vehicles. I introduced a Private Member's Bill to stop up a loophole which means that in general it is impossible to fine people for throwing litter out of a vehicle, which is a criminal offence, unless you can prove who is responsible. My Bill, which made the keeper of the vehicle responsible so that it was much easier to enforce, had its Second Reading in July 2013, with great support on all sides of the House, but the Government, in the shape of the Home Office and Defra, opposed it.

I then introduced an amendment to the Anti-social Behaviour Crime and Policing Bill 2014. The Civil Service opposition was maintained. However, I got backing from the Home Secretary, my right honourable friend Theresa May and the then Defra Secretary my right honourable friend Owen Paterson. On 20 January 2014 my noble friend Lord Taylor accepted it, and the power to make the regulations for the purpose was inserted in the Bill at Third Reading on 27 January 2014. The Bill received Royal Assent in March last year. Since then the "Yes Minister" game has started again. Defra officials have told CPRE, which has been hugely helpful to me in this matter, that they are still not convinced that what is in the Act is needed and they propose further research.

I had a letter dated 14 November 2014 signed by Dan Rogerson—then a junior Lib Dem Minister at Defra but an election casualty in May—explaining that they had, "unfortunately not been able to let the contract ... for the scoping study in July 2014", but were "taking steps to retender the scoping study in the next few weeks". Since then absolutely nothing has happened—radio silence.

I hope that my noble friend will have a word very soon with my honourable friend Rory Stewart, who is now the Minister responsible, and tell him that I am not a quitter. I shall continue to press this, if necessary throughout the Parliament, until what Parliament has decided is enacted. I am not going to accept this Civil Service obstruction to the will of Parliament and to the needs of the countryside on litter.

8 pm

Lord Rea (Lab): My Lords, I thank the noble Lord, Lord Cormack, for putting this Question about a topic which has long been on the agenda and will not go away any time soon unless they listen to the noble Lord, Lord Marlesford, who might get some action going.

The problem has got worse since the use of plastic and other non-biodegradable materials multiplied due to industrialisation and commercialisation throughout the world. I have seen idyllic tropical beaches spoilt by mounds of plastic bric-a-brac thousands of miles away from its place of origin. In the middle of the Pacific Ocean is a giant garbage patch where many thousand tonnes of plastic rubbish revolve in a slow whirlpool or gyre, causing great harm to marine life. This rubbish mostly originates from the land, blown from landfill sites or thoughtless dumping. I have been saddened to see many rural roadside hedges and verges in the UK heavily contaminated with plastic bags and other non-degradable rubbish. Removing it is labour intensive and expensive for local councils. Local volunteer groups do a valiant job but only scratch the surface of the problem.

I want to concentrate on a specific form of litter—cigarette stubs. We all know how ubiquitous they are. Despite the level of smoking dropping significantly in the last decade or two, nearly 6,400 tonnes of waste are still caused annually by smoking. This mainly consists of cigarette filter butts which take 10 to 15 years to biodegrade. Some 1,400 tonnes are discarded on streets and footpaths and must be picked up and disposed of by local government street-cleaning services. On the whole they do this unpleasant job efficiently; they deserve our thanks. Some councils, while clearing up the cigarette rubbish, use strategies to discourage smoking, including deterrents and incentives. In the City of London, for instance, if a street environment officer sees you dropping a cigarette butt, you will be issued with a fixed penalty notice and now with a "Quit Here" card with details of your local stop smoking service. If the smoker then follows this up and succeeds in quitting, they are given a £20 Boots voucher. Wandsworth was planning to pilot a similar scheme last year, together with pocket ashtrays promoting local stop smoking services.

These schemes have not yet been evaluated but they are surely a step towards eliminating the problem at source. There are other similar schemes around the country which the Minister may be able to tell us about, but no central government funding is earmarked for this, so councils will now find it difficult to fund any anti-smoking messages which could be displayed on bins for cigarette end disposal in busy shopping streets, for instance. This was not done in Middlewich, where 32 butt bins were mounted on walls around the town last February. The sting in the tail is that the £5,000 cost of installing these was borne by Japan Tobacco International, which used the publicity as part of a corporate responsibility deal. Naturally, there were no anti-smoking messages on those bins. This form of activity by the tobacco industry is against the WHO Framework Convention on Tobacco Control. Its guidelines make it clear that government endorsement of tobacco industry corporate responsibility activity, which could include activity relating to litter, can be used to create a more credible profile for the industry and its policy positions.

I hope the Minister can say that the Government will strongly discourage this form of funding for local authorities and instead step in with assistance in mounting these health messages. In effect, funding from the tobacco industry is a form of Faustian pact, considering the lethal nature of its products.

8.05 pm

Lord Curry of Kirkharle (CB): My Lords, I also congratulate the noble Lord, Lord Cormack, on stimulating this debate. I cannot remember how many times I have said to my wife over the past 12 months, as we have been driving through the English countryside, that I must promote a debate in the House on litter. I am clearly too slow off the mark and delighted that the noble Lord got there before me. I also express my thanks for the very helpful briefing pack on this topic.

I continue to be appalled at the volume of litter on the side of highways in rural areas, on city bypasses and on the streets of our towns, and at the increase in fly-tipping and its impact on the farming community and the resources of local authorities to deal with this unacceptable situation. I became even more alarmed when I read the very helpful briefing notes provided for this debate. The statistics are stark indeed. Fly-tipping is increasing by about 20% annually and the cost of clearance by local authorities is obviously increasing by an equivalent amount. To make matters worse, prosecutions are falling by 9% annually so the problem is increasing at an alarming rate and prosecutions decreasing at an alarming rate. This can only lead to a crisis situation.

When we have overseas friends staying with our family, I find myself embarrassed at having to apologise for the litter on our roadsides. Some friends of ours moved from South Africa to live permanently in Britain a few years ago, and I asked them about their first impressions of our country. Their response was that they were really surprised at the amount of litter. How dreadful is that?

The opening words of the CLG Select Committee report are very impactful:

> "England is a litter-ridden country compared to most of Europe".

Our deep concern about this issue in this House this evening is shared by others. The president of CPRE warned earlier this year that the countryside is sinking in litter. He is quoted in a *Guardian* article as saying:

> "Without urgent action, the generation that follows us will find the beauty of England submerged in garbage 'too thick-strewn to be swept up', just as Philip Larkin prophesied".

I could not have put it better myself.

We cannot stand by and allow this situation to continue to get worse and worse. I applaud the efforts of Keep Britain Tidy and of the amazing groups of volunteers who are making a real difference. There are 671 registered voluntary groups —and I suspect many more which are not registered—that care about the appearance of our countryside, towns and cities and take precious time out to clean up the mess others leave behind. I was hugely impressed with the example given in the report of a five and a half-mile section of the A46 where five workers took 17 days to collect six tonnes of litter. We cannot quite match that density in Northumberland, but our farm boundary abuts a mile of highway and I personally collect at least five large bin bags of rubbish every year from the roadsides of that mile; five large bags per mile in rural Northumberland, and every single piece of rubbish thrown out of a vehicle window. The statistic that shocked me the most in the report was that 25% of people admitted that they drop litter. I cannot believe that 25% of people have admitted to doing this. Now, I know we should not stretch statistics too far but if we discount children, around 15 million people in Britain admit to dropping litter. This is a national disgrace.

What is the solution? There are three possible actions. First, we need another high-profile campaign, building on the *Country Life* campaign referred to by the noble Lord, Lord Cormack, to raise awareness of the issue and to help persuade the 15 million people I referred to earlier to stop dropping litter and throwing it out of their vehicles. Secondly, this needs to be supported by much higher penalties. It is a joke that the maximum fine allowed in courts is £2,500 but the average penalty

[Lord Curry of Kirkharle]
is just £140, and the "on-the-spot fine", the fixed penalty notice, is only £75 on average. These are not serious deterrents. They take this seriously in Singapore, where the first offence carries a fine of 1,000 Singapore dollars, which is about £480. I am not suggesting we adopt Singaporean laws, but the deterrent works. We need to get serious about penalties for littering and fly-tipping and double if not treble the penalties. Finally, we need to encourage volunteering. We need 10 times more voluntary groups to support those who give so willingly of their time to clean up England.

A co-ordinated response on all these fronts is going to be required if we are to restore the beauty of our country and especially our countryside, so that we can be proud of its appearance once again. I hope the Minister is taking note.

8.11 pm

Lord Sherbourne of Didsbury (Con): My Lords, it is a pleasure to take part in a debate initiated by my noble friend Lord Cormack, because a cause espoused by my noble friend is a cause espoused with passion. The problem of litter, refuse and fly-tipping, as any local councillor knows, often arouses more passion than the European Union or anything else; it is a matter of real concern to many people. At the very beginning of my speech I pay tribute to what I regard as the unsung heroes: the street cleaners. I live in London, and without them this place would be engulfed in a mountain of rubbish. As many noble Lords have said, many thousands of people—including myself and, I imagine, everyone speaking in this debate—spend part of their time in their locality or street picking up rubbish, going through the countryside with a black bag and filling it up. Therefore a lot of people in this country do a great deal to try to repair the horrors caused by litter.

I will focus mainly on towns and cities. My first point is to ask, why does this matter? It matters because it affects the environment in which we live. When you see food, cans and rubbish it affects the whole mood and nature of people's lives, and they lose pride in their neighbourhoods. It matters for health reasons. The amount of food that is dropped—chicken, hamburgers and sandwiches—attracts rats, urban foxes and pigeons, so there is a health hazard as well. We know that litter attracts litter. If you leave litter anywhere, people automatically think that that is a rubbish dump and will just put more there.

How have we got to this state? If we look at some of the reasons why, we might find some of the solutions. Firstly, there is the stigma of dropping litter, which noble Lords and the noble Countess mentioned, looking back at the past. We were told as children that to drop even a sweet wrapper was the wrong thing to do, but that stigma has gone. I ask myself, how can we begin to educate people in a new way? One of the most interesting things about schools is that when children at a very young age are taught about the evils of smoking or about what is happening to our environment, they go home and tell their parents not to smoke and to worry about climate change. Therefore we have to ask how we can use schools to educate children. I wonder about some of the ideas that are happening in some places; schools might adopt a local street and go round collecting the litter, and a local company could sponsor that activity, promoting it on litter bins or in other ways so that the school and the company gain credit for that. That would be one way in which children could actively engage in litter collection.

There is a lack of ownership. As noble Lords have said, people think that it is somebody else's problem. One thing we could also do is perhaps to follow an example from Germany and begin to emphasise to retail and food outlets that they have a responsibility to look after their premises. Many single traders do that already—they take real pride—but a lot more could happen. I hope that the Minister will at least give me hope that he might consider that possibility.

I will end with a very strong plea—this debate has given me the chance to do that. I live in London, and many of us travel on the Underground. A huge amount of food is left on the Tube. McDonald's may be doing many things in its retail outlets, but not a day passes when you go on to a Tube train and immediately you can smell that someone is eating a McDonald's. They will have a grease-soaked bag, placed on seats on which people will be sitting, and there will be sandwiches, food dripping with mayonnaise—which gets all over the place. Presumably, at the end of the line, the terrific workers on the Underground have to clear it; not just the newspapers, which are left at the end of every rush hour, morning and night, but also the food, coffee, and all the rest. I end with a very strong plea for London Underground to look at this very carefully.

8.16 pm

Baroness Maddock (LD): My Lords, I will make two comments in the gap. I declare that I am a vice-chancellor of the Local Government Association. I know that local councils take this very seriously. In fact, 73% of residents are satisfied with the way their councils deal with litter. However, they need to be even better at it. My experience as a councillor and a trainer of councillors over the years has shown that voters judge their council on the state of the streets. If the streets are messy and unkempt, they think that that is how the council is run. Therefore that is definitely in councils' interests. I can recommend what Sutton council did. When it started off one of its campaign—they have been elected as Lib Dems year after year—they displayed a big mountain of litter, which was what they had collected in a day, and told the voters that it had cost £4 million to collect.

8.17 pm

Lord Whitty (Lab): My Lords, like other noble Lords I thank the noble Lord, Lord Cormack, who set the scene very well. The noble Countess, Lady Mar, and the noble Lord, Lord Curry, said that one of the difficulties here is how foreigners see us. The committee which produced the report to which the noble Lord, Lord Cormack, referred, heard from an American expert in this area. I will read a few of his words. He said that Britain was,

"like a trash can … You have to go deep into eastern Europe to find it so bad. I have never seen anything like this in Japan or France. It's obviously a cultural problem … It's bad for the spirit to walk through filth … Why should everyone live in a teenager's bedroom?".

I will not even read the next, rather colourful, American turn of phrase.

There is something wrong with our priorities and in the way we behave, whether that is on the Tube, in city centres, back streets, country lanes or our motorways. The noble Lord, Lord Marlesford, has long been a campaigner in this area. Highways England put in a lot of effort, as did the local authorities. We have very good campaigners such as Keep Britain Tidy, which has a lot of support. However, at the end of the day, we must rely on two things to improve this situation. First, we need to deter—or incentivise—people from acting in the way they do. Some of that will involve education, some of it is bringing back your food box or whatever back into the shop and you will benefit from doing that, or you will be faced—there are sticks, as well as carrots—with a rather more effective fine than we have at the moment. As the noble Lord, Lord Curry, said, there is a maximum level of fine for littering of £2,500, which would deter me. However, the actual fine in the courts is only £140, and the fixed penalty is £75.

As we have found in other areas, a hefty fixed penalty—or one that is properly enforced by the courts if we cannot do it entirely by fixed penalty—would be a deterrent. However, in order to enforce that, even through better deterrence, we need resources. The noble Lord, Lord Sherbourne of Didsbury, said that we owe a lot to the street cleaners. There is a big effort made, as I have said, by Highways England but the fact of the matter is that, with local authority finances being what they are, this area is being squeezed—it is not red circled, it is not prioritised from Whitehall. The resources for local authorities to engage in proper litter clearance are likely to be further squeezed.

I speak as a former member of the board of the Environment Agency, which deals with large-scale fly-tipping. Focusing on its key objectives has meant that the agency's enforcement regarding fly-tipping and what is effectively a criminal act—a criminal gangs' act—has been much reduced.

We need to recognise that this is a problem that affects all parts of the country and also, as somebody said, the way that you feel about walking through our cities or driving or walking through our countryside. It has a negative effect on the totality of our society and on our well-being. We need to prioritise more what is seen as a residual service, even now, within local authorities and by central government. I hope that the new, corporatised Highways Agency—Highways England—will have as one of its primary objectives ensuring that litter is removed from the highways. If it does not, other things will become more important to that new organisation.

Some deep cultural issues are involved but we can do something relatively easy about some things. Part of it is the deterrence but a lot of it is how we prioritise resources. England is a beautiful country. We have some of the most wonderful cities in the world but they are all being spoilt by the behaviour of our citizens; many of them would not be prepared to justify it to their children, or to each other, but they nevertheless continue it. We need to find a way of stopping them.

8.22 pm

Lord Gardiner of Kimble (Con): My Lords, I am particularly grateful to my noble friend Lord Cormack for raising this important topic today. I also welcome your Lordships' contributions and I shall make sure that my colleagues in Defra consider them fully as we continue to tackle this scourge on our nation. The Government are also grateful to the Communities and Local Government Committee in the other place for examining these issues and making a number of helpful recommendations. Its report is currently being considered and the Government will respond shortly.

I say at the outset that I come to this debate with the utmost sympathy with and support for all who see this matter as being of enormous importance. I agree with the noble Countess, Lady Mar, and the noble Lord, Lord Curry of Kirkharle, that it is with great dismay and shame that, when driving round our country, we see accumulations of litter next to our arterial routes and country lanes. I have indeed joined the activist cadre, having handed back a can to a driver who had dropped it at a set of traffic lights. The surprise on the face of the driver as I posted the can back into the car will remain with me for a very long time. I am sure that my noble friend Lord Marlesford would endorse this approach but I say to him: I know that he is not a quitter and nor am I. Litter of any kind, whether it is a cigarette packet or plastic bag, or the fly-tipping of tyres and large amounts of waste is totally unnecessary and an unacceptable blight on everyone's environment. I endorse the *Country Life* campaign, which highlights the challenges that we face.

Fly-tipping, which was referred to by my noble friend Lord Cormack, the noble Countess, Lady Mar, and the noble Lord, Lord Curry of Kirkharle, is a great problem and the Government are addressing it. The Government's manifesto set out our intention to introduce new fixed-penalty notices for small-scale fly-tipping. My remarks tonight, however, should perhaps focus on some of the actions being undertaken to address the separate, but obviously related, problem of littering. As my noble friend Lord Sherbourne of Didsbury and the noble Lord, Lord Whitty, have described, this issue is selfish and anti-social. It spoils our enjoyment of the countryside, can harm human health and wildlife, makes our urban areas look run down and uncared-for and damages farming and tourism. We must resolve this as a matter of national pride. It was right of the noble Lord, Lord Rea, to remind us that this is an international scourge as well. We are all able to identify places—indeed, often much cared-for places—that are littered. I assure noble Lords that I share their frustration. Despite decades of campaigning and hundreds of millions of pounds spent every year, the problem remains.

We must get on to the front foot; there is a good deal of new and innovative work being done to try to curb this blight. Everyone has a role to play. I was struck by what the noble Lord, Lord Judd, had to say—we can all do our bit and I shall certainly be considering what was suggested by my noble friend Lord Sherbourne of Didsbury.

[Lord Gardiner of Kimble]

On 21 March this year, Defra and the Department for Communities and Local Government sponsored the first, official England-wide community clear-up day. My noble friend Lord Cormack and the noble Lord, Lord Judd, referred to this—the sense of community and of doing something together, which is so valuable. Hundreds of events took place across the country. Volunteers picked up bag after bag of litter, with many new groups getting together alongside the established litter-pickers. The event attracted more than 500 community groups. These co-ordinated activities demonstrate the desire of many people in England to live in a litter-free environment, as well as their willingness to get stuck in and be part of the solution. I take this opportunity to thank them all. My noble friend Lord Sherbourne of Didsbury was right to acknowledge them and the street cleaners of our towns and cities. It is not enough, however, simply to pick up the litter already dropped. We, as a nation, need to change the mindset of those who drop litter, some of whom do so in the expectation that others will bear the costs and risks of having to pick it up while others appear simply to not care, as my noble friend Lord Cormack described.

Over the years, Keep Britain Tidy—to which I was pleased to hear the noble Countess, Lady Mar, and the noble Lord, Lord Whitty, refer—has been at the forefront of some truly ground-breaking projects to encourage people to do the right thing. The charity has recently launched a new centre for social innovation to bring together its work with that of others in the field and to enable others to learn from it. I am particularly excited about the award-winning We're Watching You project, which was funded by Defra. Based on research that showed that people behave better when they think they are being watched, this project used images of watching eyes and messages based on social norms to tackle dog-fouling. It was so successful that fouling in those areas reduced by an average of 46% and far more in some places.

I also want to recognise the Clean Essex partnership, which has shown what is possible when local government, businesses of all sizes and individuals come together. With support from the county council and Keep Britain Tidy, the partnership used advertising to get across the message that,

"littering is 'not cool', 'not pretty', 'not smart' and 'not classy'".

Last year, the Love Essex campaign achieved a 21% overall decrease in the amount of litter across the county, with a 41% decrease in branded fast-food litter. This is a real, tangible change; it can be done and it really does work. I strongly encourage other councils to learn from this example.

Another project is CleanupUK. Its Beautiful Boroughs programme helps residents in deprived areas of east London to strengthen their own, immediate community by starting litter-picking groups. Initial results are promising and the benefits are not limited to cleaner streets. Since the project began, more people in these areas report feeling safer in their communities. They are more engaged with their communities, and they feel positive that the actions they are taking will make a difference. This sense of empowerment is important. One participant said, "One person can become two, then become three—we can take on the world like that!".

Those are some examples of what organisations, charities and individuals are doing to try to change behaviour and reduce littering and its effects in their local areas. I could not possibly mention all the work that I know is going on up and down the country, from groups of litter-pickers such as Rubbish Friends and Zilch to the businesses that have subscribed to the Voluntary Litter Code in Larkfield in Kent, but I am most grateful to them all.

While local councils and bodies such as Highways England may be legally responsible for the practical aspects of picking up litter, of course we in government also have a role. Most litter problems are local and require an approach tailored to the characteristics of the area and the community. The role of central government is to enable and support this local action: providing a clear legal framework of rights, responsibilities and powers, setting national standards and, where possible, making sure that the costs of dealing with litter issues are passed to those responsible for causing the problem.

Last year, we amended the *Highway Code* to make it absolutely clear that throwing litter from a vehicle is not just dangerous and anti-social but a criminal offence. More recently, we committed in our manifesto to review the case for increasing the fines for littering. Currently, fixed penalty notices for littering range from £50 to £80, with a default fine of £75. We intend to consult later this year on whether these amounts should be increased. I very much hope that noble Lords who have taken part in this debate will wish to make a contribution to that consultation.

A number of questions were raised. The noble Countess, Lady Mar, asked whether the Secretary of State referred to in Section 89 of the Environmental Protection Act 1990 is the Secretary of State for Defra or the Department for Transport. It is the Department for Transport. My noble friend Lord Marlesford—I understand his irritation and frustration—asked when the research on littering from vehicles will be published. This will be going to Defra Ministers soon—this year, I hope. I assure my noble friend that I will be in touch with him to tell him about progress and to alert him to the publication of the research.

The noble Lord, Lord Rea, spoke about the tobacco industry. There is no question but that cigarette litter around the nation is a pernicious problem, and we are considering the recommendations in the Communities and Local Government Committee report. I also understand that this country is a signatory to the World Health Organization Framework Convention on Tobacco Control. As a signatory, we would not wish to include in that convention endorsing, supporting or forming partnerships with the tobacco industry.

My noble friend Lord Sherbourne and a number of noble Lords raised the question of education and asked how we can ensure that young people are best engaged. The Eco-Schools programme was delivered in England by Keep Britain Tidy and 17,5000 schools have taken part in it. I very much hope that, with the Eco-Schools international award programme helping schools to be more sustainable, there will be a continuing

understanding that young people need to play their part in ensuring that the future environment is better than the one we have now.

Your Lordships will understand that there is much pressure on the public purse and that we have to avoid unnecessary expense. Therefore, we must make sure that all the resources which we undoubtedly need to use make a real difference. My right honourable friend the Secretary of State for Environment, Food and Rural Affairs has made it clear that Defra is committed to delivering a cleaner, healthy environment which benefits people and the economy. Reducing litter is a key part of this—not just in delivering that cleaner environment but in encouraging civic pride and making our beautiful country even more attractive.

Childcare Bill [HL]

Committee (1st Day) (Continued)

8.34 pm

Amendment 6

Moved by ***The Earl of Listowel***

6: Clause 1, page 1, line 5, at end insert—

"(1A) For the purposes of securing "high-quality childcare" under subsection (1), the Secretary of State must, within 6 months of this section coming into force, lay a report before both Houses of Parliament setting out her strategy for developing the early years workforce.

(1B) The strategy mentioned in subsection (1A) must include in particular—

(a) a target for the number of graduates in the early years workforce,

(b) a target for the proportion of managers of early years settings who are graduates, and

(c) a plan for increasing the number of nursery schools to a specified level."

The Earl of Listowel (CB): My Lords, this amendment would require the Secretary of State, within six months of this section of the Act coming into effect, to lay a report before both Houses of Parliament setting out the Government's strategy for developing the early years workforce. It seeks to secure a commitment from the Minister that the Government will publish a strategy to increase the quality and capacity of that workforce. I shall try to be quick.

I am grateful to the National Children's Bureau for helping to prepare the amendment. I should like to seek clarity from the Government regarding their plans to ensure that all children receiving 30 hours of free childcare can access high-quality early years education and childcare that promotes both their learning and their development and is delivered by well-trained and qualified practitioners. I would like the expansion of free childcare to be supported by an early years workforce improvement strategy, setting out how the Government intend to recruit and train new practitioners and retain existing practitioners through qualifications and career development support.

Evidence shows that a well-qualified, confident and experienced workforce is central to the delivery of early years services that improve young children's outcomes. The Nuffield Foundation has recently reported on a strong relationship between the level of staff qualifications, the quality of provision as judged by Ofsted and outcomes for young children. Despite recognition that employing a graduate leader improves the quality of provision, since the graduate leader fund ended in 2011 there has been no dedicated national funding available for local authorities to support the training and qualifications of early years practitioners. In addition, reductions in local government budgets have meant that many local authorities can no longer subsidise training for new and existing practitioners. At present, only 14% of private, voluntary and independent settings employ a graduate, with few opportunities for these providers to fund graduate training.

Measures are also needed to improve the qualifications of non-managerial staff. A significant minority of practitioners are working in the sector despite not holding a level 3 qualification, an A-level qualification, the minimum recommended by the Nutbrown review of early education and childcare qualifications in order to deliver high-quality services to young children and their families. One-third of childminders do not hold a level 3 qualification and 14% are unqualified. In group settings, 13% to 16% of staff do not hold a level 3 qualification and 4% are unqualified.

A lack of investment in the early years workforce, coupled with an increase in staff vacancies and a reduction in childminder numbers, is limiting the capacity of the early years sector to provide high-quality free entitlement places for three and four year-olds, with the greatest impact being felt by providers in poorer areas—areas that are required to deliver a greater proportion of free places for disadvantaged two year-olds.

Between 2011 and 2013, there was a 42% increase in staff vacancies in full-day care settings and a 59% increase in staff vacancies in sessional care settings. During the same period, the number of active childminders fell by 6%, from 48,800 to 46,100. I would argue that a review of the workforce delivering the free entitlement for three and four year-olds should be undertaken in order to ascertain existing and projected gaps in workforce capacity prior to the extension of free childcare to 30 hours. This review would help to ensure that accurate targets for increasing the number of graduates, graduate leaders and level 3 practitioners are set out in the workforce strategy.

The Department of Health's health visitor implementation plan set measureable targets for increasing the health visiting workforce and is expected to miss its 2015 recruitment target of 4,200 new health visitors by only 3%. That is a tremendous achievement on the Government's part.

If I may say so, the Childcare Bill provides an opportunity to increase both the quality and the capacity of the early years workforce through a workforce improvement strategy. Failure to do so would hinder the expansion of free childcare to 30 hours. I therefore have three questions for the Minister. Will he provide assurances that the Government will develop a strategy for expanding and improving the quality of the early years workforce? Can he confirm whether the Government will review the composition of the workforce delivering

[The Earl of Listowel]
the current free entitlement in order to ascertain existing and predicted gaps in capacity? Finally, will the Minister confirm whether the Government intend to put in place measures to increase the number of graduate leaders? I apologise for not giving him notice of those questions and quite understand if he would prefer to write to me on them.

I have a couple of other amendments in this group, one of which is on hours of training for staff, particularly emphasising the need to allow staff to have training away from the children so that they can reflect on their relationships with them. Coram, a well-recognised, high-quality provider, provides such time away from the children for staff development. It can be seen as a costly input but it is vital. In teaching we have Baker days and recognise that teachers need time away from their pupils to develop themselves. The same should apply to early years provision. The other amendment is to do with increasing the number of nursery schools, and I was grateful to the Minister for his reply on that particular topic earlier today. I beg to move.

Baroness Jones of Whitchurch (Lab): My Lords, I rise to speak to Amendment 13 and to support the other amendments in this group which have been very ably explained by the noble Earl, Lord Listowel, and all of which highlight the need for a high-quality workforce in this sector.

As we know, there is compelling and conclusive evidence that the presence of trained early years teachers in nurseries has the biggest impact on children's early years development. This was a central theme of Cathy Nutbrown's report and was echoed in the Select Committee's report on affordable childcare, where it was identified that the number of qualified staff, and therefore the quality of provision, was higher in the maintained sector than in the PVI sector. Most worryingly, it was identified that provision in the most disadvantaged areas tended to be of lower quality. For example, the report quotes evidence from Ofsted, which described how in the more deprived areas the people who put themselves forward to work tended to have lower levels of skill.

Clearly there has been some progress in this area. The Minister spelled out some examples in his Second Reading response and in the subsequent policy statement. There has, for example, been a welcome increase in those holding a level 3 qualification, although it is by no means universal. But as Save the Children has pointed out, over half of independent nurseries do not employ a single early years teacher and only 13% of staff in independent nurseries have a degree. Meanwhile, as the noble Earl, Lord Listowel, pointed out, since the graduate leader fund ended in 2011, there is no dedicated national funding to support the training of early years practitioners, which could help the PVI sector. Save the Children has also described how a third of childminders do not hold a level 3 qualification, nor do a sixth of staff in group settings.

8.45 pm

In response to these concerns about the quality of staff, the Affordable Childcare Committee report recommends that,

"the Government considers how the proportion of staff qualified at a higher level can be increased in the PVI sector to drive up overall quality. In line with that, we also recommend that the Government reconsiders its response to the Nutbrown Review".

We believe that this amendment provides a vehicle for the Government to do that. A report of the kind that we outlined would allow an assessment to be made of the progress in rolling out level 3 and early years teacher status. It would specifically enable an analysis to take place of the causes of lower qualifications among black and ethnic minority staff. This was also proposed by Cathy Nutbrown. It would provide a vehicle for analysing the recruitment and retention issues which many in the sector report are a major barrier to growth.

We also believe that low pay rates are at the heart of this problem. A recent survey for the National Day Nurseries Association highlighted evidence of qualified staff leaving to earn more money working in supermarkets. In his Second Reading speech, my noble friend Lord Sawyer gave examples of staff employed to look after dogs being paid twice as much as those who are looking after babies. All these examples demonstrate an urgent need to investigate levels of pay, comparators with earnings in other education sectors, the scope for paying at least the living wage and the contribution that a national pay structure can play in easing recruitment challenges in the future.

I hope that noble Lords will feel able to support this amendment which reflects many of the concerns of the Affordable Childcare Committee and would enable the Government to identify the further drivers which could help improve quality and retention in this sector.

8.45 pm

Baroness Howarth of Breckland (CB): My Lords, I just want to speak briefly about baselines. As we are talking about quality, I wonder whether the Minister has seen the report of the Family and Childcare Trust, *Access Denied*, which does not talk about quality but about 38 English local authorities which failed to carry out and publish assessments of local childcare since 2012. Therefore, a large number of working families have no access at all to childcare. The report gave an example of a mother who said:

"I was so happy when my boy turned three and we got free nursery education. I decided to try and move him from the childminder to a nursery, where he could get the free hours. But I could not find a place with any vacancies. The local nursery and the school were both full, so I'm still with the childminder, so no free hours for him and a big bill for me".

Would the Government like to comment on this problem of access to basic childcare, never mind quality?

Baroness Pinnock (LD): My Lords, I do not want to expand on what has already been said most ably by the mover of the amendment, the noble Baroness, Lady—oh dear.

Baroness Jones of Whitchurch: Jones.

Baroness Pinnock: Jones. I do apologise.

Baroness Jones of Whitchurch: It is getting late.

Baroness Pinnock: It is, yes. I have been concentrating hard. I support everything that the noble Baroness said because it follows on from the earlier debate about quality. You cannot deliver quality unless you have a well-trained staff working in the childcare sector. I wanted to make it clear that there is support on our side. We have no critical comment to make but welcome the amendments that have been moved.

Baroness Evans of Bowes Park (Con): My Lords, I shall also speak to Amendments 13, 17 and 36, on the early years workforce. I thank the noble Earl, Lord Listowel, and the noble Baroness, Lady Jones of Whitchurch, for bringing forward these amendments. They are wide-ranging and cover a review of the workforce and workforce strategy, together with specific issues such as training, qualifications and pay.

I am sure we would all wish to pay tribute to the commitment and dedication of the early years workforce. Their hard work and devotion does not go unnoticed, and the support they give to children in the most important years of their lives is critical to ensuring that every child gets the best start in life. The Government are committed to ensuring that childcare hours are of high quality and, of course, the workforce is key to that.

The noble Earl, Lord Listowel, has moved an amendment requiring the Secretary of State to,

"lay a report before both Houses of Parliament setting out her strategy for developing the early years workforce".

We covered this issue in an earlier group of amendments. I set out that strategy and some of the initiatives that the Government have introduced, so I do not propose to repeat those.

The noble Earl also moved an amendment to make explicit requirements for the use of graduates in early years settings. We are committed to continuing to raise the quality of the early years workforce. We have already set the bar high for the qualifications of people working in childcare, including early years teachers, who must meet the same training course entry requirements as primary teachers. Since 2007, 15,422 early years teachers have been trained. I also assure the noble Earl that we will continue to support expansion of the graduate workforce through the provision of early years initial teacher training routes and through providing funding support for trainees.

Regarding the noble Earl's amendment to develop a strategy to increase the number of maintained nursery schools, we recognise that they have been shown to deliver high-quality early years education. However, we must of course also recognise that many private, voluntary and independent providers also deliver quality. At 31 December 2014, the proportion of all providers on the early years register rated good or outstanding by Ofsted was 83%.

While we agree that many nursery schools offer high quality, we also think that the diversity of the childcare sector is one of its strengths as it offers choice and flexibility to parents. We want maintained nursery schools to play their part in a diverse early years sector in years to come, delivering high-quality, sustainable provision that is responsive to the needs of parents in their local area.

I say to the noble Baroness, Lady Howarth, that I have indeed read the report to which she referred and we will certainly reflect on some of the findings laid out in it.

The noble Earl, Lord Listowel, has also tabled an amendment which would require early years settings to provide a specified number of training hours per year to each member of staff. While I entirely understand the intention behind this amendment, to support staff training and development, we think this is a matter for individual employers and the sector to lead on. We will continue to support the sector in doing so, but do not believe that specifying a one-size-fits-all model would be helpful. Given these reassurances, I hope the noble Earl will withdraw his amendment.

The noble Baroness, Lady Jones, has tabled an amendment which would require a review of the qualifications and pay of staff. It specifically addresses the assessment of progress of level 3 qualification standards, the assessment of progress in introducing early years career paths, recruitment and retention, pay levels and the number of black and minority ethnic staff at different levels of the profession. I will take each of these briefly in turn.

We have a robust set of standards for level 3 early years educator qualifications. The quality of the workforce is increasing year on year. We know that the proportion of paid staff with at least a level 3 qualification increased between 2011 and 2013. The sector shares the Government's ambition to see staff in key positions holding good GCSEs in English and Maths, as this can only be to the benefit of the children with whom they work and the status of the profession.

We recognise the importance of clear progression routes within the sector to attract and retain good-quality staff, and will be looking further at how to ensure that the current and prospective early years workforce can take advantage of the varied and rewarding careers that are available to them. I know that the Minister for Childcare and Education is looking closely at the qualification frameworks and rules to ensure that they are enabling the development of a high-quality workforce.

The noble Baroness, Lady Jones, and the noble Earl, Lord Listowel, also raised the important issue of recruitment and retention. It is important that experienced and skilled early years professionals want to stay in the profession, a point made by the noble Baroness. The Government recognise that settings, the majority of which are private businesses, manage this themselves in the context of their staff employment and deployment responsibilities.

There are many reasons why staff turnover may increase, including local economic factors which are beyond the control of providers. Making staff turnover information available at a local level to parents could lead to the information being misinterpreted and lead a parent to dismiss out of hand a good-quality setting that is doing good work to support staff. That is not what anyone would want.

The noble Earl, Lord Listowel, tabled an amendment on local authorities publishing turnover rates of early years staff. We already collect and publish information on staff turnover through the *Childcare and Early Years Providers Survey*, which was last published in 2013 and

[Baroness Evans of Bowes Park]
is publicly available on GOV.UK. We think this is the right level of information about turnover, and that it is not appropriate or necessary for local authorities to publish further information.

As regards the amendment of the noble Baroness, Lady Jones, on reviewing pay, all private, voluntary and independent providers are free to set their own pay scales. This means that those working in the sector can be paid as their employer sees fit. Only those defined as "school teachers" under Section 122(3) of the Education Act 2002 are legally entitled to the pay and conditions specified in the *School Teachers' Pay and Conditions Document*. With respect to the noble Baroness's amendment to assess the numbers and qualifications of black and minority ethnic staff, it is the responsibility of early years training providers and employers to ensure that they do not discriminate when recruiting trainees and employees, and they must comply with the requirements of the Equality Act 2010. Information published on the representation of ethnic minorities reveals that school-based providers in nursery schools have the highest level of BME staffing, at 17%.

In conclusion, while we sympathise with the intention behind these amendments, we do not think they are necessary. Work is already under way to look at how to support the continued improvement of the early years workforce. I therefore urge the noble Earl, Lord Listowel, and the noble Baroness, Lady Jones, to withdraw their amendments.

The Earl of Listowel: My Lords, I am grateful to the noble Baroness for her careful reply and for what she said about the availability and additional funding for early-years initial teacher training. However, I must say that I still do not feel reassured. The noble Baroness stated that it was important to leave parents to choose what suits them, to allow them the flexibility to decide what needs to be done. I am afraid that research I have seen indicates that parents tend to choose price over quality. We are putting them in a difficult position: they are desperate to get out to work, and we are saying, "We will leave it to you to choose. You have to make the choices, without necessarily having all the information".

I understand what the noble Baroness says about not publishing the turnover figures. Will she be good enough to write to me with a breakdown of turnover levels, ranging from the turnover of staff in nursery schools to group settings in children's centres, and looking at privately, voluntarily and local authority-run settings? I would be grateful to see the range that is available.

I understand that there is always a balance. The Government do not wish to be overly prescriptive, to unnecessarily hinder businesses from doing a good job, or to interfere too much with the market. On the other hand, I am not sure that the balance is right here. It is so important that children get the high-quality care that they need; the Government may have to go further to persuade noble Lords that the additional care offered will be of the necessary quality. Nevertheless, I am grateful for the noble Baroness's response and I beg leave to withdraw my amendment.

Amendment 6 withdrawn.

Amendments 7 to 9 not moved.

Amendment 10

Moved by ***Baroness Pinnock***

10: Clause 1, page 1, line 10, at end insert—

"( ) Regulations under subsection (2)(c) must ensure that the description of "qualifying child of working parents" includes children between the ages of 1 and 2 years."

Baroness Pinnock: My Lords, Amendment 10 is in my name and that of my noble friend Lady Tyler of Enfield. It seeks to ensure that the new free entitlement provided under the Bill is also available to parents with a child aged between one and two. The Government's announcements on this Bill have made it clear that they intend to target their support at three and four year-olds, who already receive 15 hours of free childcare a week. While I welcome this, it means that a significant gap in childcare arrangements will remain. At the moment, a parent with a newborn baby will receive support during parental leave, which—thanks to the work of Liberal Democrats in the previous Government—can be shared between mothers and fathers, helping them to share child-raising duties. However, once their statutory pay expires, they must make ends meet on their own. It can therefore be of little surprise that many parents see the end of their statutory parental pay as the point at which they need to return to work. It is a luxury that few can afford to go on for many months, especially due to the high cost of housing.

9 pm

However, when parents do return to work under our current system they are likely to receive a nasty shock. They will find themselves suddenly in need of childcare but receiving little, if any, of the support that others with slightly older children receive. These parents, who are just at the point of wanting to get back to work, will not see the benefits of the free entitlement under either current policy or the Bill. How can this be right or fair? Surely this is exactly the time when support needs to be there to help parents to get back to work, which is clearly the intention of the Bill, applying as it does only to working parents.

Indeed, the failure to support people looking to get back to work can have significant long-term effects. The Office for National Statistics released a report in 2013 that stated:

"Over the year from April-June 2012 to April-June 2013, if one had been unemployed for less than three months one was 3.2 times more likely to move from unemployment into employment compared with someone who has been unemployed for over two years, and 1.9 times more likely compared with someone who has been unemployed for between six and 12 months".

In 2014, a United States study by, among others, Alan Krueger from the Brookings Institution, suggested that those in long-term unemployment have a 20% to 40% lower probability of returning to work in the future than those who have been short-term unemployed. These studies show the importance of ensuring that new parents are given all the support that they need to return to work when it suits them, rather than delaying

support until when they can afford it. Of course, parents may choose to return to the same job that they left, or move to a more flexible job, but the point remains the same. That is why the Liberal Democrats, in our election manifesto, specifically prioritised extending the 15-hour free entitlement to all working parents with children aged between nine months and two years after extending the 15 hours to all two year-olds.

I appreciate that that proposal would cost money. It is estimated that the manifesto policy that I have just described for 20 hours' entitlement for those aged from nine to 24 months would have cost £1.26 billion a year. The proposals in the amendment would, of course, cost substantially less; I have not been able to cost them because they would apply only to working parents. It is worth pointing out that we are not talking about two different sets of people: anyone who has a child aged between three or four has also had a child aged between one and two. It does not make sense to target one but also to leave the gap at one to two year-olds.

It is hard enough for someone to leave their baby and return to work, without the additional challenge of struggling to afford childcare. The Bill provides us with an opportunity to correct this imbalance. I beg to move, and urge the Minister to consider how parents of one to two year-olds may be helped by the free childcare offer from the Government.

Lord True (Con): My Lords, surely, as the noble Baroness has acknowledged, there is a key question of affordability here. There is a great danger of good intentions running away with us on this legislation. I ask the noble Baroness for clarification. She speaks from the Front Bench of her party; is she making a commitment that the Liberal Democrats believe that that money should be spent?

Baroness Pinnock: My Lords, as the noble Lord, Lord True, and I said earlier, election manifesto promises are important. The Liberal Democrat manifesto gave a commitment to providing childcare in this gap for one to two year-olds. In the end, it is a question of priorities. Either you spend money on things such as Trident or you spend it on children from one to two years old. It is a question, as always, of priorities.

Lord True: The answer is yes.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, I shall speak to Amendment 10. While I understand the noble Baronesses, Lady Pinnock and Lady Tyler, would like working parents of children between ages one and two to be entitled to additional childcare, the elected Government's manifesto commitment is to increase the hours of free childcare to working parents of three and four-year-olds.

There is already support for childcare put in place by the last Government. We have increased the child tax credit entitlement to £2,780 per year for families with one child, £480 more per year than in 2010. We have legislated for tax-free childcare, which will save about 1.8 million working families with children under the age of 12 up to £2,000 per child a year.

The Government are also committed to increasing childcare support within universal credit by about £350 million to provide 85% of childcare costs from 2016 when a lone parent or both parents in a couple are in work. This is up from 70% in the current working tax credit system and current universal credit system.

This package of support for childcare as a whole provides help for parents with children between ages one and two and represents significant public investment. These are, however, difficult economic times, and the Government have to make hard choices. We know that more parents use childcare as children move towards school age. We are, therefore, focusing on where there is the greatest demand for childcare. Alongside this, two year-olds in low-income families also receive 15 hours a week, offering both high-quality early education and the opportunity for their parents to move into work.

I hope, for these reasons, that the noble Baroness is persuaded to withdraw the amendment.

Baroness Pinnock: The response from the Minister is predictable because of the cost to the public purse of providing free childcare in this gap year. I refer, however, to the comment I made earlier about the motif on the door of the Minister's office, which says, "closing the gaps". Here is a big gap that I would like closed. If we can edge towards this by saying, "What we would really like to achieve for early years care and education is a planned approach which includes provision from age one to four," I would welcome that. At the moment, we have a more or less ad hoc approach to extensions; first it was to everyone—the universal offer—now to only those with working parents, and to some two year-olds from disadvantaged families. It seems that we ought to be able to extend this to one and two year-olds, especially to those from disadvantaged families who would qualify at age two. As I and many of the Members of this House have said, if we can help the most vulnerable children in the most disadvantaged homes, it helps not only those children but also the rest of society as they grow into adulthood.

I hope that, at some point, perhaps on Report, there could be an approach to help bridge that gap. I beg leave to withdraw the amendment.

Amendment 10 withdrawn.

Amendment 11 not moved.

Amendment 12

Moved by ***Baroness Jones of Whitchurch***

12: Clause 1, page 1, line 18, at end insert—

"(3A) In order to support the effective implementation of the duty under subsection (1), the Secretary of State shall arrange for a review to be conducted that shall include, but shall not be limited to—

(a) an assessment of how the new entitlements in this Act will support the inclusion of disabled children and those with special educational needs;

(b) an assessment of how the existing structures and framework for childcare meet the needs of disabled children and those with special educational needs;

(c) an assessment of existing barriers that limit access to childcare by disabled children;

(d) an estimate of the access to the current entitlement of free early education;

(e) an assessment of how many local authorities have sufficient childcare for disabled children;

(f) a calculation of the additional costs, funding and support required to meet the needs of providing childcare to disabled children;

(g) an analysis of the workforce available and their ability to provide quality childcare for disabled children.

(3B) The report of the review under subsection (3A) shall be laid before both Houses of Parliament.

(3C) Once the review has concluded, the Secretary of State shall establish a strategy for improving the skills of the early years workforce to meet the needs of disabled children and those with special educational needs.

(3D) Where the Secretary of State does not adopt a recommendation from the review, the Secretary of State must set out the reasoning for doing so."

Baroness Jones of Whitchurch: My Lords, I also support Amendment 16, which has similar objectives. Two key findings of the report of the Parliamentary Inquiry into Childcare for Disabled Children in 2014 were that,

"disabled children are denied the same opportunities for positive educational and social development",

and that:

"Parents are denied the same opportunities to choose to return to work".

Here in 2015, the same conditions still exist but now we have a chance to change that with these amendments to the Bill.

At Second Reading, the Minister stated that where parents of disabled children would like to go out to work, the Government wish to make it easier for them to do so. We support this aim. We know that 88% of the parents of disabled children who do not work wish to return to work. However, we must bear it in mind that 83% of them cite the lack of suitable childcare as the main barrier to doing so. The Minister also said at Second Reading that,

"parents with disabled children must have the same opportunities as other parents to access the entitlement".—[*Official Report*, 16/6/15; col. 1127.]

That refers to the new entitlement to 30 hours. We obviously welcome this important commitment and will support him in achieving it. However, we have a long way to go to make this a reality. We know that parents of disabled children do not have the same opportunities to access the current entitlement. For example, only 21% of local authorities are now reporting that there is sufficient childcare for disabled children in their area. Simply adding a new legal entitlement on top of that entitlement, when we know that it is already not working for families with disabled children, will not be enough to secure equal access.

For disabled children and their families, business as usual will not be enough. This amendment would also require the review to make a calculation of the additional costs of funding and support required to meet the needs of providing childcare for disabled children. My noble friend Lord Touhig made it clear at Second Reading that one of the main barriers to the greater inclusion of disabled children was the lack of consistent funding to meet the additional cost. We were therefore pleased that the Minister stated at Second Reading that the funding review announced by his department would consider evidence on the funding issues for disabled children. However, given this commitment, why does the call for evidence for the funding review make absolutely no reference to funding the additional needs for disabled children? I hope that he will be able to reassure me on this point and can confirm that the funding review will explicitly take into consideration the additional cost of ensuring equal access to the new entitlement for the parents of disabled children.

I also request that the Minister asks his officials to work on the funding review with members of the Special Educational Consortium, who have expertise in this area. He and his team will benefit greatly if they do. They will produce better information by working closely with those who, on a day-to-day basis, help parents with these problems to solve them by giving them advice on where they can go for help.

Amendment 12 also identifies workforce issues, which are a recurring theme today. We supported the Government's reforms to special educational needs and disability provision contained in the Children and Families Act 2014. This Act focuses on early identification and early intervention, and on achieving the best possible educational outcomes. We know that the earlier a child's needs are correctly identified, the more effective the intervention will be. However, an early years workforce without proper training or qualifications will not be able to deliver the Government's vision for children with special educational needs and disabilities.

The Parliamentary Inquiry into Childcare for Disabled Children found that the situation could be so bad that the lack of staff skills and confidence was often the reason for parents,

"being subtly discouraged or simply turned away by a provider".

This simply is not right. It is discriminatory and I urge the Government to address it. The review proposed in our amendment would be a vehicle for this, so I very much hope that your Lordships will support it.

9.15 pm

Baroness Tyler of Enfield (LD): My Lords, I shall speak to Amendment 16 in my name and that of my noble friend Lady Pinnock. In doing so, I very strongly support Amendment 12, which has just been moved so ably by the noble Baroness, Lady Jones. Indeed, much of what I wanted to say has already been said, so I will be brief.

We know there is much evidence that existing childcare is simply not working well enough for disabled children and those with special educational needs. That is the nub of my amendment. It will place a requirement on the Secretary of State to ensure that childcare providers are suitably qualified and trained to deliver high-quality care to disabled children and children with special educational needs, that childcare providers have suitable facilities to do this task and, very importantly, that they have access to additional funding to meet the needs of all these children.

I warmly welcomed, as, I am sure, did many others in this House, the commitment by the noble Lord, Lord Nash, to equality in this area and his statement at Second Reading that,

"parents with disabled children must have the same opportunities as other parents to access the entitlement".—[*Official Report*, 16/6/15; col. 1127.]

However, there is overwhelming evidence—we have heard it this evening—that parents with disabled children are struggling to access their current entitlement to childcare.

A salient point here is that the current funding system does not take account of the additional costs of supporting disabled children. I know that some local authorities provide top-up funding, which is of course welcome, but it leaves us with a very patchy and inconsistent pattern of provision. I recognise fully that my amendment would have costs attached to it at a time when money is tight. However, the social, economic and, above all, moral case for finding the money to ensure that local authorities can fund all childcare providers to offer suitable places to disabled children is very strong. We are in a difficult situation, as has been said. I hope this is one area the funding review will look at, but until we have that funding review it is hard to say whether more money will go into this area. I very much hope that it is something that we can return to when we have the funding review.

We also know—we have heard plenty of evidence of it today—that the workforce is not suitably qualified and trained at the moment to deliver high-quality care to disabled children. It is something that Cathy Nutbrown touched on in her review. Again, I know that the Government have taken welcome steps to develop a range of tools to support professional development, but there is much still to do. We have heard a lot today—and I welcome some of what the Minister said in response to my earlier amendment—about the Government's plans for a workforce improvement strategy, but I finish by asking for an assurance that this work on improving the workforce will include the critical area of ensuring that all early years providers have had the training they need to ensure that they can offer high-quality care to disabled children.

Baroness Howarth of Breckland: My Lords, I spoke at length about disabled children at Second Reading and I will not repeat what I said then, so I will just make two points in support of the amendments, particularly that in the name of the noble Baroness, Lady Jones. Her amendment makes two points that take me back to our debates on the Children and Families Act 2014, when we looked at how children with disabilities and special educational needs could be properly assessed and then slotted into services that would meet their needs and give them an opportunity in the future. The first point concerns whether local authorities have sufficient facilities to provide childcare for disabled children. Then there is an assessment of the existing barriers that limit access to childcare for disabled children. I am extremely grateful to the Minister for arranging for me to bring some members of TRACKS autism to meet him and talk about some of the barriers that are in place at the moment. I raise this point so that, should I not be able to move it forward, I can at least speak on Report.

There is a lack of providers and able staff, but even when you have both those things, there seems to be a barrier in some local authorities to enabling the families to have placements. That is even where parents have jobs and want to work, and are working to pay fees so that their children can get the experience that will take them forward in their learning so that they move on to further education, often in specialist facilities, but at least with the basic communication skills that are given at that early nursery stage. I am grateful to the Minister for his interest and hope we can take this forward so that some of those issues can be resolved. In particular, in any reviews that go forward, the questions the noble Baroness raised are extremely important.

Lord Sutherland of Houndwood (CB): My Lords, I promise to be very brief and offer one comment and one suggestion. The comment is that there is a huge range of possible needs under SEN and we need to unpick them at some point. This is not the time to do that, but it leads to my second point. Many of the issues covered by these amendments are of a practical nature and I wonder how far study of them could be incorporated into the pilots that are proposed to be set up.

Lord Nash: My Lords, this group includes Amendments 12 and 16. I remember well the excellent debates we had during the passage of the Children and Families Bill, and it will be no surprise that I sympathise with the intentions of the noble Baronesses, Lady Jones, Lady Tyler and Lady Pinnock, and the noble Lord, Lord Touhig, in their desire to ensure that the new entitlement is implemented in a way that meets the needs of children with SEN and disabilities.

We know that families with disabled children too often experience challenges and financial pressures in getting the service they need. That is why we have already acted—or will be taking steps—to address the issues highlighted by the proposed amendments. There is a strong legal framework in place to support children with SEN and disabilities. The Equality Act requires local authorities and other public bodies to promote equality of opportunity for disabled people. Early years settings, schools and colleges must make reasonable adjustments for disabled children, including the provision of auxiliary aids and services, to ensure that they are not at a disadvantage compared with their peers.

The Children and Families Act introduced significant reforms to the way children with special educational needs and disabilities are identified and supported. The improvements they will bring will be for all children, including those whoreceive childcare. Local councils will now commission support across education, health and care jointly with their health partners, publish a clear, local offer of services for children with SEN and disabilities and provide comprehensive information and advice to parents on these matters. New 0 to 25 education, health and care plans for those with more complex needs will replace the current SEN statements.

We want every family to have access to flexible and affordable high-quality childcare. We are monitoring take-up of the entitlement for two year-olds closely. In 2015, there were 2,450 two year-olds with some form

[LORD NASH]
of SEN or disability who took up a place within the current entitlement, compared to 1,300 in 2014. We can be confident that this is high-quality provision since the majority of children—85%—are attending settings that are currently rated good or outstanding by Ofsted. As the entitlement for three and four year-olds is universal, we do not currently collect information on why children take up a place. However, we know that 94% of three year-olds and 99% of four year-olds in England are taking up funded early education.

We are funding a number of projects to increase the number of good-quality and flexible childcare and early education places for disabled children: for example, 4Children's project to build on the success of childcare hubs and Family Action's work to support more school-based childcare for children under five with SEN and disabilities. We are also building on the Family and Childcare Trust's parent champions and outreach work to increase the number of flexible early education and childcare places for disadvantaged families.

The Government are committed to building a highly skilled workforce for all children. All early years childcare providers must have in place arrangements to support children with SEND under the accountability framework that they are assessed against. The current early years teacher standards require that all new early years teachers have a clear understanding of the needs of children with SEND and are able to use and evaluate distinctive approaches to engage and support them. Similar arrangements apply for schoolteachers.

To ensure that providers and local authorities are equipped to deliver the expectations of the new code of practice, we are funding a number of projects to better equip the early years workforce to support children with SEND responsibilities. These include: funding the National Day Nurseries Association to build on local systems for self-improvement through SEND champions; the Pen Green Centre, which supports a model of peer-to-peer training; and the Pre-School Learning Alliance, to build mentored workforce development networks. More broadly, the SEND gateway, established by the National Association for Special Educational Needs, provides information and training resources for education professionals across early years, schools and further education. Through our voluntary and community sector grants programme, we are also funding the NASEN to develop online learning to help practitioners effectively to identify and meet the needs of children with SEN.

To make sure that we fully understand the issues that families face, we will engage with parents and providers to find out more about how they currently access and deliver childcare. We want to hear their views on how the extended entitlement could best meet their needs. I am pleased to say that we have already received a number of responses from groups representing and supporting disabled children and their parents, offering to host consultation events for parents and providers. We will continue to work with providers to identify what more can be done to ensure that early years settings are building inclusive and accessible services for parents with disabled children. I shall take back the idea put forward by the noble Lord, Lord Sutherland, of making sure that providers for disabled children and the needs of disabled children are factored into the pilots.

As the Committee has heard, funding and affordability is a significant issue for many parents of SEND children. Local authorities must have the flexibility to provide support according to the circumstances in their area. They are able to set higher funding rates for provision that involves additional costs, including costs for children with SEN or disabilities, and can use their high-needs budgets to fund provision for children with additional needs, including those in specialist settings. Some in the sector have expressed concerns over the higher costs of supporting children with SEN and disabilities. The funding review will, of course, consider the additional costs, funding and support required for children SEN and disabilities. We would welcome any evidence that the Special Educational Consortium can submit to the review on this issue and we will be happy to work with it—indeed, my officials have already met its representatives.

I am in agreement with the noble Baronesses, Lady Jones, Lady Tyler and Lady Pinnock, and the noble Lord, Lord Touhig, about the need for concentrated action to ensure that the Government implement the new entitlement effectively for children with SEN and disabilities. As I have described, much of this is either in hand or about to take place. However, in view of the importance of ensuring that there is equal access to the new entitlement, I would welcome a conversation with noble Lords outside this debate.

I hope that I have reassured noble Lords, and therefore urge the noble Baroness to withdraw her amendment.

Baroness Jones of Whitchurch: My Lords, I am grateful to the Minister for suggesting that we can have a further conversation about this, and that may be the way forward, because I think that there are some issues that still need to be explored. I think that there is a problem with saying that we already have a legal framework in place, and that therefore there is no problem, per se. It is one thing to say that you have a legal framework and another to look at the practicality of what is happening on the ground. We have to marry those up in some way—so, if we have a legal framework but parents of disabled children are not accessing it, we have a problem, and we really need to get to the heart of why that is the case.

I am pleased to hear that the funding review will consider the issue. As I said in opening the debate, the call for evidence does not explicitly say that we want to hear from parents of disabled children. I think the noble Lord is saying that that will be done as a separate exercise or a parallel exercise. If that is the case, I am very pleased to hear that. Rather than just assume that parents of disabled children were responding to a general call for evidence, we need to go and seek them out in a more targeted way.

9.30 pm

There still is an issue about staff training, where ILEA staff feel that they do not have the skills or confidence to deal with some of the disabled children who might otherwise be able to attend their facilities

in a perfectly happy and healthy way. All of this needs to be explored in more detail, and I very much welcome the suggestion from the noble Lord, Lord Sutherland. In addition to trying to gather the evidence through the funding review, some specific work on the pilots, which really look at that on the ground, would help us all. In the mean time, let us have a conversation outside this about what more we can do. I beg leave to withdraw the amendment.

Amendment 12 withdrawn.

Amendment 13 not moved.

Amendment 14

Moved by ***Baroness Jones of Whitchurch***

14: Clause 1, page 1, line 18, at end insert—

"(3E) In order to ensure the effective implementation of the duty under subsection (1), the Secretary of State shall establish an independent review of the free childcare entitlement funding system, including a large-scale analysis of the cost of delivering funded places.

(3F) The review established under subsection (3E) shall consult local authorities, childcare providers, employers, parents and others with an interest.

(3G) The Secretary of State must establish a comprehensive and sustainable funding solution taking into account the findings of the funding review to address the funding of existing childcare and the additional requirements on childcare providers arising from this legislation."

Baroness Jones of Whitchurch: My Lords, this amendment seeks to explore in more detail the purpose of the funding review announced by the Government, the extent to which real evidence will inform its findings, and the need to find a fully sustainable solution to the funding crisis.

At Second Reading there was a general recognition that the funding of the existing 15 hours of free childcare was unsustainable and would not survive an extension to 30 hours. There was also considerable evidence given to the Affordable Childcare Select Committee on this matter. This was subsequently echoed by the Pre-School Learning Alliance and others, which made a persuasive case to show that the hourly rate was so low that nurseries were able to provide the free hours only if they did so at a loss and cross-subsidised the payments from additional hours elsewhere. To be fair, the Government were quick to identify that this was a problem and announced the funding review soon after, and, of course, this is to be welcomed. However, serious questions remain about the conduct of the review, and this amendment seeks to explore these issues further.

First, the call for evidence asked parents and providers to send in any information that they wished to provide to inform the review, such as existing studies on the cost of childcare and the factors that make up the cost. That is okay as far as it goes, but where is the analytical research that needs to underpin a review of this nature? What we do not want is a whole series of anecdotal stories, important though they are. Surely what we need is a proper, independent study to investigate and evaluate the cost of provision across the different providers, how much the current shortfall is estimated to be and what the full cost of providing a fully funded, sustainable system would be. For example, it would be helpful to know how the Government will calculate the number of parents they expect to be eligible for these payments. Will any capital funding be included to allow for the expansion of premises or the creation of new premises? Will the calculations allow for any increase in staff pay, which providers say is necessary to recruit and retain staff? Will the assessment end the historic disparities in payments between the different local authorities? I could go on, but the point is that to do this properly requires a major piece of research, and I am not convinced that this is what the Government have in mind.

The Minister said in the policy statement that, "between now and September 2015, the Government will be considering the simplest and most effective way to deliver the additional 15 hours of free childcare to working families. This process will be led by the Minister for Childcare and Education and the government task force on childcare. The Government will provide a full update on this at Report stage in the House of Lords". Again today, the Minister has confirmed that the funding review will be completed by September. This hardly allows time for a proper inquiry to be carried out.

There is then a question about how any increase in the payments to parents will be funded. The Pre-School Learning Alliance estimated that it would cost at least 20% more than the original estimate of £350 million; and, as we know, the Children's Minister was at one stage talking about a figure over £1 billion. So there is an urgent need to clarify where any additional money will come from. Will the Minister confirm that it will be new money, not money drawn from existing budgets, and will arrangements be made to increase these sums year on year?

This amendment seeks to tease out more information about the nature and scope of the review, who will be consulted, what the timetable will be and how the outcome will be financed. It goes without saying that we welcome the Minister's reassurance that this House will have an opportunity to consider the outcome of the review and its impact on regulations as proposed by the Delegated Powers Committee, and we look forward to further debate on this in that context. In the mean time, I beg to move.

Baroness Pinnock: I shall speak to Amendment 30 in this group which is tabled in my name and that of my noble friend Lady Tyler of Enfield. For a serious new investment by the Government, it is disappointing that there is no indication in the Bill of the funding package that will be available for its implementation, because the funding is critical to the nature and quality of the childcare that will be provided. I welcome the funding review that has been opened, and I am delighted that the Minister has already received more than 500 responses to the request for information, but that simply shows the nervousness of the sector over the funding package that may be available.

I know from comments that have been sent to me by various childcare providers that they are very worried that if the funding is not of the right size, the implementation of what is otherwise an excellent proposal will be seriously damaged. There are several reasons

[Baroness Pinnock]
for this. We do not know the quantum figure. We know that two figures have been bandied about. One is £350 million, which was mentioned in the Government's manifesto, and the other is more than £1 billion, which was mentioned prior to the election period. The figure surely must be more than £350 million in order to fund an additional 15 hours of childcare for three and four year-olds. I hope the Minister will be able to explain where the money will come from, even if he is not able, at this stage, to tell us the total figure that will be available.

The other significant issue is that providers will not know the hourly rate that they will get for providing this childcare in the different settings. We know the rate is determined through local authority school forums and that they get the grant via the early years element of the direct schools grant. We also know that that is a flawed system. It is not necessarily a fair distribution of funding to local authorities across the country. We end up with different hourly rates for different childcare providers in different parts of the country which may not be sufficient to meet the costs of provision in those areas. I hope the Minister will be able to throw some light on this area.

There is going to be a significant demand for capital expenditure. For instance, providers in the state sector in nurseries attached to primary schools currently provide 15 hours through a morning session and an afternoon session. If there is going to be only one session of 30 hours, there will need to be a 50% increase in the amount provided. Capital funding will be necessary to do that, and it would be good to know whether any capital money is going to be available for either the voluntary or the state sector to do that.

The last point I want to make is one I raised at Second Reading, on the question of cross-subsidisation. Currently, parents who are working full-time may have to have childcare from 8 in the morning to 6 in the evening. It is obviously quite proper that they have to pay for some of those hours, but people have been telling me that in the hours outside the free entitlement, they might be paying up to twice as much as the hourly rate in order for the private provider to meet the full costs. If, therefore, a private provider or voluntary sector provider is providing not 15 hours but 30 hours free, where is the cross-subsidisation going to come from? I am confident that the Minister, through his request for comments on the funding review, is receiving in his inbox many expressions of concern about the hourly rate that will be necessary to ensure these childcare providers are viable. For those reasons I move the amendment in my name and that of the noble Baroness, Lady Tyler, and support the comments that have been made by the noble Baroness, Lady Jones.

Lord True: My Lords, I also have an amendment in this group. Part of it follows from what the noble Baroness was saying. Cross-subsidy—or top-up fees, as it would be more honest to call them, although we pretend that they do not exist—is a problem. As has been established in this Bill so far, that will be a problem if 30 hours becomes the limit and you cannot charge below that for the settings in question.

I am actually really interested in another thing, which is not just money. I do not believe all the problems in the world are solved by money. One of my objections when I saw this Bill published arose when somebody said, "Here's a great idea. We'll throw an unspecified amount of money at it and the world will be a better place". It is not quite as easy as that and what matters are real people, real places and things that actually happen on the ground. This is a fantastically diverse sector, as both my noble friends on the Front Bench have rightly recognised. Of course, I am biased, because over the last 30 years I have come to know hundreds of people who work in the informal education sector, in nursery care, for whom I have huge affection and admiration. They are good educators; women with vocations; people who are passionate about children; but maybe those settings do not all live up to the standards you might want if our country had been erased and you were rebuilding it—they would not be like that. But they are there—in the little church halls, the village halls and parish halls up and down the land—and they are small settings. It may be nine or 10 people who work hard, and the skilled and dedicated principal and manager does not have all the time in the world to fill in forms.

What this amendment is getting at is something that I think is so important. I know my noble friend says that he wants to address this issue—I appreciate what he said both inside and outside the Chamber—and does not want to cause problems for this sector, but a huge number of providers simply could not provide 30 hours of childcare a week, because the constraints of where they provide it do not allow for it. We really should understand, as I ask in this amendment, how many nursery and childcare providers operate in rented premises or private places. These are the people who are under threat. What proportion of nursery and childcare providers could not offer this wonderful 30 hours a week that we talk about in this House and which we would all love to see?

9.45 pm

There is another very important interest group, which is the other part of the big society—the village halls, parish councils, community buildings, sports clubs, community clubs and other groups that offer those premises. Very often those schools, nursery providers and settings are a hugely significant part of their revenue. If the good old state comes lumbering in and says, "These people won't be able to provide 30 hours, so we're going to go and provide support for somebody else", some of those places will begin to shrivel and wither on the vine, and may disappear. Not only will the richness and diversity of nursery education be threatened but so will part of the warp and weft of society in the villages and local communities across the land.

I may be unnecessarily worried, but I know that a lot of providers out there are worried about this, and we should cherish and nurture them. There is nothing about that in the call for evidence. Who will speak up for the church halls and places like that? There is nothing about the impact of hours and the possibilities with regard to settings. I urge that we use this extra time to consider this very carefully.

I did a small test and looked at the family information service of four councils taken at random, because I could get to them quickest on the internet. I did not mention 38 weeks in my amendment, which is the other thing that was mentioned. If you look at the PVI sector in each of those four councils, more than half of them were not providing either 38 weeks or 30 hours. If you then look further, you find that they are a church hall or parish hall, and it is very easy to infer that it was not possible—it probably was not because they did not want to do it. I did not look at my own authority, but I bet that if you did that would also be true.

This is perhaps my one opportunity to make this plea, which I mentioned briefly at Second Reading—I apologise for trespassing for so long on your Lordships' time at this hour. These are good people, good settings, some of the things that bind society together and which bring hope to people. Let us understand, when we make policy, the reality of life on the ground—the people who go on buses in the morning to get to these little centres, the people who open them up, those who book the halls and have to balance the time they give to their choir against what they can give to the nursery school. This is the reality of life in our land, and how the voluntary world and the informal world make good education happen. Please may we take that into account?

Lord Nash: My Lords, I will speak to Amendments 14, 30 and 32 regarding the review of the cost of childcare, the funding rate to deliver early education places and the impact of the additional entitlement on providers.

I appreciate the concerns that the noble Baronesses and the noble Lord are trying to address through Amendments 14 and 30. I agree with them that a review of the cost of providing childcare is needed and that providers should receive a fair funding rate to deliver early education places. This is particularly important as we move forward to extend the free entitlement to 30 hours for working parents of three and four year-olds. In order to do this, as we discussed, we are conducting a thorough review. The review will report in the autumn and will inform our decisions on the level of funding that providers require to deliver quality childcare, and as I said, we will report on these findings by Report.

The Government have committed to a funding rate that is fair and sustainable for providers and meets the needs of a diverse market—we were the only party that committed to increase the rate. The findings from the review will inform what that rate should be. This is a complex issue which will be looked at both by experts across government and by an external team of experts. Their role will be to support the review process and validate their findings. A call for evidence is already under way, and as I have said, we have already received more than 500 responses. With regard to how we will pay for that, it will be funded by restricting tax relief on the pensions of higher earners.

The noble Baroness, Lady Pinnock, talked about the scale of the increase facing us. We have introduced an offer relating to two year-olds and raised the offers for three and four year olds from 12 to 15 hours, and the sector has coped well with that. However, the increase is nothing like the 50% that she spoke about. Many children will be in reception classes in primary schools at the age of four and many will already be taking up the offer—parents will be paying for it themselves—so the challenge is not as great as it might appear at first blush. As I say, we are confident that the sector will be able to respond. I hope that the noble Baronesses and the noble Lord will agree that the Government's firm commitment in respect of the review and funding for early education addresses their concerns. I therefore urge them not to press the amendments.

Amendment 32 is in the name of the noble Lord, Lord True. I understand the noble Lord's concern that the additional provision may have a negative impact on some providers, many of whom will provide a valuable service to their local community. As I mentioned earlier, I am happy to confirm that we do not envisage that any provider will be forced to provide places. While the number of providers offering places under the existing entitlement continues to grow, it is true that some choose not to do so. Parents may choose, as some do already, to receive their free entitlement from more than one provider. The existing entitlement of 15 hours per week for disadvantaged two year-olds and for all three and four year-olds will of course remain. We will keep all aspects of the delivery of the new entitlement and all the different types of providers under observation and careful consideration but it seems to us that a report such as that suggested by the amendment would be wholly disproportionate. It would be very intrusive into the private business affairs of providers. I hope that this gives the noble Lord the reassurance that he seeks and I therefore urge him not to press the amendment.

Baroness Jones of Whitchurch: I thank the Minister for that response. The difficulty is, I think, that there is a great deal seemingly riding on the funding review and we are all trying to piece together what will be in it. Originally we were referred to the call for evidence, which we have of course looked at, but it does not give a great deal away and, as I said earlier, the evidence that it is calling for is very generalised. There are some quite specific issues that we want the funding review to look at, such as capital funding, the historic disparities between local authorities and where the money will come from—I note that the Minister said that it would be paid for by the tax relief but, if it turns out that it costs more than the original assumption, where will that extra cash come from? I give those issues as examples.

This is the last opportunity that we will have to talk about the funding review before we see the findings—according to the timetable now, we will see the findings on Report—and our last chance to influence what is in the funding review. Given that, it would have been, and still would be, helpful to see the terms of reference so that we know exactly what is in them, what is being looked at and what is excluded

I was very taken with the examples given by the noble Lord, Lord True. You cannot assume that some of these providers will find their way to us if we do not ask them to give us the evidence to help get a full picture. I am pleased to hear that there are experts in and outside of government, but I would love to know

[Baroness Jones of Whitchurch]
exactly what they will be doing. I do not want everything dotted and crossed, but a bit more of the flavour of what exactly is going on with the funding review would be really helpful while we still have a chance to encourage people to participate in it and before we finally get a chance to debate the outcome in October. We have moved a little way forward but I think that we still have a way to go on some of these issues. In the mean time, I beg leave to withdraw the amendment.

Amendment 14 withdrawn.

Amendments 15 to 17 not moved.

Amendment 18

Moved by ***Baroness Jones of Whitchurch***

18: Clause 1, page 2, line 11, leave out paragraph (g)

Baroness Jones of Whitchurch: My Lords, this is one of the many clauses about which the Delegated Powers Committee was scathing. Regarding the proposal for the establishment of a body corporate, it said in its report that the government memorandum,

"explains little about why a new body might be thought necessary or about the nature of its proposed functions".

I am rather glad that it said that because our inquiries at Second Reading received a similarly blank response.

Since then, there have been some developments. I am very conscious that the Minister said before we started this debate that the Government had had some second thoughts on the amendment. I could spell out in more detail why we thought that the measure was not a sensible idea but I am sure that the noble Lord has something useful to say about it. Therefore, rather than pre-empt that, I should be interested to hear what he has to say.

Lord Nash: As I said earlier, we are very happy to accept this amendment.

Amendment 18 agreed.

Amendment 19

Moved by ***Baroness Jones of Whitchurch***

19: Clause 1, page 2, line 22, leave out paragraph (k)

Baroness Jones of Whitchurch: My Lords, of all the issues on which regulations might be produced, as listed in paragraphs (a) to (k) of Clause 1(5), this is the one that has caused the most concern and disquiet.

Our Amendments 19 and 22 would remove the new powers to create new criminal offences leading to imprisonment of up to two years. On the face of it, this appears to be draconian and unnecessary, and we would like to explore the thinking behind it in a great deal more detail.

The Government say in their policy statement that it is their intention to align these new offences with existing schemes involving information-sharing and self-declaration. However, as the Delegated Powers Committee points out:

"There is nothing on the face of the Bill or in the memorandum … identifying the categories of person from whom the information … might be required".

It goes on to say that the Government have drawn a confusing analogy between their proposals and the 2006 Act, the latter being about childcare premises rather than about the provision of information.

The truth is that we do not know who might be covered by this possible regulation. Would it be individual parents, individual nurseries or childminders, or even local authorities? How severe would their crime need to be? At Second Reading, a number of noble Lords identified how confusing and contradictory the current childcare funding landscape is proving to be. Parents of children aged two, three and four all have potentially different entitlements. The scope for uninformed errors is considerable.

We do not feel able to agree to a part of the Bill that gives so much power to the Secretary of State to determine who will be criminalised in the application of the Bill. Our amendment therefore removes this paragraph. It is a probing amendment but we would need a considerable level of reassurance about the constraints of its application before we were able to support the original text at Report stage. I beg to move.

Lord True: My Lords, I raised this matter at Second Reading and, having raised it, it had rather more publicity than I expected. I had a very large number of expressions of concern on the subject. I had tabled an amendment but, seeing that the Opposition had also put one forward, I saw no need to persist with it. However, I think that a very clear answer is needed both on the range of possible forms of entitlement, which we discussed in relation to an earlier amendment, and in relation to the informality of a number of the settings which I described when debating the previous amendment. The fear of criminal offences and potential imprisonment is quite chilling for people who work in this sector.

Baroness Evans of Bowes Park: My Lords, the noble Baroness, Lady Jones, and the noble Lord, Lord Touhig, seek the removal of a power to create criminal offences. The Government's position on this issue was set out in the policy statement that was made available to all Members of this House last week. We take the security of personal information seriously, which is why Clause 1(5)(k) enables regulations to make provision for any criminal offences in connection with the provision and disclosure of information or documents mentioned in subsection 5(i) and (j). These paragraphs relate to the sharing of information and provision of documents for the purpose of checking eligibility for the free childcare provision.

10 pm

Members of this House will understand that the Government's intent is to ensure that personal information, which will often be sensitive, is not disclosed to those who have no right to see it. Making the unlawful sharing of personal information a criminal offence sends a very clear message about how important it is to keep the information safe and confidential and that

it should be used only for the purpose for which it is collected. As far as we know, no one has been prosecuted under the equivalent provisions in the Childcare Act 2006. That does not mean that the offences are not necessary, rather it demonstrates that the information has been successfully protected. We want to ensure that the same culture of information protection continues in respect of eligibility checking for the additional childcare, which is why we intend to create this offence.

Amendment 22 seeks the removal of Clause 1(7). This provides for a cap on the penalty that may be imposed on indictment for a criminal offence created in connection with the unlawful disclosure of information. That seeks to limit the penalty to a maximum term of imprisonment of two years, with or without a fine. The Government believe that this provides an appropriate safeguard to set a maximum level of penalty, while retaining the option of imposing lesser penalties. Such a power is analogous to the power in Section 13B of the Childcare Act 2006, so there is a precedent in terms of the existing entitlement should it need to be used.

At Second Reading and again today, my noble friend Lord True also cited his concerns. I should like to reassure all noble Lords that the Government intend these provisions to be limited in scope and only for the purpose that I have outlined. They are not intended as a threat, for example, of penalties for staff and providers who fail to disclose confidential details of their businesses to local authorities, which was, as I recall, one of the concerns of my noble friend. Similarly, we have no intention that these provisions would be used as a threat against parents.

I am sure that noble Lords will agree that the protection of personal information is an extremely important matter. Without the power to establish criminal offences, the protection of those data will be significantly undermined. As I have said, we would intend these provisions simply to replicate offences that already exist for the 15 hours of free early education that children already receive. I therefore hope that the noble Baroness will withdraw her amendment.

Lord True: My Lords, I do not expect an answer now, but I should like to give an example which comes from the policy statement. It says that under Clause 1(5)(i), the number of hours of free childcare each eligible child takes up may be included. That can only come from a report provided by the provider, which is sometimes a small provider. Inadvertently false information may be given; it could be a mistake or something might be put in the wrong column—things happen. The next paragraph in the statement, which concerns provision for criminal offences, directly relates that to the provision and disclosure mentioned in Clause 1(5)(i) and (j). It may be that the example given is not included in that, but people reading this document could believe that there is scope for the offence to be pushed too wide by certain busybodies. I do not want to continue the point now but I hope that we can have further discussions on that matter of concern.

Baroness Jones of Whitchurch: I share the continuing concern of the noble Lord, Lord True. I have to say that the noble Baroness did not address the concerns raised by the Delegated Powers Committee. I know that, separately, the Government have given an assurance that they are going to look at that. However, she will know that they raised some concerns about the analogies being drawn between the 2006 Act and what is in the Bill now. I am not convinced by what the Government have said on this matter so far. I think that we need to have considerable further discussion on this, but I am prepared to allow the noble Baroness to look at the Delegated Powers Committee report and respond to that, and then perhaps we can have a more informed discussion. I beg leave to withdraw the amendment.

Amendment 19 withdrawn.

House resumed.

House adjourned at 10.05 pm.

Grand Committee

Wednesday, 1 July 2015.

Charities (Protection and Social Investment) Bill [HL]

Committee (3rd Day)

Relevant documents: 1st Report from the Delegated Powers Committee, 2nd Report from the Constitution Committee

3.45 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, this Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes.

Amendment 14

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

14: After Clause 12, insert the following new Clause—

"Power to make representations

(1) A charity may undertake political campaigning or political activity in the context of supporting the delivery of its charitable purposes.

(2) A charity may campaign to ensure support for, or to oppose, a change in the law, policy or decisions of central government, local authorities or other public bodies."

Baroness Hayter of Kentish Town (Lab): My Lords, the amendment stands in the names of my noble friends Lord Watson of Invergowrie and Lord Lea as well as my own. It essentially restates the current legal position, as it is well established in charity law that campaigning and political activity can be legitimate, indeed valuable, for charities, provided that they are undertaken to achieve their charitable aims.

The Charity Commission's guidelines on campaigning and political activities, known to us in the field as CC9—technically called "speaking out"—recognise that there may be situations where carrying out political activity is the best way for trustees to support the charity's purposes. Indeed, charities have used the opportunity of elections to promote their charitable objectives for more than 100 years to raise concerns and gain attention for their charitable aims. It is clear that, although a charity cannot exist for political purposes, it can campaign for a change in the law or a change in policy, or on decisions where such a change would assist the charity's objectives. Charities can also campaign to ensure that existing laws are observed.

However, following the transparency of lobbying Act—I am delighted to see here the noble Lord, Lord Wallace of Saltaire, whom we would say was the guilty party on that Act—we know that there is a very difficult interplay between charity law and electoral law, particularly over non-party campaigning rules. There is insufficient clarity now on whether and when awareness-raising on policy and legitimate non-partisan campaigning by charities would be regulated by the Electoral Commission, even where activities were not intended to have any electoral effect.

The NCVO is therefore concerned that charities could be deterred from engaging in public policy and speaking out on behalf of beneficiaries during election periods. With local, European, devolved and general elections, we seem almost always to be in an election period.

The NCVO wants charities to have maximum clarity as to what comes within the scope of the non-party campaigning rules, so that legitimate campaigning is not inhibited. We share that aim. The problem is that the recent Act broadened the definition of what counted as political expression while reducing the threshold at which organisations caught by the new definition had to register with the Electoral Commission. They thus have to comply with more red tape than most businesses seem to have to do in a year.

Indeed, the Act represents a radical change to the regulatory environment for charities, and it has constrained, if only by a chill factor, charities' legitimate activities. When the then Bill was in the House, the noble Earl, Lord Clancarty, feared that it would,

"put Westminster further into a bubble",—[*Official Report*, 22/10/13; col. 923.]

by cutting out a much-needed source of intelligence to SW1. We think that this has happened.

More than that, the Act increases the imbalance between the controls on commercial lobbying and similar activities by charities on behalf of those with the least access to decision-makers. Not only can well-heeled drinks or defence companies have free rein to lobby, to campaign and to further their interests, so can groups, such as the TaxPayers' Alliance, which has a clear campaigning rule. However, because they are not charities, they face no regulatory or transparency rules.

We wholly concur that a charity's sole purpose should not be to campaign, must never be party political, nor involved in the electoral process, and that they should campaign only to achieve their charitable aims. The charities believe that they have been unfairly treated by the new Act and are genuinely bemused by such treatment, given that every political party, including that of the Minister, purports to support the work of charities. Indeed, many parliamentarians from across the political spectrum are actively involved in at least one charity.

The NCVO reports that confusion over the law is now widespread, leading to charities unduly self-censoring. For example, the charitable arms of two well-respected churches, which both provide an extensive network of social care and have advocated for policy change for over 150 years on behalf of the people they support, have come to different conclusions about what advocacy they can now undertake, how they do it and how to account for it. They are confused about what counts as controlled expenditure and are fearful that the new legislation means that almost anything that a charity or coalition does to advocate policies in the year before an election might be judged to impact on the success or failure of a particular party or candidate.

Indeed, trustees of some charities appear so scared of infringing the rules, as well as being bemused by the difficulties of calculating staff costs, particularly geographically, that they have stopped the charity from

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campaigning. Others have reached a different conclusion and have decided to risk running outspoken campaigns on the grounds that, as they make the same points to whoever is in government, they are not seeking to influence any one party.

What is most worrying for democracy is those other charities which feel that they cannot risk advocating on behalf of their charitable aims or their charitable beneficiaries. It is surely wrong and, due to the uncertainties created by the lobbying Act, some charities believe that they cannot speak up on behalf of their users or campaign to achieve their charitable objectives. Decision-makers lose that input and the voiceless lose their advocates, and this is in a democracy like ours, which is such a strong and vibrant civil society.

The intention of the amendment is clear; that is, to give confidence to trustees that the existing legal position remains untouched by the lobbying Act. They can undertake campaigning or political activity in furtherance of their charitable purposes. They can campaign to build support for, or oppose, a change in the law, the policy or the decisions of central government, local authorities or other public bodies. I beg to move.

Baroness Pitkeathley (Lab): My Lords, I support this amendment and speak as the former chief executive of Carers UK, a very successful campaigning organisation, which, arguably, could be credited with making caring and carers, once an entirely private matter, the public issue that we all recognise today. I submit that that came about almost entirely through the campaigning of the carers' organisations. I very much agree with my noble friend that there is now confusion, since the lobbying Act, about what is legitimate and what is not so far as charities are concerned at election periods.

At present, we do not have the maximum clarity which my noble friend has called for. I draw the attention of your Lordships to the lack of profile which charities had in the recent general election. In the past, it was commonplace for charities or groups of charities to hold hustings at which all parties could set out their wares. We heard very little of that in the last general election.

I hope that the Minister will confirm that he supports the rights of charities to campaign for policy changes which will benefit their client group. Of course, that could be called political—changing policy is political—but it is very much small-"p" politics, not party politics, and charities are very much aware of that.

Lord Judd (Lab): My Lords, I am very glad that this amendment is before us but I noticed that in introducing it my noble friend emphasised very heavily that it was not endorsing in any way the concept of charities becoming involved in party-political activity. I was glad that my noble friend Lady Pitkeathley also made that point.

I want to speak very honestly as a former director of Oxfam in the 1980s, when we were campaigning very hard to get a change in charity law. We had quite a skirmish with the Charity Commission at the time. It was done in a gentlemanly way but very firmly by the commission, which was quite right, and in the end the laws on campaigning were rewritten and we could have almost dictated word for word what the new regulations said because they were exactly what we were after.

What was happening in Oxfam, as I saw it, was that the charity was maturing and growing up. It was saying, "We can't go on simply alleviating poverty or whatever because in doing that we may be condoning the causes of what we are dealing with. We are repeatedly putting fingers in the dyke without seeing that it is the dyke itself that is crumbling or which is the problem". There was a very strong feeling developing among staff and trustees—and the trustees held very firm on this, which I found very encouraging—that we were being dishonest: that in our work we were coming up against the real causes of the issues we were encountering and, in order to not just alleviate the consequences but deal with the causes, we had to spell out what we had come to see as the causes.

I think I have shared this personal anecdote with the Committee before so I hope I can be forgiven for mentioning it again. Once when I was on a visit to Latin America at a very difficult time to visit our programme there, I had a very long and interesting conversation with the Bishop of San Cristobal, who was bravely standing up for the Indians in Chiapas who were under terrible pressure. He was being denounced by the Government of the time and so on. It was quite ugly, with people disrupting his church services and standing outside his little house shouting all night, but he was just getting on with the job. He spoke fluent English; he was a really strong man. I asked him, "Have you got a message that you would like me to take back to the UK, to my staff colleagues and my trustees but also more widely in Britain?". He said, "Yes, I have". He made several points but the point I shall always remember is that he said, "In situations of this kind, you cannot be neutral. I believe that solidarity is the real meaning of charity". If you are getting into a position of solidarity with the people you are trying to help, you must recognise that they are talked about a great deal, they are talked to a great deal, but in the major debates that are taking place that affect policy who talks for them? Of course, that is one step short of talking for themselves in those debates.

I was very privileged to have held that post in Oxfam. I came away from my time in it absolutely convinced intellectually and emotionally that if a charity was to be true to its purposes and was dealing with really severe social problems, one of its most important tasks and one thing it should never equivocate about was advocacy—to speak out about the issues that it had discovered in its work were the real issues. Of course, that is not always comfortable but it is absolutely essential to integrity. We received terrific support. We relied in those days on a widespread constituency support, and regular giving from the wider public increased while we were making this stand. Clearly many people in the country agreed with our position. It is a tremendous achievement and of great credit to the Charity Commission of the time that it took the point and amended the laws on campaigning. We must stand firmly by that because it could become easily eroded.

4 pm

Perhaps I may make one other principal point. I always said to my colleagues in Oxfam—this is clearly a personal view but I hold it very dearly—that the great asset a charity brings to the public debate is that it speaks with the authority of engagement. This is absolutely crucial. I belong to a number of pressure groups of different kinds which are very important because, intellectually and in other ways, they bring a great deal of pressure and thought to bear on public debates. The real strength of a charity is that it speaks with the authority of its experience and we should find ways of underlining this in our deliberations. It is not just a legal or formal matter. The day a charity allows itself to drift away from demonstrably and transparently speaking with the authority of its engagement will undermine its role and it will become another intellectual influence group. The authority of its work and experience needs to be made absolutely clear in the representations that are made.

I am glad that my noble friend has tabled this important amendment but I wonder whether one or two points might be expressed more clearly at the next stage.

Lord Wallace of Saltaire (LD): My Lords, my name has been mentioned in this debate and perhaps I should intervene. I spent a good two months of my life much preoccupied with this issue and I came away from it content with the law as it stands. It is quite clear that there is a line between advocacy—which is an entirely appropriate and proper part of what charities should do—and moving too close to party-political campaigning. This is not purely a matter of, as it were, good-works charities on what one might describe as the left, but also about think tanks on the left and on the right. I can think of one or two think tanks which have got quite close to the line of moving from research to a highly partisan presentation of the research they provide. Having worked for 12 years in a think tank, I am conscious of the lines that one has to draw.

In speaking to 50 representatives of different charities, I certainly came across the advocacy point. Some first-class charities raised public awareness of mental or physical conditions, the problem of women unnecessarily in prison and so on—all of which are entirely within charity law. I also came across a small number of organisations which appeared to want to get a little too close to party campaigning, including on one splendid occasion meeting a group of rather large charities, one of which said, "We do not want to have to register for this because the little old ladies who give us money would not want to know that we were doing it". That seemed to be a recognition that they were indeed moving towards a line that they should not be too close to.

I am happy with a restatement of the position as it stands. I think we all accept that advocacy is a part of what charities do in furtherance of their charitable purposes, but that they should not move too far into the party-political area. Anyone who has been involved in the think-tank world knows how conscious they have to be that that is a line they should not cross.

Lord Judd: Does the noble Lord agree that this is not altogether simple? He and I clearly agree on this important matter, but it is not simple because if a charity finds itself strongly advocating a position and a political party is doing the same, that is open to misinterpretation. We have to be absolutely clear that the way in which the law is administered is also transparent. There have been arguments that campaigning should be curbed in the last year before an election. It is absolute nonsense for a charity, which feels strongly, passionately and morally obliged to put forward a case because it wants policy change, to have to lay off in the year of a general election. That would be condoning something they believe is wrong and that is not what any of us would want to imagine happening in Britain. It is very important that the Charity Commission is held to account; that the whims of a particular commissioner are not prevailing and that, from an objective, analytical position, very strict rules are fairly observed.

Lord Lea of Crondall (Lab): My Lords, I am happy to be associated with this probing amendment. As I suspected, there is scope for talking at cross-purposes about the commission's present understanding of "political". I have been at the receiving end of an objection on the grounds of that word. The noble Lord, Lord Wallace of Saltaire, whose attention I do not have at the moment, equates "political" with "party-political". As I understand it, that is not the Charity Commission's feeling about the word. I have been at the receiving end of criticism that this is political, but when I speak to Amendment 15 no one would think there is anything party-political about it.

I will give one illustration from the press in the last six or nine months, to show why there is a need for a minimum of clarification on this question. We all get round-robin emails from organisations: we agree with some and disagree with others. This is one about a breakfast discussion to be held on Wednesday 15 October 2014, arranged by a Eurosceptic organisation concerned with EU regulatory issues called the CSFI; someone will probably know what this stands for. It said that the CSFI was,

"now accepting online donations via the Charities Aid Foundation (CAF). This is the most cost-effective way for the Centre to collect one-off donations online, which can also be GiftAided. To support the Centre, please click here".

That clearly establishes that this is an all-singing and all-dancing registered charity as I understand it, or else it could not enjoy the benefits of the gift aid scheme. The first sentence by the director, Mr Andrew Hilton, states:

"As I am writing this, the Commission's new gauleiter"—

being the European Commission—

"Mr. Juncker, is busy trimming the edges of the various portfolios he has offered individual Commissioners".

Noble Lords who speak some German will know that, until 1933, "gauleiter" was a pretty everyday word, with "gau" meaning "area" and "leiter" meaning "leader". But since 1933, no one would think that "gauleiter" was without very strong connotations and, I would say, strong political connotations. On the basis of what I have come across, this should be viewed by the Charity Commission as being out of bounds because it is political.

The Minister has a very sharp brain, so my question to him is this: does he acknowledge that there is an issue here? How should the commission go about its

[Lord Lea of Crondall]
business if an organisation which can get gift aid refers to the President of the European Commission as the new gauleiter, while in other areas it says, "You cannot get Charity Commission registration because you are political"? That is my question.

Lord Hodgson of Astley Abbotts (Con): My Lords, the noble Baroness and some other noble Lords know that I have been asked by the Government to review the operation of Part 2 of the transparency of lobbying Act, which is the part referred to by the noble Baroness in her amendment and is about third-party campaigning. I am doing so on a strictly non party-political basis and the review is going to be evidence-based, as was my review of the Charities Act. I have been working hard to make sure that as much evidence as possible from right across the political spectrum is gathered in. I have been to all the devolved Administrations and have ensured, with the team at the Cabinet Office which is helping me—it is a terrific team whose members are working hard, so I shall place that on the record now—that every candidate in the general election has received a questionnaire, that every returning officer has received one, and that we had a question for the public on our website which we publicised as far as we could through bodies like the NCVO and the CBI.

We now have an outstanding call for evidence that is more detailed in its questioning and will run until the end of July. Moreover, I have had a great many face-to-face meetings with people from all parts of the political spectrum and our commercial life. I have to tried to ensure that, as far as possible, all the leading interested parties in this area have had a chance to put their point of view and have it recorded. We have tried to do a lot of the meetings on the basis of Chatham House rules so that people can speak frankly. We say, "Tell us what you really feel and later on, when we make a call for evidence, we shall want you to go public and on the record". However, in order to amplify and get the colour and context of these things, at this first stage we will treat their remarks in confidence.

The report is due by the end of the year, subject to the figures on actual spending that we need from the Electoral Commission. The commission's second set of returns is due around the middle of November, so we will be a bit pushed, but I hope that we can do it. As I say, my report will be evidence based. So however my noble friend is going to answer this debate now, I say to the noble Baroness, the noble Lord, Lord Lea, and anyone else in the Committee—indeed, everyone in the House—that if they have information they think would be helpful and should be consulted on and included in the review, please get in touch. Firm factual evidence is a good basis for making recommendations, while rumour and myth are a bad one, and I am anxious to ensure that we get down to a hard evidence base. Obviously people can then debate the conclusions that can be drawn from it.

I shall not comment on the noble Baroness's amendment this afternoon; I am not going to run before my horse to market. I want to collect the evidence, I am sure that Members of your Lordships' House have a great deal of it, and I hope that they will ensure that I get it.

4.15 pm

Lord Leigh of Hurley (Con): My Lords, I declare my interest as a trustee of a number of charities, national and local, a former trustee of a care charity and, of course, as a senior treasurer of the Conservative Party. I broadly agree with the remarks made by the noble Lord, Lord Wallace of Saltaire. I remember the arguments on the then transparency of lobbying Bill; I was fairly new to Parliament, and I found myself for the first and only time being lobbied—on a lobbying Bill, as it transpired—by charities. However, I take issue with his remark, unless I misunderstood it, about the charities doing good works being broadly on the left. In the charities that I see, the donors' register broadly replicates that of the Conservative Party, and there are many good-works charities on the right that are helping people to help themselves. I may have misunderstood.

Lord Wallace of Saltaire: As the chair of trustees of a musical charity, I would welcome the further conversation that we might have on that.

Lord Leigh of Hurley: I thank the noble Lord. I also think that I may have misunderstood the noble Baroness, Lady Hayter, when she talked about some charities not solely campaigning. My experience is that some charities are solely campaigning ones; in fact, I had personal experience of that only two weeks ago when a raven bird got stuck in my basement. In a moment of panic, and prompted by my young children, I was too frightened to address the issue myself so I rang the RSPB, thinking that that was a logical solution. The RSPB informed me that under no circumstances does it actually go out to assist birds in distress or in danger of damage; no, it is a lobbying charity. I was to either ring another charity or do it myself. In the event, I passed the buck to my wife.

My point is that there are charities that have evolved—some quite rightly, but some perhaps worryingly—into pure campaigning. The charities with which I am involved found the transparency of lobbying Bill helpful, in that it was clear that during the election we had to keep on the straight and narrow. On the boards of the charities with which I am involved sat a broad-array spectrum of political opinions, and it helped to ensure that we all abided by the Act and did not engage in political advocacy during the election.

I am particularly heartened by the comments from my noble friend Lord Hodgson of Astley Abbotts that he is taking further evidence on this issue. I rather hope that this can still be discussed at a later stage with that evidence, and I ask for the Minister's comments on that.

The Parliamentary Secretary, Cabinet Office (Lord Bridges of Headley) (Con): My Lords, I very much welcome this debate. It is exactly the kind of debate that we need to have on these issues. I am grateful for all the contributions made by a number of your Lordships, especially the noble Lord, Lord Judd, who made a very eloquent contribution.

I make it categorically clear that the Government support charities' right to campaign within the law. Many charities use campaigning and advocacy effectively and legitimately to support their charitable purposes

and beneficiaries. This role is important to charities' independence and is certainly of value to society. Campaigning for changes to the law or policy that would support a charity's purposes is a legitimate activity for charities, and one in which charities in this country have a long and proud tradition, as we have heard from the noble Lord, Lord Judd, and the noble Baroness, Lady Pitkeathley. The position that they occupy is largely derived from case law, and the Charity Commission's CC9 guidance is clear on what charities can and cannot do. Its view of case law is clear: political activity by charities is an acceptable means of supporting their charitable purposes but it cannot be the sole and continuing activity of the charity, as that would indicate a political rather than a charitable purpose. So charities can undertake political campaigning or political activity that seeks to support the delivery of their charitable purposes where trustees consider it an effective use of their charity's resources, but charities must never engage in political activity or support for a political party or candidate.

In response to the point made by the noble Lord, Lord Judd, about neutrality, I say that a charity can campaign strongly on an issue linked to its purpose, as long as it is not endorsing or supporting a particular party. As I said, political campaigning or activity cannot be the sole and continuing activity of a charity, and charity trustees need to ensure that political activity remains a means to an end and does not become the reason for that charity's existence. Charities must, when undertaking political activity, seek to retain their independence from political parties. As the Charity Commission's guidance makes clear, in the political arena, a charity must stress its independence and ensure that any involvement it has with political parties on the particular views of the parties is balanced. Trustees also need to ensure that any political activity is an effective use of the charity's resources. In response to the question of the noble Lord, Lord Lea, about gauleiters, I am sorry, but I am not going to get into individual cases and words used in particular literature. It would be wrong for me to offer a view on whether a charity is on the right or the wrong side of the rules. That is rightly a question for the Charity Commission on the basis of the evidence it receives.

I turn to the amendment. Attempting to put into statute law a provision of case law risks changing the boundaries of what is permitted. Even if the boundaries of the law were not shifted by a statutory definition, one would still expect legal challenges to test the "new" boundaries of the law. Further, putting it in the Bill risks politicising charities' right to campaign. Cabinet Office Ministers are responsible for charity law and would be responsible for this provision. That would leave it open to political interference over time—not that I am suggesting that any such interference would take place, but the risk would be there. I would argue that instead it is much better to have a case-law provision firmly in the realm of the independent regulator and courts.

One might question whether Amendment 14 permitted charities to support political parties—for example, by allowing charities to undertake political campaigning—without defining exactly what that means. The Charity Commission's CC9 guidance runs to 31 pages. Trying to condense the legal underpinning into a short statutory provision that is five lines long, while attractive from the point of view of simplicity, would not properly reflect the current case-law position and could have unintended consequences.

In recent years, there has been a similar debate about whether the meaning of "public debate" could be distilled into a statutory definition. This is another area where the Government believe that we are better served by a long-standing case-law position supported by clear guidance than by attempting to define a solution in statute.

There has been discussion of the transparency of lobbying et cetera Act. It was not the Government's intention that the changes to the rules for third parties campaigning at elections made by the Act should prevent charities and campaigning groups from supporting, engaging or influencing public policy. The Act is designed to ensure that campaigning by third parties to influence an electoral outcome is properly regulated, and there are few circumstances in which legitimate charity campaigning on policy would be caught. Very few charities registered with the Electoral Commission for the 2015 general election. It is worth noting that the test for "controlled expenditure" provided for in the Act is the same as was in operation for the 2005 and 2010 general elections: namely, only expenditure which,

"can reasonably be regarded as intended to promote or procure electoral success of a party or candidates".

The Electoral Commission published guidance for third parties and engaged with a range of third parties in formulating this guidance. As my noble friend Lord Hodgson of Astley Abbotts said, he is currently undertaking a statutory review of the rules for third-party campaigners at elections. He is taking evidence, and I certainly encourage all your Lordships who are interested in this matter to respond to and engage with him. We look forward to his recommendations later in the year.

I turn briefly to the Charity Commission guidance. The commission has also monitored charities' political activity and observance of its guidance during the election campaign, and is considering the findings from that monitoring and other issues relating to its current guidance. The commission will, I am sure, study the findings of my noble friend's statutory review; I know that it has been engaging throughout. As I said at Second Reading, the Charity Commission has said that it keeps all its guidance under review to ensure that it remains relevant and up to date. If the commission considers that revisions need to be made to its CC9 guidance later, it has committed to saying so publicly and to consulting widely.

As has been said, there have been cases where charities have overstepped the mark of what is allowed under charity law or have failed to protect their independence by undertaking political activity that gives or risks the impression of being party political. In general, the numbers of cases that the commission takes on that are related to campaigning and political activity are low—in 2013-14, there was only one inquiry and a handful of operational compliance cases. However, where they occur they are often high profile and have significant impact. In the run-up to the election,

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for example, there were some clear cases where charities overstepped the line. For example, some charities signed a letter in support of Conservative policy and another painted a political slogan on its roof. These are clear cases of a breach in the law and the commission's guidance. People with concerns about political activity are able to question whether or not a charity has stuck to the rules on campaigning and political activity, and an independent regulator in the Charity Commission can look at the facts and will reach a judgment in each case on the basis of the evidence provided. That is absolutely right and proper.

To conclude, the Charity Commission's guidance CC9 makes it clear that charity law recognises that campaigning can be a legitimate activity for charities and sets out the general principles. Charities can campaign to raise awareness and understanding of an issue or to secure or oppose a change in the law or government policy or decisions, as long as the campaigning relates directly to a charity's purposes and beneficiaries. Charities must retain independence and political neutrality, must never engage in any form of party-political activity and must avoid adverse perceptions of their independence and political neutrality. In addition, they must not embark on campaigning to such an extent that it compromises their legal status as a charity. I firmly believe that the existing case law and guidance serve us well and that there are major risks in attempting a statutory provision. I therefore invite the noble Baroness to withdraw her amendment.

Baroness Hayter of Kentish Town: My Lords, I thank my noble friend and other noble Lords who have spoken in this debate. The Minister is right that this is an important issue to discuss. I disagree only with his conclusion, as it seems to me that he has endorsed the amendment—he agrees with every word in it and his only argument against it seems to be that it should be not in law but in 31 pages of Charity Commission guidelines. That is exactly the problem for trustees. However well written 31 pages of guidance are, it is not a great comfort blanket to trustees. I take a different view, which is that a clear statement that trustees can read is a much better way of ensuring that they know the law.

The Minister and I are as one on the content; the law as it stands is fine and we are both content with it. The issue is that the transparency Act reads differently and is constraining. The Minister was not quite right to say that the position was the same in the previous election, because in that election only printed documents were covered and it is easy to see whether they support a particular party. The range of activities now covered includes meetings, press conferences and possibly hustings. Indeed, the church raised the issue of hustings with the Minister at the time, as a number of churches had traditionally had hustings. It is interesting to note how many fewer hustings there were this year, owing to the fact that the definition of the sort of activities that would be covered was expanded so much. The Minister has not quite got the descriptor right in saying that the position was the same as before. I was also sorry that the Minister did not give us a slightly more thoughtful response to the point made by my noble friend Lord Lea. Perhaps he will consult the Charity Commission because clearly some important issues were raised and I hope he will follow them up.

4.30 pm

The noble Lord, Lord Leigh, and I agree on other issues. I think he said he has children who do not like birds. If I am right that he has children, if he takes them to any park or open area he will see that the RSPB does some extraordinary work; it does not just lobby. I was on Richmond Hill recently and saw a lot of the safeguarding that it was putting in there for birds. I am sure he did not mean to say that it only lobbies because it certainly does not and is out and about in a number of woods putting up special nesting boxes and all sorts of things to help preserve birds.

The examples that my noble friends Lady Pitkeathley and Lord Judd gave are important ones but the question is: would chief executives, which both of them have been, find as ready a response from their trustees today to do that sort of work, given the transparency of lobbying Act? That is why we will look again at whether this should be written in law because the law changed this year. Had it not, we would not have needed to bring forward this amendment. It is because one bit has changed that we feel the balance is not there. But for the moment, we will consider the wording of that and how we might take this forward. I beg leave to withdraw the amendment.

Amendment 14 withdrawn.

Amendment 15

Moved by ***Lord Lea of Crondall***

15: After Clause 12, insert the following new Clause—

"Charity Commission annual report to refer to principles of best regulatory practice

(1) Schedule 1 to the Charities Act 2011 is amended as follows.

(2) In paragraph 11(c), after "16)" insert "including the extent to which, in its opinion, it acted in a proportionate, accountable, consistent, transparent and targeted manner (see section 16(4))"."

Lord Lea of Crondall: My Lords, Section 16(4) of the Charities Act 2011 sets out the commission's general duties and Schedule 1 provides that it should have regard to and report annually on its performance on accountability, consistency and transparency. I will present a case from my own experience for why we need to strengthen this section to require the Charity Commission to report on the extent or degree to which it has actually done so. As I say, I am influenced by a particular case and, whether or not I technically need to declare this as an interest, I certainly do so.

The case in question arises from the fact that I have had a long-standing interest in why the then Secretary-General of the United Nations, Dag Hammarskjöld, died in a plane crash, or immediately afterwards, in Northern Rhodesia in 1961 on his way to meet the leader of the breakaway Congolese province of Katanga, Moise Tshombe, and the British Under-Secretary of State, Lord Lansdowne, along with the British high commissioner to the Central African Federation, Lord Alport, and his private secretary, Sir Brian Unwin.

There was immediate and widespread speculation as to whether or not it was an accident. The United Nations carried out an internal inquiry, which reported in 1962, with an interim verdict of not proven—as they would say in Scotland—but the United Nations General Assembly then resolved that, if cogent new evidence came forward, the Secretary-General was empowered to draw it to its attention.

Fast-forward to 2011 and a book was published by Dr Susan Williams which produced some cogent new evidence. I, with others, established in 2012 the Hammarskjöld Inquiry Trust, a legal trust. I do not need to explain to everybody here that lawyers will distinguish a legal trust, which anyone can establish just like that, from a registered trust, which is registered by the Charity Commission. Its purposes were:

> "To advance public knowledge and understanding, by seeking to ascertain first the true circumstances of the death of the Secretary General of the United Nations, Dag Hammarskjöld, in 1961 and secondly the true circumstances leading thereto; to make available the results thereof to the United Nations and more widely as the Trustees shall determine".

This was in the preliminary submission of the purposes of the trust, of which I have a copy, but more of that in a few moments. Suffice to say that it was the start of my experience over the past three years with the Charity Commission.

The modus operandi was that having first appointed a group of trustees of good standing from Europe and Africa, our first job was to appoint an "international commission of jurists"—I use the phrase descriptively—to carry out, over a 12-month period, an examination of new evidence on this matter of national and international importance; and to put together the resources needed for it to carry out its work. I chaired the trust.

The commission of inquiry that we appointed was chaired by the right honourable Sir Stephen Sedley, a Lord Justice of Appeal from 1999 to 2011 and a member of the Judicial Committee of the Privy Council. Its members were Judge Richard Goldstone—inter alia the first chief prosecutor of the UN international criminal tribunals for the former Yugoslavia and Rwanda; Hans Corell from Sweden, a former deputy secretary-general for legal affairs of the United Nations; and, last but not least, Wilhelmina Thomassen, a judge in the Supreme Court in the Netherlands who had been a judge of the European Court of Human Rights.

We told the Charity Commission right from the start, very clearly, that this was a time-limited exercise. If there was cogent new evidence found, our idea was that the commission of inquiry would report by the autumn of 2013 and that there would be no need for the trust to carry on much longer than that once it had presented the report to the United Nations in New York.

In being time-limited it is perhaps an unusual trust—perhaps the Minister will comment on how unusual it is or is not—but it is none the worse for that. Again I stand to be corrected but there is certainly nothing in the legislation that states it is not possible to register a short-term trust. The significance of this consideration will become clear.

To cut a long story short, seemingly endless obstacles were put in our way. First was the contention I mentioned in the previous debate that the trust was "political". I return to the point made by the noble Lord, Lord Wallace of Saltaire: no one would remotely say that there was anything party-political about it. However, inter alia, one of the objections raised was on the grounds that it was "political". Secondly, there were various arcane discussions about the objectives and whether or not we would meet, for example, the test of promoting a sound administration of a law. Where that came from I do not quite recall.

Then we were told that the commission had ascertained that the United Nations was not interested. I will come back to that because it turned out to be not only untrue but the total opposite of the truth. In the background, there was a growing sense among the trustees that, as in a novel by Kafka, this process would never reach a conclusion. This is my answer to the tendentious explanation now given by the Charity Commission that we simply omitted to put in a formal application. I use "tendentious" because it had been made clear to us that, first, we had to satisfy a sequence of tests put to us before it was likely that we would get the green light. That was the process that it presented to us. It was the commission, which, when we had dealt with one objection in preregistration which would stand in the way of a successful application, simply came up with a new one. All that took place over 12 months from August 2012.

I fast-forward to the publication of the report in September 2013 from the commission that the trust appointed. The commissioners found that there was cogent new evidence that the crashed plane had been the subject of some form of attack as it circled Ndola airfield and that the key to this would be to access intercept records from the Cyprus listening post of the United States National Security Agency—likely to be held in its archives in Washington.

I presented the report to the United Nations in New York in October 2013. In the spring of 2014, the Secretary-General wrote a memorandum to the General Assembly recommending that it be an item for the agenda of the session of the General Assembly commencing last September. This was agreed and, in December 2014, a resolution drafted by the Swedish Government was adopted. It ultimately carried signatures of some 60 countries, including South Africa, and 35 European countries, including Germany, Italy, Spain and the Netherlands, but not the United Kingdom, France and Belgium. It decided inter alia that the UN should establish its own panel to carry out follow-up investigations. These have just concluded but its report and any further recommendations from the Secretary-General have not yet been published.

Despite all this, at no point in the last 18 months have we received—until yesterday and I am just coming to that—any acknowledgement, let alone an apology, from the Charity Commission, in terms of retracting its contention that there was no evidence of interest on the part of the United Nations. The importance of that is obvious: it has made that a sine qua non of continuing. Indeed, one of our colleagues, the noble Lord, Lord Malloch-Brown, a former Foreign Office Minister and a former deputy secretary-general of the

[Lord Lea of Crondall]
United Nations, wrote on our behalf to the Charity Commission on this very point, with no substantive reply.

I shall complete the story. I wrote to the current chairman of the commission, Mr William Shawcross, on this aspect on 26 February this year and received no reply—until, surprise, surprise, I received a reply from him yesterday dated 25 June. He partially changed his tune by acknowledging the UN's considerable interest, which was palpable, but still did not acknowledge that it had made a big deal out of this, that we had been right about it—and that the commission had certainly been wrong to be dogmatic about it, or that perhaps it had received its steer from biased sources.

In his letter, Mr Shawcross apologised for the delay in answering my letter—after four months; make of that what you will—but then went on to the now all-too-familiar routine along the line that the attitude of the United Nations to the work of the trust was only one aspect of its consideration and that there were others. However, even on the narrow point, how did it come about that we were advised that a positive message of support from the UN would be very significant for the commission's decision? We have now, as a trust, given up chasing after the moonbeam of Charity Commission registration, so this is by way of a valedictory set of observations from me, regarding a time-limited trust which has now completed its work, given that the follow-up procedures within the UN are now well in hand.

4.45 pm

The Charity Commission's commitment to the standards of probity referred to in the 2011 Act has, in our case, been seen in the breach rather than the observance. Indeed these standards have gone a long way to being replaced by their converse, such as arbitrariness, secrecy and economy with the truth. In practice, there is no accountability at all. It is a law unto itself. So how are we to make a difference? How are these required standards of behaviour to be benchmarked in practice? As provided in the amendment, the commission would need to elucidate how far it has, it in its opinion, actually met these tests. Maybe an independent watchdog should play this role.

I have to underline the point that these procedures are a lot more difficult to meet, especially when a trust is on a short timescale. Trying to work out how to go through an appeals procedure is simply an invitation to throw good money after bad. In our case, we expended £6,000 in legal fees on the application costs; we could not afford any more. Our total costs were some £70,000, contributed mainly by the trustees, with about half expended on employing a full-time administrator for the 12 months in question, working directly to the chairman of the inquiry. Both the commissioners and the trustees worked pro bono.

It may be asked how far the experience of our trust is a more general one. Obviously, the answer is that we do not know. However, being in a somewhat privileged position as a Member of the House of Lords, I thought this a proper opportunity to put on the record the hurdles we encountered. Paradoxically, this may turn out to be one of the most productive trusts to have been established in recent years, but this is certainly with no thanks to the Charity Commission. The issues which currently arise are: first, the apparent inability of the commission and its staff to appreciate that a time-limited trust needs a procedure which sorts out any issues very quickly; secondly, the frequently changing nature of its requirements, which made the exercise of seeking registration a bit like Catch-22; and thirdly, the high degree of subjectiveness regarding whom the commission consulted about the application, which may reflect what I can describe only as bias in the system.

In addition to considering the merits of the 2011 Act being amended in the way I have suggested, will the noble Lord respond directly, on behalf of Her Majesty's Government, to some issues? First, did they, though departments of state or any of the agencies, have any contact with the Charity Commission on the handling of our application? After all, it was the commission, not us, which has described the issues as "political". Secondly, are they aware of the contacts between the Charity Commission and the United Nations itself? Even though my third and final question is not a matter for the Bill—and I am aware that a separate reply may need to be made on this point—it does follow on from what I have been explaining. Now that the United Nations General Assembly has asked all member states to co-operate on the follow-up to its resolutions, are Her Majesty's Government actively supporting those steps? The noble Lord may wish to take away some of these issues and write to me, putting a copy in the Library. I trust this will be in good time before Report. I beg to move.

Baroness Hayter of Kentish Town: My Lords, I will not add to the case that has been made, but I would like to make a tiny point referred to by my noble friend about making complaints about the Charity Commission, which is quite hard to find on the website. The complaints procedure finally ends up with the Parliamentary and Health Service Ombudsman, which we welcome because that is an excellent ombudsman. From another part of the Government—although I think that it will be the Minister who will deal with this in due course—is an extremely welcome provision to bring about a merger of the Parliamentary and Health Service Ombudsman with the Local Government Ombudsman. That is something we will welcome when it comes here. However, perhaps the Minister can outline how that will facilitate complaints about any decisions made by the Charity Commission—not necessarily appeals because not every trustee will be able to raise the case, as we have just heard.

Lord Bridges of Headley: My Lords, I thank the noble Lord, Lord Lea, for the explanation behind his amendment. I shall pick up on the final point made by the noble Baroness, Lady Hayter. I will need to write to her as regards the complaints procedures and the changes to be made in respect of the Parliamentary and Health Service Ombudsman.

Perhaps I may begin by focusing on the actual words used by the noble Lord, Lord Lea, in his amendment,

"a proportionate, accountable, consistent, transparent and targeted manner",

and whether the annual report of the Charity Commission should refer to these. I draw the attention of noble Lords to the annual reports of the Charity Commission headed *Tackling Abuse and Mismanagement in Charities*, and the stand-alone case reports in which it applies the principles of best practice. However, I should add that the commission tends to frame this in terms of proportionality. The Charity Commission's annual report for 2014-15 was published just yesterday—I am sure that noble Lords took it to bed with them last night to read. In the section on promoting compliance, the commission explains its approach:

"We use our powers proportionately according to the nature of the issue, the level of risk, and the potential of impact. However, even where we have regulatory concerns, it may not, in some instances, be proportionate for us to formally investigate a charity".

The commission's annual report also includes a paragraph specifically focused on how it is supporting the Government's commitment to better regulation. There is furthermore an extensive section on enabling, which sets out not only the commission's permissions casework—making schemes and so on—but also the work it has undertaken to prevent problems arising in the first place by making trustees aware of their duties and responsibilities, which is a key principle of proportionate regulation.

I turn now to the *Tackling Abuse and Mismanagement in Charities* reports. In these the commission is at pains to include some cases which show that it does not always have to make significant regulatory interventions, especially when the trustees who co-operate are either able to put the problems right themselves or can demonstrate that the initial concerns cannot be substantiated. For example, last year's report set out the commission's proportionate approach, stating that:

"As an independent, non-ministerial government department with quasi-judicial powers, we operate within a clear legal framework and follow published policies and procedures to ensure that we are proportional in our approach to tackling abuse and mismanagement".

Finally, the commission's published framework explains how it approaches all its work and helps to ensure that it continues to be proportionate, accountable, consistent, transparent and targeted. It sets out three questions that the commission answers before taking any action: first, does the commission need to be involved; secondly, if it decides that it does need to be involved, what is the nature and level of risk; and thirdly, what is the most effective way of responding? The commission prioritises issues that fall within three areas of strategic risk affecting charities: fraud, financial crime and abuse; safeguarding issues; and concerns about the terrorist abuse of charities. I hope that I have addressed the substance of the amendment, and furthermore these words are set out under Section 16 of the 2011 Act. The commission needs to abide by them in all it does.

Lastly, I want to address the specific case that may have given rise to the point made by the noble Lord, Lord Lea. As I hope he will understand, I am not able to go into the details of this case as it is an operational matter for the independent regulator, the Charity Commission. However, as the noble Lord said, he has been in correspondence with the commission and I understand that the chairman has replied and offered to meet him to discuss the case. I hope that the noble Lord will accept that offer. With regard to the specific questions that the noble Lord asked me directly, I will need to write to him in response.

I draw the Committee's attention to the wider issue of registrations of charities. I point out that we know the number of registrations applied for and the numbers rejected. This year's report sets it out in detail on, I think, page 41: last year there were 7,192 applications to register, 4,648 registration applications were approved, 2,248 charitable incorporated organisations were registered and 34 registration applications were formally refused.

I am concerned that the amendment that we are considering is not necessary. The commission already explains in its annual report how it is enacted in line with the principles of best regulatory practice. I therefore hope that I have been able to reassure the noble Lord, Lord Lea, somewhat, and that he will feel able to withdraw his amendment.

Lord Lea of Crondall: My Lords, I totally expected that the Minister would be unable to reply to my questions today; that is why I said, and he has confirmed, that he should write to me about the questions that I have raised—before Report, I think he said—and no doubt put a copy in the Library. I am slightly surprised that in the circumstances, since he is aware of the broad outlines of the case, he has had nothing to say about the special circumstances of a short-term trust. Is this a lacuna in the procedures of the Charity Commission, as I suspect?

I stretched the limits of the procedure in the time that I took when I made my opening speech, so I will leave it there at the moment and study the Minister's reply. Incidentally, with no discourtesy to Mr William Shawcross, no, I have no wish to meet him, given the nature of the reply that he eventually gave to my letter. I beg leave to withdraw the amendment for the moment.

Amendment 15 withdrawn.

Amendment 15A

Moved by ***Lord Bew***

15A: After Clause 12, insert the following new Clause—

"Damages for torts by trustees or their employees

Damages for torts by trustees of unincorporated charities or their employees

(1) The Charities Act 2011 is amended as follows.

(2) After section 284 (when and how section 282 resolution takes effect) insert—

"284A Damages for torts by trustees or their employees

(1) This section applies where—

(a) a trustee of an unincorporated charity is liable in tort by reason of his conduct in his capacity as a trustee of that charity; or

(b) a person employed by a trustee or trustees of an unincorporated charity is liable in tort by reason of his conduct in the course of that employment.

(2) Where this section applies, a person entitled to damages for the tort shall be entitled to recover those damages from the assets of the charity.

(3) Subsection (2) shall not affect the liability of any trustee, employee, or any other person.

(4) Where a claim is made under subsection (2), the provisions of the Civil Liability (Contribution) Act 1978 shall apply as if the charity had legal personality.

(5) Where a claim is made under subsection (2), or a contribution is claimed from the assets of a charity under subsection (4), the charity may be named as a party and may be represented by its trustees or such other person as may be appointed by the court in any legal proceedings.""

Lord Bew (CB): My Lords, Amendment 15A is in my name and that of the noble Baroness, Lady Deech. The purpose of the amendment is to enable claims for compensation to be made against the assets of a charity where wrongful acts have been committed in the course of that charity's activities. There is a gap in the current law, in that unincorporated charities are not liable since they have no legal personality, in contrast to incorporated charities or other companies or incorporated bodies.

It is clear from the Explanatory Notes to the Bill that the Government's purpose with the Bill is in part to look at and perhaps clean up, if that is the right phrase, some unsatisfactory aspects of the charity/extremism nexus. The purpose of this probing amendment is simply to see if it is possible to add further gentle assistance in that project. However, I should add that the amendment is inspired not just by concerns about the relationship between charities and terrorism but also by concerns about certain cases of sexual exploitation.

In fact, it is best to start with that, as it is the best way to illustrate the key difference between incorporated and unincorporated charities. The Scout Association is a national body and, like many of the older charities, is in fact incorporated by royal charter. It has therefore been possible for victims of sexual abuse by scoutmasters to claim damages from the national body, the Scout Association. However, many local Scout associations—dozens of them, in fact—are unincorporated. Victims of sexual abuse therefore may well find it much more difficult or impossible to recover compensation. That creates an obvious unfairness and anomaly, and it is to that problem that proposed new Section 284A is directed.

5 pm

I return to the debate about charities and terrorism. In recent years, there have been a number of well-documented moments. In the case of the Tamil Tigers, it is eloquent enough simply to look at the Charity Commission's actions. Some noble Lords will remember the controversy in 2009 about Interpal and Hamas, the debate which followed the work of John Ware for "Panorama", the Charity Commission report on Interpal and the subsequent debate in public, among many different sources. In recent times, there has been mention of Boko Haram in this context. In April 2014, the Home Affairs Select Committee concluded:

"We are deeply concerned with the potential for 'bogus' charities to dupe members of the public into raising funds which are eventually used to support terrorist activity".

I am well aware that the Government have made more material resources available to the Charity Commission to deal with that sort of problem. It is also clear, as I have said before, that the Bill in a number of its provisions is intended to deal with that difficulty, and that the Government are well aware of the problem. The amendment is simply an attempt to see whether something else can be done and whether it is possible to have a constructive debate about that. The essential point is that although individual employees and trustees of unincorporated charities can be made personally liable under current law, that is of little comfort to victims if, as is commonly the case, they have no significant assets. I acknowledge that it is possible under current law to claim indirectly from the charity's assets via an indemnity to the trustees or from insurance covering the trustees. However, even where that is possible it is certainly cumbersome and expensive, and it is not possible where the trustees are themselves implicated in the wrongful conduct or have been reckless. In some ways, the irony is, the worse the governance of the charity, the less prospect of a remedy for the victim. I beg to move.

Baroness Deech (CB): I will speak briefly in support of my noble friend Lord Bew. I got interested in this area having had some experience of when things may go wrong. When you have a commune, for example, which takes all the assets of its members and something goes wrong, such as abuse, there ought to be recourse against those assets. The same applies to children's clubs, after-school lessons, youth movements, and even student unions.

Our previous discussions show how far the charitable organisation has spread, reaching into every area of our life. It seems only right that there should be the same protection for those who may be adversely affected by an unincorporated charity as by an incorporated one. The main thrust of the amendment lies in proposed new subsection (2), which would enable a person entitled to damages to recover them from the assets of the charity. It is intended to be prospective and not retrospective in effect, applying only to torts committed after it comes into force.

In sum, the amendment would produce a small but useful improvement, making it practicable for victims to obtain compensation for wrongs committed in the course of the activities of unincorporated associations in circumstances where this is currently not practicable. It would remove disparity between unincorporated and incorporated charities; it would encourage the provision of additional resources to expose misuse of charities. It would strengthen compliance with the law and protect the reputation of legitimate charitable activities.

As my noble friend mentioned, the resources of the Charity Commission, which could be involved in this, are necessarily limited and it is only right to help the Charity Commission in its efforts. In sum, this is a good, useful amendment which seems capable only of doing good and certainly no harm.

Lord Gold (Con): My Lords, as the noble Lord, Lord Bew, has said, the purpose of the amendment is to remedy a deficiency in English charity law which prevents victims of wrongs committed in the course of the activities of an unincorporated charity being able to recover compensation from the charity's assets. This is of particular concern when an unincorporated charity is used as a mask by those knowingly funding terrorism. Victims may have claims against individual staff or trustees of the charity, but if such individuals

are men of straw or vanish from view then, unless the charity is obliged to provide an indemnity for its staff or trustees—and that can be uncertain—the claimant will lose out. Worse, the unincorporated charity can carry on just as before, while the victims or their families are cheated out of justice to which they are entitled.

As the House of Commons Home Affairs Committee stated in its report of 30 April 2014 on counterterrorism, bogus charities are being used as a means of funding terrorist activities. There is a serious risk therefore that, unless there is some redress to the assets of unincorporated charities, this anomaly will protect such charities, which will not be liable for the activities of their staff or trustees. The amendment would give victims of wrongs who have claims arising from the conduct of trustees or employed staff the right to bring a claim directly against the unincorporated charity, just as they can at present against an incorporated charity. This proposal does not affect any personal liability of trustees or employees, but the court would have power to determine what should be paid by the charity and what the wrongful individuals should pay.

For an unincorporated charity presently to be liable to indemnify staff members or trustees, it must be vicariously liable for the wrongful acts of its trustee or staff member. That will apply only if the tort or wrongdoing was committed by the staff member in the course of their employment or, in the case of a trustee, if they were not acting in breach of trust. Only in such a case would it be possible for the claimant to recover damages indirectly from the charity's assets via this indemnity. Even so, the claimant in such a case would face uncertainty, delay and cost if he or she were to test the position, which would be made harder if the trustees were unco-operative. For example, it may suit the individual wrongdoer not to be able to call for an indemnity so that the charity's assets are protected and can continue to be used to sponsor terrorist activity. Similarly, any insurance cover which the trustees may have is unlikely to apply where they deliberately or recklessly misapply or jeopardise the charity's assets.

By supporting the amendment and giving claimants a more direct and certain way of gaining redress, we would also be making it far harder for those seeking to fund terrorism or other wrongdoing to do so while hiding behind a seemingly charitable veil.

Lord Leigh of Hurley: I congratulate the noble Lord, Lord Bew, the noble Baroness, Lady Deech, and my noble friend Lord Gold on highlighting this clear loophole; I think it has come as a surprise to many that it exists. I have tried to research this as best I can. I have read the Henry Jackson Society's written submission to the Draft Protection of Charities Bill Joint Committee, which I found excellent and helpful. In trying to research it, though, I could not make out, and therefore I am not clear, whether there are any other legal remedies to resolve this problem. If that is the case, and if the Minister is not able to allow this amendment because of the necessary legal advice and argument that he must take, I very much hope that he, like me, can offer general support to the principle behind it.

Baroness Barker (LD): My Lords, I am intrigued by the amendment. My response to it, on the basis of about 30 years of working with trustees of charities, many of which were unincorporated associations—some were not; some were incorporated—is that the prospect of losing one's house as a consequence of a decision one made when acting as a trustee was one of the most sobering responsibilities of trusteeship. Indeed, were Lord Phillips with us today, he would explain how, throughout the history of charity law, even though charities have become much more complex as the areas in which they operate have become much more complicated, we have maintained the entity of an unincorporated association precisely to preserve the importance of trusteeship. That said, in my experience, trustees of unincorporated associations were always desperate either to try to get liability insurance, if they possibly could, or to incorporate, precisely to minimise their own risk.

We have kept unincorporated associations because they have an importance in the field of charity. It is important that we still have organisations in which individuals come together and are willing to put their own assets on the line in order to do good and to be judged as such. As with many of the arguments that I have listened to this afternoon, my response is that if there is a new body of evidence that this measure is required because a new form of abuse is going on, I am willing to look at it. However, I take issue with the noble Baroness, Lady Deech: this is not a simple tidying-up of a loophole but a rather large fundamental change to the law of trusteeship with regard to charities. She may be right and there may be a good reason why we should do that, but I would prefer to see a bit more than one briefing from a think tank—if that is not to damn today's discussion—to say that this is necessary. It is actually a very big transformation of the way in which we organise charities.

5.15 pm

Baroness Deech: My Lords, I will of course defer to the noble Lord, Lord Gold, who is much more of a lawyer than I am, but I do not believe that the purpose of the amendment is to turn all charities into incorporated bodies. It is simply to ensure that when something does go terribly wrong, an example being sexual abuse, innocent trustees should not lose their houses. The other side of that coin is that the value of the innocent trustee's house may not be nearly enough to cover the damages that ought to be paid to the victim. It is simply a question of protecting the innocent trustee while of course respecting and honouring the long history of trustees being very involved and feeling personally liable. However, when there is a serious issue in which a victim has been seriously harmed either physically or mentally, the assets of the trustee may be insufficient for the victim, while at the same time the wrong trustee is being punished. The damages should come out of the collective assets of the charity. However, in every other respect, the long-standing, noble notion of the unincorporated charity should of course remain.

Lord Watson of Invergowrie (Lab): My Lords, we support the amendment in the name of the noble Lord, Lord Bew. Change is needed because, as we have

[Lord Watson of Invergowrie]
heard, many people who have suffered in a manner that would allow them to seek at least adequate redress against an unincorporated charity are currently in effect unable to achieve that. There are a lot of unincorporated charities. The Charity Commission has around 125,000 of them on its register, which gives some idea of the scope of those that may be covered by this amendment.

Surely there is a need for parity, because where a tort has been committed in the course of a charity's activities, the remedy should not be different simply because of the charity's status. An example of an unincorporated charity being able to escape the consequences of its actions arose a few years ago, and I had personal contact with it. Noble Lords may recall that a number of charities became involved in fundraising to assist countries in sub-Saharan Africa. Huge amounts of clothing, toys and other portable goods which had been donated by the public in the UK were transported by road to people in need in those countries. I had a friend who was involved in delivering those goods as part of one of the convoys. Sadly, during the journey his convoy met with an accident in which he suffered a serious leg injury. He is now unable to drive and has lost his job, because driving was an essential part of it. However, the charity was unincorporated so he had no effective means of redress in the form of compensation. He did receive some, but not nearly as much as he would have done had he been able to take action against an incorporated charity.

I do not think that there is any point in repeating the comments made by noble Lords in this debate. I simply wish to say that the amendment is a sensible one and I hope that the Minister will agree to bring forward an amendment on Report that incorporates its aims.

Lord Bridges of Headley: My Lords, I thank the noble Lord, Lord Bew, and the noble Baroness, Lady Deech, for their explanation of the amendment. This has indeed been an illuminating debate and I thank them for it. As has been alluded to, an amendment along these lines was first proposed by the Henry Jackson Society in its submission to the Joint Committee on the Bill, and the submission was published in the committee's report on the evidence it received. It is worth pointing out that the Joint Committee did not recommend changing the law as proposed in that submission.

Perhaps I may briefly summarise our view around this point. As noble Lords will know, "charity" is a status rather than a legal structure. Organisations can choose from a range of different legal structures when establishing a charity. An unincorporated structure, as has been said, has no separate legal identity of its own, and so the trustees must hold the charity's property and enter into contracts for the charity, where this is required, in a personal capacity. Unincorporated structures are usually simpler, and have fewer and less demanding reporting obligations than corporate structures, as the noble Baroness, Lady Barker, pointed out. The downside is that a trustee's personal assets are at risk if the charity is sued and its assets cannot pay the debt. This personal liability is often a reason that many charities choose to adopt a corporate structure. Even so, many smaller organisations opt for an unincorporated form, such as a trust or unincorporated association, as the noble Lord just said.

In a corporate structure, the charity itself has a legal identity enabling it to hold property and enter into contracts in its own name. As directors, the trustees act as agents of the charity. If they act properly, they and the charity's other members have the benefit of limited liability, protecting their assets from being available to creditors in the event that the charity's assets are exhausted. However, the accounting, reporting and insolvency requirements that apply to corporate structures are usually more demanding. Many charities choose the structure of a company limited by guarantee, and an increasing number of small and medium-sized charities are opting to incorporate as charitable incorporated organisations—a structure designed specifically for charities and implemented in 2012.

If an individual or entity commences litigation against an unincorporated charity, usually all the trustees of that charity would be named as parties. This is because an unincorporated charity has no separate legal identity. This would include proceedings for tortious liability against a charity trustee in his capacity as a trustee of that charity or an employee in the course of his employment. The trustees of an unincorporated charity are jointly and severally liable for their actions, where taken on behalf of an unincorporated charity. If damages were awarded against the trustees, they ordinarily would be entitled, if they have acted properly and reasonably, to indemnify themselves from the assets of the unincorporated charity under the charity's governing document. They could, however, be jointly and severally liable for any shortfall where the charity's assets are insufficient to meet the level of damages awarded.

As an employer, the trustees of an unincorporated charity would be vicariously liable for the actions of an employee if they were acting on behalf of the charity and the same principles would apply, enabling a claim to be paid out of the charity's assets. Indeed, a person suing the trustees of an unincorporated charity could seek redress from the assets of the charity and the personal assets of the trustees. For an incorporated charity, in the absence of any charity assets, there is limited redress against the directors and members. If a third party reasonably believes a trustee is acting on behalf of a charity, it may sue all the charity's trustees. Ordinarily, the trustees would be entitled to an indemnity from the funds of the charity under the charity's governing document. However, a trustee in breach of trust or duty would be unlikely to be able to rely on this indemnity, so would remain personally liable. In either case of a trustee or employee acting on behalf of a charity, liability is not likely to be, nor should be, automatic, as the amendment seems to propose; it would still need to be established by the court where the liability should lie, based on the facts of the case.

In our view, the current legal position already supports the provisions within the amendment that damages may be recoverable from the assets of the charity, whether it is incorporated or unincorporated. Apportionment of liability between the trustees of an unincorporated charity is already possible under the Civil Liability (Contribution) Act 1978 if a claim is not brought against all of the trustees. The amendment would also run counter to the long-established principle that unincorporated associations do not have legal

personality. I would be delighted to meet the noble Lord, Lord Bew, and the noble Baroness, Lady Deech, to discuss all this further, but, in the mean time, I invite the noble Lord, Lord Bew, to withdraw his amendment.

Lord Bew: I am very grateful to the Minister for his very full reply. My noble friend Lady Deech and I would be glad to take up the opportunity of further discussion with him on this subject. I beg leave to withdraw the amendment.

Amendment 15A withdrawn.

Amendment 15B

Moved by ***Baroness Pitkeathley***

15B: After Clause 12, insert the following new Clause—

"Review of Charity Commission's funding arrangements

The Secretary of State must order a review of the Charity Commission's funding arrangements and look into different options for funding."

Baroness Pitkeathley: My Lords, I again declare my interests as vice-president and patron of several charities, co-chair of the All-Party Group on Civil Society and Volunteering, a member of the advisory body of the NCVO and, especially in relation to this amendment, chair of the Professional Standards Authority, the overseeing authority for the nine health regulators, such as the GMC, the NMC and the GDC.

Throughout our deliberations on the Bill, concern has been expressed about giving more responsibility and powers to the Charity Commission while not providing any additional resource. Indeed, the commission has seen a considerable cut in its resources over the years. So this amendment, and I stress that it is very much a probing one, calls for a review of its funding. I am certain that we all—beneficiaries, government and charities themselves—want from the Charity Commission the assurance that it can do its job and, further, to be assured of its competence to do that job and its independence in the way that it carries out its functions.

In view of the cut in its funding and of the criticism, sometimes harsh, that it has faced about its competence, the Charity Commission has concentrated, perhaps understandably, on its core function: its regulatory or policing function. In my view, this is a pity since what is most valued by the charitable sector, particularly small charities—we have heard many times that most charities are indeed very small—is the commission's advice and guidance as well as its regulation. The role of regulation, after all, is not just about policing but about maintaining professional standards in the interests of public protection. This is very familiar to me in my role as chair of the Professional Standards Authority.

This probing amendment seeks to encourage the Government to look at other ways of funding the Charity Commission in order to ensure that its role includes advice, information, support and other services that those regulated should be able to expect from a regulator. I start from the assumption that no further money will be forthcoming from the Government, which seems a safe enough one in this climate, though if the Minister would like to disabuse me of that idea I would be delighted; I would be very glad to be corrected if more money were coming from the Government.

The review that I am suggesting would take the widest possible look at all the funding options, but I am going to concentrate here on one particular option. One other way to be considered could be for the regulated to contribute to the funding of their own regulator, which is how most other regulators get their income. My own organisation, the Professional Standards Authority, which provides not actual regulation but oversight of the nine health regulators, is shortly to be funded by a levy on the organisations that we oversee, based on a per-capita calculation of the number of registrants. I am aware that it is one thing to charge a nurse, doctor or dentist a fee for a registration that allows them to practise but quite another to take things from money raised from charitable donations. However, not all charitable income comes from charitable sources, and even the lowest-paid nurse knows that it is a condition of his or her practice to be registered, and that for that registration you have to pay a fee.

Let me be clear: I am not suggesting that paying fees to the Charity Commission should be a condition of regulation for all charities. The review that I am suggesting would of course have to look at exemptions from contribution, and I suggest that a very high threshold would have to be set. I think that the commission itself has suggested a £100,000 a year income, but in my view that is not nearly high enough and the threshold would have to be much higher—say, income of £1 million before any fees were charged, and then there would have to be a sliding scale.

Moreover, no Government could bring in such a scheme without significant quids pro quo being established if this suggestion were to be at all acceptable to the charitable sector. One of these would certainly be the guarantee of the independence of the commission, as all the regulators with which I am familiar have—they are guaranteed independence. We call the Charity Commission independent at present, but does it pass all the tests for an independent body? It is answerable to the Government of the day, not to Parliament; it is dependent for virtually all its funding on government; and the way in which it appoints and reappoints its trustees has been called into question, with the Government's influence over that possibly being too strong. In my experience it is unusual, to say the least, for an independent body to have staff in the Box advising the Minister on a Bill of which it itself is the subject. So we would need more assurance about the independence of the Charity Commission if we were even to think about going down this road.

Another change which could and should be suggested about the governance of the Charity Commission in return for a change in the way it is funded is more connection with the beneficiaries of charities—the consumers of their services. The focus of all the other regulators with which I am connected in my role at the PSA has been radically altered in recent years and their governance has been changed to reflect this. The change has been to ensure that their primary role is protection of the public, not defence of their registrants. There is surely a case for making it similarly clear that the regulation of charities is a means to an end, not an end in itself. The end must be the protection of the beneficiaries—the receivers of the services of charities. Accordingly, along with contributing to the resources

[Baroness Pitkeathley]
of the Charity Commission, the charities themselves should be assured that their beneficiaries would in some way be represented in the governance of the Charity Commission; if not on the board, then for example through an advisory or reference group.

5.30 pm

I am very well aware that these are controversial suggestions. I put them forward as a means of starting a discussion and as a consideration for the total review of funding that I am suggesting. I am also putting them forward in the interests of enabling the Charity Commission better to do the whole of its job, which will in turn benefit the whole charitable sector. Most importantly, it will benefit those who profit from and are the subjects of the excellent work of this sector, which is dear to my heart and, I know, to the hearts of all noble Lords. I beg to move.

Lord Hodgson of Astley Abbotts: My Lords, the Committee owes a debt of gratitude to the noble Baroness for giving us a chance to canter over this ground. As she says, this is controversial stuff but it is certainly worth the sort of creative thinking that she has just outlined.

There are a couple of public policy issues. The first is whether it is an issue for actual fundraising—a way to give more resources to the Charity Commission—but there are those charities for which you might have a second public policy idea; that is, if you made people pay they would behave better. You could use various policies to drive up standards of governance within charities. Some charities say, "What you don't pay for, you don't value". Of course, as we know, a charity number is an exceptionally valuable thing to receive in the sense that it enables you to get local authority or central government funding or makes it possible for you to apply to grant-giving foundations that almost certainly will not even entertain an application from you unless you have a charity number. So there is the argument about how one might use an aspect of this issue to improve governance.

The challenge, of course, is how you levy it. We heard earlier today from the Minister that there were 7,192 new charities last year. Noble Lords can do the arithmetic, whether it is £10, £100 or £250. But unless it is going to be north of £100 for your initial registration you are not going to raise a significant sum of money. People will say that £100 is a great deal of money—maybe. Equally, you might say that if a charity starting out does not have £100 spare, its financial viability is a bit doubtful.

There is an argument about initial registration. I am less keen on things such as fines for late returns of stuff to the commission. If small charities do not do it, the problem of finding them and getting the money means that the administrative costs for the Charity Commission will almost certainly outweigh any money that is received. My particular issue, which came up in the evidence, was that if you set up a trust and you use a standard commissioning trust document, which is available on the website, that is fair enough; but if you want an all-singing, all-dancing trust deed because you are a wealthy bloke or a wealthy lady and you want a very specialised trust to reflect your own wishes, and you are going to send it down to Taunton to the Charity Commission to bless and it spends two or three days blessing it, I do not see why that should be paid for by the taxpayer. If you want your own special trust deed, that is fine—you are entitled to it—but there ought to be a cost-recovery basis for the Charity Commission to be able to get that paid back. That has a degree of fairness and equity that would be attractive and would raise a decent sum of money.

When I paid my visit to Taunton and talked to the people there, they said, "Well, you know, I get this telephone call from a law firm and they ask me a series of questions. I am virtually certain that they are writing down my words, putting it on their letterhead and sending it off to the client with a fee note attached". There are issues there that need to be explored as part of the exercise that the noble Baroness was talking about. There is no reason why the taxpayer should subsidise the activities of law firms, however eminent and brilliant they may be.

My view is that in the end we shall move inexorably towards a hybrid funding model, under which the state will pay a basic amount for what one might say are the "must-have" tasks and the sector will pay for the "nice-to-have" tasks, such as help desks and the types of things to which the noble Baroness referred. If you talk to charities, there is a list of things that they think it would be helpful for the commission to provide. There might be a bit of argument about what is a "must have" and what is a "nice-to-have" but over time that could be sorted out by discussion and intellectual heavy lifting. The sector needs to show the way and that is a much better way for the sector to take charge and come up with some proposals.

That of course takes me to my last and most important point; namely, the attitude of the Treasury. It is no good my noble friend on the Front Bench thinking that this will happen, unless there is an absolutely cast-iron guarantee that the Treasury will keep its hands off it. If you raise a couple of million pounds or £3 million from the sector and the Treasury says, "That's a brilliant idea. We will have £3 million off the grant", the sector will be absolutely furious. How we get to the situation where the sector in good faith enters into a funding arrangement to help develop its own future and to have the right regulatory structure in which we all have trust and confidence, and how we get that level of commitment about which the sector can be assured—not just this year or next year but over time—is a very difficult issue, to which I am not sure that we have yet found the answer. For the sector to move forward with confidence and to think of new, creative ideas of the sort mentioned by the noble Baroness in her opening remarks, it will require us to find a way to unlock that problem.

Baroness Barker: My Lords, I too thank the noble Baroness, Lady Pitkeathley. The funding of the Charity Commission is a subject which anyone who has met its current chair for longer than about five minutes will have had raised. It is quite a complex issue. One of the most interesting points to arise from the investigation into the Cup Trust was the extent to which the Charity Commission was not, at that stage, aware of the cost of its own operation. At a time when every charity in

the land has ruthlessly to look at the cost of its operation, it is only fair that the commission should do so, too.

I want to make three points. Clearly, the matter will not be resolved today but it is a useful contribution to the debate. First, the exercise of the commission's powers is not in any way related to the number of charities which it has to regulate. In fact, it is rather disproportionate: a very small number of charities cause the most costs to the Charity Commission. Increasingly because of digitisation, most charities are dealt with in a low-cost and volume operation—there are just a few which are bigger.

Secondly, the noble Baroness, Lady Pitkeathley, was quite right when she said that it is the commission's advice that is most valued. That is an area of work for which it receives no revenue at all. It is rather strange that this country has the most advanced charity legislation and regulation in the world, so much so that one would think we might be able to export it around the world to generate income. If I were setting up a charitable foundation in Russia, I would not want to register it there; I would want to do it here. Much as the previous Government set up an international commercial court in London, might the Charity Commission at some point look towards increasing its income by internationalising and commoditising what it does?

Finally, until the Charity Commission is willing to look to other regulators, such as the FCA, and to appreciate that it has common interests with them and to be less isolated in the way it pursues its function, it will inevitably always be running back to government asking for funding. As the commission has seen in the last few years, government funding is finite. The noble Baroness, Lady Pitkeathley, has raised some really interesting questions which the sector needs to think about but which the commission needs to start thinking about much more creatively than it has done before.

Baroness Hayter of Kentish Town: My Lords, all those who have spoken have made the case for the amendment moved by my noble friend Lady Pitkeathley: this review is clearly needed. The Charity Commission has itself published some interesting research, either this week or last week, which gives an interesting insight into the views of the public and charities themselves on the concept of charging for charity regulation. A significant proportion of charities do not presume that the costs of charity regulation should continue to be met entirely from public funds. The wider findings of the study indicate a public appetite for charities to be regulated effectively. This leads one to question whether the Charity Commission can do that without sufficient funding. However, the report also shows that charities and the public are rather split on how to fund regulation. As my noble friend has indicated and as the noble Baroness, Lady Barker, referred to, it is unusual for a regulator to be funded by taxpayers rather than the regulated community. We have the example of the FCA, but the Legal Services Board, the accountancy regime and the CQC are funded by their regulated communities.

The noble Baroness, Lady Barker, made the point about a regulator feeling part of the regulators' community, sharing benchmarks and the whole of that attitude. She also drew on the point about user involvement. I have been a member of some regulators, and I chaired a consumer body of one of them. We benchmarked the different ombudsmen in various sectors. The Charity Commission is an ombudsman in that sense but this was a different issue. There was a feeling that it was a useful exercise not only in how they could compare themselves with each other, but also in how as their users we could influence how they were working for us. It would be nice if the commission could see itself in that environment.

5.45 pm

I turn to the Charity Commission's published research. It is interesting that not 100% but two-thirds of charities want regulation to be funded entirely by taxation—no surprise there, except perhaps the fact that it was not 100% of them. However, only one-quarter of the public agreed, and I am afraid that says something about the relationship between charities and the public which we dealt with in the discussion on fundraising. In fact, two-thirds of the public support regulation being partly or fully funded by a charge to charities compared with under one-quarter of charities. Key stakeholders are similarly divided on this: there is some support for continued government funding while others are open to the idea mentioned by the noble Lord, Lord Hodgson, of a more mixed funding model. I think we hear his warnings about the Treasury getting its sticky hands on that.

For ourselves, we will be very interested to hear the Minister's view on this. As my noble friend says, we worry about the lack of independence for the Charity Commission that the current funding model creates. We are concerned by the many complaints that we hear from charities about the cutbacks in the advice service offered by the commission and delays in dealing with correspondence and queries; it is not just about the letter to which my noble friend Lord Lea referred earlier, which was written in February and answered only in June. However, when I have picked up the phone to the Charity Commission there have been helpful staff who have made an effort to fast-forward things when I know that charities have been waiting for replies. Still, if you cut an organisation's funding by 50%, that sort of fall-off in advice is not surprising. It is almost bound to happen.

We favour robust but flexible regulation, we want to see it effectively delivered, and we want to see the optimum use of resources. We are therefore very interested in the points made by my noble friend Lady Pitkeathley. As I am sure everyone knows, she probably has more experience with charities than the rest of the House of Lords put together, so we should listen seriously to the points she makes. Others have suggested different regimes —a percentage of gift tax, perhaps, or the fee for service plans referred to by the noble Lord, Lord Hodgson.

Following on from what the noble Lord said, in the earlier debate my noble friend Lord Lea mentioned that he had paid £6,000 for legal advice in putting an application together. We are talking about whether a charity could afford perhaps £100 to pay for its annual fee, but it may be paying £6,000 to lawyers. This is not an issue that will go away and my noble friend is right to ask for a review. We will be interested to hear the views of the Minister.

Lord Bridges of Headley: My Lords, I welcome this debate, prompted by the amendment of the noble Baroness, Lady Pitkeathley, who, as the noble Baroness, Lady Hayter, has just said, has extensive experience of this sector. I also welcome, as did my noble friend Lord Hodgson, the chance to climb on my horse and canter around this terrain once again. It is important that we debate these issues and I can see that there are a number of them here. On the one hand there is the independence of the commission but on the other, much more fundamentally, there is the question of its funding.

Before I turn to the future, I shall talk first about the present and where we are today. It is important that we put the debate on funding in the context of recent history. At the Committee knows all too well, in its critical 2013 report on the Charity Commission the National Audit Office found that the commission had,

"no coherent strategy for delivering clearly defined priorities within its broad remit",

and:

"The Commission does not know how much its activities cost and has not focused its resources on its priorities".

Those are pretty damning words, as I am sure the Committee will agree. Under the leadership of William Shawcross and Paula Sussex, the Charity Commission is making good progress in addressing these weaknesses. I pay tribute to their leadership and that of the commission's board. Equally important, I also recognise the commitment and hard work of the staff at the Charity Commission who strive, day in and day out, to ensure that charities are properly regulated and get the service they require.

The National Audit Office undertook a follow-up report on the Charity Commission which came out in January 2015. The report found that the commission has made good early progress in addressing all of the recommendations made by the NAO and the Public Accounts Committee and has put in place a credible programme for change. That said, it also pointed out that there is still some way to go.

The Charity Commission's 2014-15 annual report, which was laid before your Lordships' House yesterday, demonstrates some of the progress it has made in its compliance work, for example, and in a number of other areas. It reports that in 2014-15 the commission opened 103 new investigations and used its enforcement powers 1,060 times—up from 64 and 790 respectively in 2013-14. Equally as important, the commission also continues its enabling work through permissions casework, providing online services to charities, and through guidance and engagement to support trustees in fulfilling their legal duties when managing their charities. In the commission's first contact alone, it dealt with over 57,000 calls, 55,000 emails and granted over 2,500 permissions last year. It continues to refine this work with an aim to provide an "efficient, fuss-free service to charities". So we are seeing good and positive progress from the commission in becoming a more effective and efficient regulator.

However, as has been discussed, the question of funding is a valid one and I share the noble Baroness's wish to ensure that the regulator is properly and sustainably funded. I am sorry to disappoint the noble Baroness but I am not able to shake a money tree and magic up a large cheque for the Charity Commission. This is because the Government remain committed to dealing with the record deficit and all parts of government need to contribute to efficiency, including the Charity Commission.

That said, the Government recognise the need for targeted additional resources for the Charity Commission. In October last year, my right honourable friend the Prime Minister announced an £8 million capital investment for the Charity Commission through to March 2017. On top of that, it also received an extra £1 million in funding for 2015-16. This £8 million capital investment will help the commission to refocus its regulatory activity on monitoring and enforcement in the highest risk areas—for example, the abuse of charities for terrorist and other criminal purposes such as tax avoidance and fraud. The commission has said that this significant investment will be spent on technology and frontline operations, allowing it to streamline lower risk work and deploy its resources more effectively to priority work.

So that is where we are. Looking to the future, the Charity Commission's strategic plan for 2015-18, which was also published yesterday, sets out its four strategic priorities. These are, first, protecting charities from abuse or mismanagement; secondly, enabling trustees to run their charities effectively; thirdly, encouraging transparency and accountability; and, fourthly—this is the matter that concerns the Committee—operating as an efficient and expert regulator with sustainable funding. Under the heading of that fourth strategic priority, the commission has committed to consulting on proposals for alternative funding options, including an annual charge for registered charities.

The strategic plan also makes it clear that the Charity Commission cannot devote the same level of resource to each of its statutory objectives as it previously could. It accepts that means changing the way it operates, allocating resources by relative priority and risk, and working with partners. The commission is looking at various options. However, I should stress that there are no plans in place yet. The commission's chairman, William Shawcross, has been meeting the chief executives of a number of charities to raise the idea with them and listen to their thoughts. Of course there are those who have concerns. The commission is listening to them and will consult more widely as its plans develop.

As the noble Baroness, Lady Hayter, has illustrated, there is a wide range of views on this subject already. The Populus research that she cited found that the majority of the public—69%, as noble Baroness said—believe that charity regulation should be partly or fully funded by charities themselves. A significant minority of charities—23%—agree with this, while the majority of charities believe that charity regulation should be funded entirely through general taxation. Clearly, therefore, discussions must continue with the sector to see where there is shared ground. Of course, Parliament would want and needs to be involved in any debate, and I know that some of your Lordships have already fed in your thoughts and have expressed them today. Section 19 of the Charities Act 2011 would enable charging to

be brought in through secondary legislation, but importantly and crucially, it provides for parliamentary scrutiny of any charging proposals and requires the affirmative resolution procedure.

The issue of independence was raised and whether, if charities are to pay for their regulation, we can ensure that the Charity Commission is independent of government. This again raises questions about the commission's independence. Its chairman, Mr Shawcross, explored the issue of sustainable funding for the regulator in a speech on 10 June, saying:

"There are indeed very real questions to answer—including how the Commission's independence, which is so vital, would be protected under such an arrangement".

We must ensure that the Charity Commission remains independent of government and the sector it regulates, however it is funded in the future.

The funding of the commission is just one strand of ensuring that it is able to be the modern, effective regulator that the public and we all expect. The powers in this Bill are another strand of that. I hope that my response begins to reassure the noble Baroness that we and the commission are committed to ensuring that the regulator has a sustainable funding solution to enable it to regulate charities effectively and efficiently, and that work is already under way to consider the options. With that, I hope that she will feel able to withdraw her amendment.

Baroness Pitkeathley: I thank the Minister for his thoughtful response and other noble Lords for their similarly valuable contributions to this short debate. I said that my amendment was controversial; it has also been illustrated that there are many complex issues within it. The debate about how the Charity Commission is funded did not start here and certainly will not finish here. It will be the subject of ongoing relationships. It seems to me that the relationship between the Charity Commission and the sector that it regulates is vital.

I have raised the issue—and the Minister has spoken to them—of independence. My noble friend referred to consumer involvement and protection. Those issues will not go away as we look to the future of funding for the Charity Commission, but, for the moment, I am happy to withdraw the amendment.

Amendment 15B withdrawn.

Clause 13: Power to make social investments

Amendment 16

Moved by ***Baroness Barker***

16: Clause 13, page 16, line 10, leave out "both" and insert "primarily"

Baroness Barker: My Lords, before we start to debate the matters related to social investment in Clause 13, I should declare an interest. I am one of the vice-chairs of the All-Party Parliamentary Group on Social Enterprise. The Committee will not be surprised to learn that many of the amendments that stand in my name have been put forward by Social Enterprise UK. It did so because it is the national body for social enterprise and has a direct interest in social investment. It conducts research on policy and Bill campaigns over the whole field of social enterprise, and social investment is very much at the heart of that. Social Enterprise UK chairs the Social Investment Forum, which is a network of social investment and finance intermediaries designed to keep money flowing around the social enterprise market. It therefore has a direct interest in the first ever legal definition of social investment. Perhaps because it is the first ever legal definition of social investment, there is considerable concern that the law should be right. That is not easy, because by its very nature social investment, as opposed to straight financial investment, is not easy to define.

6 pm

People in the world of social enterprise often talk about social finance in terms of social enterprises being entities that have triple bottom lines. In business, you have a single bottom line: you are either making a profit or you are not, and that is the basis on which all your activities are judged. In a social enterprise, that is not the case. Whether or not you are achieving the social or environmental purposes for which you have been established, the extent to which you have been doing that and how you measure whether you have been doing that are matters on which some of the greatest minds in the world have been exercising themselves in the past decade.

When we come to the matter of what is a social investment, as opposed to an ordinary financial investment that any charitable trustee might make, we are in similar territory of having to argue about definitions. The definition of social investment on which the Government alighted and put into the Bill—it was not in the draft Bill but, as noble Lords said on Second Reading, we are all delighted to see it here—was put forward by the Law Commission.

That is welcome, but there are some oddities within it that would at the very least benefit from debate in your Lordships' House, if not some tidying and clarification. The first is a change under Clause 13 to Part 14A of the Charities Act 2011 in new Section 292A, which covers the "Meaning of 'social investment'". We on these Benches and the noble Lord, Lord Hodgson of Astley Abbots, have focused on subsection (2), which states:

"A social investment is made when a relevant act of a charity is carried out with a view to both—

(a) directly furthering the charity's purposes; and

(b) achieving a financial return for the charity".

There we are straight into the matter of judgment, because a trustee must show that they have pursued both those things, when in fact they may not follow one from another.

Social Enterprise UK has expressed concern that the clause as written would catch within it investments that the charity may make which are not social investments and that they would end up having to report to different types of investments together, when that may not be appropriate. It is entirely appropriate to report on one's financial investments purely in terms of the amount of interest or return on investment. Social investment may be different and, as we know, may involve the charity making a loss, at least in the first stages of its investment. That is why we have tabled

[Baroness Barker]
Amendments 16 and 18, which enable a social investment to be defined as an act where the purpose is not only directly to further the charity's purpose. That may be primarily what it is about and there may well be an intention to achieve a financial return, but there could be an interplay between those two. This is in the nature of an amendment in Committee trying to probe exactly what we mean by the new definition of social investment. I beg to move.

Lord Hodgson of Astley Abbotts: My Lords, I have three amendments in the group, Amendments 18A, 18B and 20A, which follow the noble Baroness down the rabbit hole of definition. However, I have to say that the advice I am getting—I am not going to pretend that I drafted these amendments—is that the Bill as drafted does not do what it says on the tin. I should like to take a minute to explain why that is the case and why the Government should be considering amendments along the lines of these three. I am supported in this by members of the Charity Law Association.

Perhaps I may back up for a moment. We spend quite a lot of time in my review on social investment, which obviously presents tremendous opportunities if we can set it up right and make it work effectively. As I said at Second Reading, that is not just in terms of this country. We in the UK have done so much heavy lifting that we are in a world-leading position in this new area. We heard from my noble friend on the Front Bench at Second Reading that the Law Commission carried out a consultation on these and various other proposals to remove unnecessary impediments to the growth of social investment. That consultation ended in July 2014 and the commission's final report underpins much of what lies in Clause 13. I do not doubt for a moment the Government's good intentions regarding social investment, but there is a view held by specialists in this area that the current drafting of the clause—specifically, proposed new Section 292A—does not capture the results of the Law Commission's consultation, which the Government have accepted and which I think this Bill was supposed to implement. It is worth quoting from the summary of its conclusions at paragraphs 6 to 8 of the report:

"6. We recommend that a new statutory power should be created, conferring on charity trustees the power to make social investments, so as to put the law beyond doubt.

"7. A social investment is any use of funds from which charity trustees seek both:

(1) to further one or more of their charity's objects; and

(2) a financial return, which might include (i) income, (ii) capital growth, (iii) full or partial repayment, or (iv) avoiding incurring financial liability at a future date.

"8. We recommend that the new power should apply unless it has been expressly excluded or modified by the charity's governing document".

The consultation paper produced by the Law Commission contains a splendidly clear diagram of how this works and sheds light on what is a pretty technical area. At one end are the grants where the money is given and at the other end is investment where there is a financial return. But in between, close to a grant, there are what is known in the trade as programme-related investments, which support the charitable objectives of the charity but do not expect a financial return. As you inch towards financial investments by moving across the spectrum, you reach something known as mixed-motive investment, a title that I find quite appalling because a mixed motive sounds like an ulterior motive. I wanted to change it to "mixed-purpose investment", but that was altogether a bridge too far and we are still stuck with the terrible title of mixed-motive investment. Never mind; we can leave that for another day.

There is concern among charity lawyers that the Bill permits programme-related investments but does not give an adequate statutory power to mixed-motive investment, which I like to call mixed-purpose investment. That is because of the general drafting, particularly the use of the word "directly", of subsection (2)(a) of Section 292A to be inserted in the Charities Act 2011 under Clause 13. Charities may not always act directly to further their charitable purposes. They may do so through a third party, which may not be exclusively charitable.

I have received examples of how this might work. First, a diabetes charity seeks to invest in a company developing foods calculated to reduce the impact of diabetes on sufferers but which are available to the general public. The investment will achieve some mission benefit for the diabetes charity but the fact that the foods will be available more widely means that not all the activities of the investee will advance the objects of the charity because there is a commercial element. The object therefore will be advanced only in part, which is why we need to get the words "in part" in the rephrasing.

Secondly, a charity that has purposes to relieve unemployment wants to invest in a social firm in the construction industry that employs ex-offenders at risk of unemployment. Once employed, the individuals employed by the social firm are not charitable beneficiaries because they are employed. The investment by the charity and the social firm may in part relieve unemployment but it also, in part, advances other purposes and benefits individuals who are employed by the social firm.

The worry is that almost any situation in which a charity is investing in a non-charitable social enterprise—picking up the point made by the noble Baroness—such as co-operatives, community benefit societies or community interest companies, will likely involve mixed-motive investment and will likely advance the objects of the charity in part and not exclusively. Without adequate clarification of the power, the Government risk introducing a statutory power which fails to achieve the clarity and confirmation that they seek.

Quite simply, Amendment 16A deletes the phrase,

"directly furthering the charity's purposes",

and replaces it with,

"furthering one or more of the charity's purposes in whole or in part".

The examples that I have just given underline that. Amendment 18B would insert a new subsection at the end of what will become subsection (7). It would state:

"A relevant act of a charity may be carried out with a view to furthering one or more of the charity's purposes in whole or in part for the purposes of this section even where the relevant act may not exclusively further one or more of the charity's purposes".

Finally, Amendment 20A would make an amendment to new Section 292C, to which we will come later, headed "Charity trustees' duties in relation to social investments". At the end of subsection (2) it would insert,

"having had regard to the degree to which the relevant act is expected to further one or more of the charity's purposes in whole or in part, and the expected financial return".

That is all quite complicated, technical and difficult but it has important consequences. However, the charity law sector is concerned that we need to bottom this out. I am sure that the Government accept that, and I certainly believe that we want to put the ability of trustees to make mixed-purpose, mixed-motive investments beyond statutory doubt. I am sure that my noble friend will not be able answer all this today but I hope that he can take on board the concern about the technical details. I think that they have been raised elsewhere with the Treasury and so on, and it may be that we will need to have a discussion about it. I hope he can see what the sector is driving at. The sector is merely wishing to ensure that what the Government want to achieve can properly be achieved by the Bill. Currently, it does not think that the drafting achieves that.

Lord Wallace of Saltaire: My Lords, I agree with much of what the noble Lord has said. Perhaps I may remind him that when I first went to a tutorial with him on charity law history, he said that part of the glory of charity law was that so many definitions were left loose.

6.15 pm

Lord Watson of Invergowrie: My Lords, I am in favour of these amendments. It is important to ensure that the Bill is drafted as clearly and concisely as possible to enable charities to make the most of social investment in furthering their purposes.

In 2012, the noble Lord, Lord Hodgson of Astley Abbotts—who has, as ever, provided us with an insight into some of the work that led to the Bill before us today—said in his review of the Charities Act 2006 that while charity law did not actively prohibit social investment, it was,

"certainly not set up to support it".

He went on to advocate a statutory power for charity trustees to engage in social investment and statutory clarification of just what social investment is and involves. That makes it all the more puzzling why the previous Government chose not to include the social investment aspects in the draft Bill that was the subject of pre-legislative scrutiny by a Joint Committee of both Houses. If social investment is suitable for inclusion in this Bill, why was it not suitable for the draft Bill? Is there an answer? Of course, it is not a new idea but we are where we are and it is certainly to be welcomed that we now have this clause in the Bill.

In preparing for this part of the Bill, I tried to answer the question: what is social investment? I am not alone in that. The term is often confusing to many, and a lack of transparency could undermine its potential. As I understand it, this is the first time that social investment has been defined in statute, although neither the Bill nor its Explanatory Notes are particularly helpful in their attempts to define it. Am I the only one to have read the Explanatory Notes on Clause 13, paragraph 80 in particular, and found myself little more aware of what social investment really is and how it might operate as a result?

According to the Big Society Capital website, social investment is,

"the use of repayable finance to achieve a social as well as a financial return",

which certainly has the benefit of being both clear and concise. Big Society Capital was the first ever social institution of its kind, established by the coalition Government in 2012 as an independent organisation with an investment fund of some £600 million. However, the concept actually emerged under the Labour Government of 2005 to 2010, who established the Commission on Unclaimed Assets to examine how funds released from dormant bank accounts could be used to generate the maximum public benefit. The creation of a social investment bank was a key recommendation of the commission and, following a consultation, the Labour Government proposed naming it the Social Investment Wholesale Bank. Fast-forward to the arrival of the coalition Government, for whom the title was perhaps a tad too left-sounding, hence the incorporation of what I regard as the largely meaningless big society name—whatever became of that concept, I wonder?

Whether Big Society Capital is now succeeding in supporting the third sector in the way it was intended to do is open to question and there are arguments both for and against within the sector. Certainly, Big Society Capital should have a positive impact on the social investment market by facilitating the provision of funding capital to the third sector. It is also charged with increasing awareness of and confidence in social investment by promoting best practice and sharing information; improving links between the social investment and mainstream financial markets; and working with other investors to embed social impact assessment into the investment decision-making process.

A new social investment market is emerging, developing ways to connect socially motivated investors with social sector organisations that need capital so that they can grow and make a greater impact on society. All this is to be welcomed, and the fact that every organisation that has sent noble Lords a briefing has welcomed the addition of social investment to the Bill demonstrates that it is an idea whose time has come, certainly in the third sector. The key is to make sure that it is as effective as possible in enabling charities to further their stated purposes while achieving a financial return for them.

Clause 13 is, by consensus, necessary. Noble Lords have already referred to the Law Commission consultation, which highlighted that there are differences of opinion regarding the ability of charities to make social investment based on their existing charitable powers. Clause 13 removes any such doubts and will enable charities to undertake social investment more easily and without the need for legal advice, at least as to the principle of the investment.

It is self-evident that social investments should be made only after careful consideration of the risks of the investment and evaluation of the benefit that will

[Lord Watson of Invergowrie]
accrue as a result of it. Trustees should also be clear as to how they will evaluate the social investment and how regularly the investment will be reviewed. Such reviews should consider the effect that the social investment may have on the rest of its overall investment portfolio and other activities, such as grant-making. Social investments are not made in isolation and it is surely sensible for trustees to take this into account when making a decision.

We support the amendments in this group. As has been stated, there is a need for clarity on what social investment is and how it will operate. The noble Lord, Lord Hodgson of Astley Abbotts, made the important point that the current wording of new Sections 292A and 292C does not reflect adequately the suggestions made by the Law Commission in its report. It is important for the Bill to be as clear as possible and I hope the Minister will be open-minded on this broad point and that he will not dismiss the amendments but will undertake to look at them in the way they have been brought forward. I hope he will give an undertaking to bring forward his own re-wording to improve this section on Report. We have a singular aim: to make this section of the Bill as effective as possible. It would be in the interests of everybody, not least the charities themselves, for the wording to be tightened up.

Lord Bridges of Headley: My Lords, I am grateful to the noble Baroness, Lady Barker, and the noble Lord, Lord Hodgson, for tabling these amendments. I entirely share the sentiments of many noble Lords that we need to examine the definitions in detail, although this might get very technical. This is clearly the first time that we have attempted to define social investment and set it out in statute. It is entirely right and proper that we take time to debate and define to make sure that what we are doing is fit for purpose.

I will pick up on what has been said about the definition of social investments. Traditionally, as your Lordships know, those charities that have money to invest have taken a two-pocket approach to pursuing their goal. On one side, they seek to maximise financial returns from their investments. On the other side, they distribute those returns to further their mission. Sometimes, but not always, they try to measure the impact they are having. I would argue that social investment is different, because it sits between these two pockets. It involves investments that further the charitable mission but also expect to generate a financial return. This means the capital can be recycled again and again, contributing to a sustainable model and reducing dependency on grants and donations. In the right conditions, it can enable a greater impact than the traditional model, and further benefits from the focus on measuring and reporting on the outcomes that have been generated.

Turning to the amendments, it may first be worth recognising that Clause 13 has been prepared by the Law Commission, as the noble Baroness, Lady Barker, said, in order to implement its recommendation for the creation of a new power, and associated duties, when making social investments. The Bill is not the Government's interpretation of what the Law Commission recommended; rather, it is drafted by the Law Commission to reflect its own recommendations. In this way, the definition of social investment used for the purpose of this Bill has been deliberately drafted to be as wide as possible while retaining the distinctiveness of the "social" element. It covers a spectrum, from investments that are mostly intended to further charitable purposes but involve some return of capital, through to those that are primarily financial but have a small mission benefit. I think of these as the two poles at the extremes of the spectrum. At one end are social investments that look much like grants, with a very limited expected return of capital. At the other are social investments that look very similar to traditional financial investments, but have a small role in furthering a charitable purpose. Social investment must combine some aspect of each pole, but the nature of the combination is entirely flexible.

Neither the furtherance of the charity's purposes nor the financial return should be required to take precedence. To hold one above the other would potentially restrict the breadth of investments that fall under the power, thereby making it less likely to be used. In order to maintain as wide a scope as possible for the power's use, so that the power may have the largest possible impact, I hope the noble Baroness will withdraw her amendment.

On the other hand, the definition of social investment used here seeks to ensure that there is a direct relationship between the social investment and the charity's purposes; in other words, there should be a clear causal connection between the act done by the charity and the charitable service ultimately provided. Allowing for indirect furthering of the charitable mission would mean that the power of social investment applied to investments that were purely financial but where the returns were used for charitable purposes. I thank my noble friend Lord Hodgson for raising this important consideration with me, but in order that the clear causal connection should be maintained I hope that he will be content to not move his amendment.

Turning to Amendments 16A, 18B and 20A, I thank my noble friend Lord Hodgson for the work that he has done and continues to do in this area. His input is of great help and has been of real benefit to the charity sector. My understanding is that these amendments are intended to ensure that the definition of social investment is wide and can cover all potential situations, even those where the furtherance of the charity's mission is slight or occurs piecemeal. In particular, I understand that the intention is to make explicit that mixed-motive investments, as described in Charity Commission guidance note CC14, are covered by the definition.

I take this opportunity to state explicitly that the Bill has been drafted by the Law Commission to include MMI as one aspect of social investment. Furthermore, officials have been in continued dialogue with the Law Commission on this and other points, and the commission is satisfied that the drafting properly reflects the intent. So long as some direct furthering of the charity's purposes is intended, no matter how small or partial, along with some anticipated return of capital, no matter how minimal, the investment is covered by the definition. Mixed-motive investment

clearly falls within this. It partly furthers charitable purposes and partly achieves a financial return. I hope that this provides assurance to my noble friend and that he will feel comfortable not moving the amendment. I know that we seek a similar destination here, and I hope to have shown that the vessel that we are embarking in stands good for the journey.

Lord Hodgson of Astley Abbotts: We are on to angels on the head of a pin, to be honest; this is very technical. When we have had a chance to go through what the Law Commission has said and what the Minister has said today, if the Charity Law Association still thinks that there is an issue to be thrashed out here, it would be helpful if we could have an understanding today that we could come to see him to talk about this and sort it out. We are going to get no further today because this is a very narrow point, but people feel strongly about it.

Lord Bridges of Headley: My noble friend takes words out of my mouth. I was about to invite him and the noble Baroness, Lady Barker, to meet so that we can discuss this point and dance on the head of a pin together. I understand that we need to get this right.

I confirm that the relevant guidance from the Charity Commission—CC14—will be revised following the passage of the Bill. The commission will take steps to make sure that charities that want to make social investments are clear about the scope of the power and what it would mean for them, as well as how the commission can and will monitor for abuse of the power. The commission will update its relevant guidance for trustees' duties where needed. It will also consult stakeholders—a mix of legal advisers, investment bodies and charities—to ensure that any guidance produced is of practical use and widespread application. Any such guidance would be produced in time for the implementation of the power. I hope that that begins to address some of the Committee's points but, as I said, I would be happy to meet my noble friend and the noble Baroness.

6.30 pm

Baroness Barker: I thank all noble Lords who took part in what was a very technical but extremely important discussion. It is important out in the field. It took me back several years to a discussion I had with a colleague who had been to visit a rather far-flung part of our charitable empire. We discussed whether or not the fact that some pensioners went on some of the holidays that were provided by the organisation was enough to make it so distinguishable from a travel agent that it might just be a charity. That is a flippant way of saying: it is very important for trustees to understand exactly what their powers are going to be. The intention of us all is to open up the social investment market and those who work in this field know that even the best of the social investment charities are very cautious and very conservative in the way in which they exercise their powers. We will not be doing the sector any favours if we allow there to be considerable doubt on the part of the trustees about where they are going to fall. So I very much welcome what the Minister said and, like the noble Lord, Lord Hodgson of Astley Abbotts—not my noble friend any more—I would be delighted to come and meet him, but we might be lawyered up when we do. I beg leave to withdraw the amendment.

Amendment 16 withdrawn.

Amendments 16A to 18 not moved.

Amendment 18A had been retabled as Amendment 16A.

Amendment 18B not moved.

Amendment 18C

Moved by ***Lord Lea of Crondall***

18C: Clause 13, page 17, line 8, at end insert—

"( ) privately funded educational institutions, except universities;"

Lord Lea of Crondall: My Lords, I tabled this amendment to help clarify what Clause 13 is not, as much as what it is. I would like to ask the Minister how widely this clause can be interpreted. I do not want to wake up one morning and find that it means something quite different from what I thought it meant. I would like to clarify that it is not an opportunity to open up a further shift towards helping taxpayers invest, with socioeconomic income distributional consequences, in private education rather than public education. I do not think anyone would deny that that is a consequence of the charity status of public schools in this country. I repeat that my purpose is to ensure that we all put our cards on the table as to what is going on here and what may be open to interpretation. We do not want to wake up one morning in four years' time and say, "Well, people kicked the ball through that goal and you did nothing about it. Are you stupid or something? You didn't keep your eye on the ball".

I do not know how we are going to avoid the spectre that I am talking about but I will put my question to the Minister in two parts. First, will he comment on my anxieties or analysis of what this may lead to? Secondly, if he wants to reassure me—not me, I am sure he does not wake up in the middle of the night and think, "I'd like to reassure the noble Lord, Lord Lea, of something"; but if he wanted to reassure people—that this does not have any wider consequences in the sphere that I am talking about, what is wrong with this clause? The answer can only be that it is redundant or offensive. I would like to know which it is. Is it redundant or is it offensive and if so, why? I beg to move.

Lord Wallace of Saltaire: My Lords, the noble Lord, Lord Moynihan, and I both have amendments down for Monday's Committee sitting which relate to the issue of public benefit and public schools, and specifically the provision of their facilities for use by others. We all know that this is a delicate and sometimes politically controversial issue. What I want to say on Monday—although I realise with horror that I am supposed to be speaking in a debate on Gaza at the

[Lord Wallace of Saltaire]
same time—is that now that private schools in Britain with charitable status have some wonderful sports, music and drama facilities, the question of how far they make them available to their communities is one that we cannot entirely ignore.

It happens that a charity which I chair has benefited from very good partnerships with a small number of public schools which do this precisely because it demonstrates that there is a public benefit, and I am sure that the noble Lord, Lord Moynihan, will be saying much the same thing. We will return to this issue on Monday, but one has to be careful not to go on an all-out attack on schools with charitable status. Nevertheless one would wish to insist that public benefit does mean what it says in this and other areas. As I say, we will return to these matters on Monday.

Baroness Hayter of Kentish Town: My Lords, I want to add little to what my noble friend Lord Lea has said, but I do think it is a question that needs a serious answer. It does not take much imagination to see how such investment could be used by certain facilities to further enhance the advantages they already have, and therefore a serious response is needed. We look forward to hearing it.

Lord Bridges of Headley: My Lords, I will certainly give this amendment a serious response, and I thank the noble Lord for the interest he has shown in the Bill. It is of course appropriate that we should consider the range of organisations to which social investment will apply, and I recognise that that range is huge and complex. Many different types of charitable organisations will apply for and use this power, but for many of them it may not be relevant. I should take this opportunity to point out that this was known from inception and that the drafting of the power has been undertaken with the intention of placing the minimum possible burden on those charities by which, at least in the first instance, it is unlikely to be used.

However, I want to set out the case for including as wide a diversity of charitable organisations as possible within the scope of the power. The power of social investment is a permissive one which is intended to encourage trustees who can see the potential of social investment but have lacked the confidence to take it further. By providing a framework in law, the power of social investment will give confidence to charity trustees to add social investment to their existing armoury. The Government intend the power to be available to the full spectrum of charities, subject to some technical exclusions around those established by legislation or royal charter. It is important to make the power as widely available as possible in order to encourage its use and the benefits that will flow from it.

Charitable independent schools fall within this spectrum of charities, and in their charitable activities they seek to further educational purposes for the public benefit in a wide range of ways. Many of them are providing significant support to their local communities across a range of actions. It would therefore be inconsistent to deny them the use of this social investment power. Indeed, to answer the point put by the noble Lord, Lord Lea, I think it would be wrong to do so. I see no valid argument for why charitable independent schools should be arbitrarily singled out for exclusion from this power, and that is even more the case given their valuable existing contribution, as I have said, and their potential to do even more. It simply does not make sense to deny them the use of this permissive power to stimulate social investments. Indeed, it is encapsulated by the debate on this point so far. On the one hand there are those who appear to be doubting charitable basis for private schools overall as they do not do enough, while on the other hand there are some who are imploring private schools with charitable status to do more.

I would argue that the social investment power would enable them to do more. Therefore it is entirely justified that they should be able to use it. We should give charitable independent schools every opportunity to increase their contribution to public benefit, and using the power of social investment represents such an opportunity.

That is my serious contribution to this debate and, on that basis, I hope the noble Lord will be willing to withdraw his amendment.

Baroness Hayter of Kentish Town: Can the Minister outline the checks that will be made to ensure that the social investment that, say, Eton makes will be for the wider public benefit of local schools in the area, rather than being used only for even more educational buildings for its existing pupils? What will be the checks on that?

Lord Bridges of Headley: The noble Baroness makes a good point. The overarching check will be that it meets the twin ends of the social investment to make some financial return and ensures that—the noble Baroness mentioned Eton—its charitable mission is fulfilled. We will have to make sure that it does.

Lord Lea of Crondall: My Lords, it would be going a bit far for me to say that I do not believe a word of this and that I have got the t-shirt—but not very far.

To caricature—although not a lot—the purpose of the Charity Commission is to do with tax relief. The bigger the tax rate, the bigger the tax relief. That is why it is good for public schools and good for the socioeconomic distribution of income and wealth in favour of the rich. It is not only me saying this: every study that has been carried out for the OECD, through to Milburn and so on proves that. The Minister may wish to caricature me as or put me in the category of a dinosaur from an earlier age—that is entirely his privilege. However, I am talking about what the analysis is today—and that is the analysis of today.

We have a growing problem in Britain in this regard and I would like to think how to move this issue forward before Report. We are obviously miles apart on the analysis—not the politics—of what these kinds of investment would do to the socioeconomic distribution. The answer is regressive. That is the analysis on which 99% of economists would agree.

There have to be safeguards. Things need to be said about this which have not been said so far. I see the noble Lord, Lord Hodgson, wants to say something useful on this.

Lord Hodgson of Astley Abbotts: Probably not but I am grateful to the noble Lord for giving way. He is making a case for using charitable status for social engineering—fair enough, that is a perfectly good argument—but that is not what we are discussing in the Bill. Social engineering is a different issue. I have heard his callings and those of Members on the other side of the Committee on other occasions. There is nothing wrong with that but it is not what we are driving at on this occasion. We are talking about how to make charities more effective and how to widen the pool of money that is available for social investment.

Lord Lea of Crondall: Yes, I know the speech. I have great regard for the noble Lord, Lord Hodgson, but my truth is much more truthful than his truth, which is that charities are about socioeconomic distribution towards the regressive. If you put my caricature up against his caricature, the jury will ultimately decide. At the moment, I beg leave to withdraw the amendment.

Amendment 18C withdrawn.

6.45 pm

Amendment 19

Moved by ***Baroness Barker***

19: Clause 1003, page 17, line 18, at end insert "including, where it is reasonable, from beneficiaries and other stakeholders"

Baroness Barker: My Lords, after that foray into the wider realms of charity law and purposes, we come back to the anorak stuff of social investment. As the noble Lord, Lord Hodgson of Astley Abbots, alluded to earlier, new Section 292C(2) sets out the considerations which charities must make before they exercise a power to make social investment, and it refers specifically to advice that they should take.

As we discussed in relation to the earlier amendments, there are two different sets of considerations which trustees will have to make. One is a straight financial assessment. I know that it is argued that some social investments are almost akin to the making of grants—they are very few, I would imagine—so a great deal of what most people involved in making decisions about giving assets to social investments are concerned with is the business case for doing so and the likelihood of return. It is therefore quite right that the subsection should place a strong requirement on trustees to obtain advice on that. I think that most trustees making a social investment would seek the advice of people who had relevant experience in business.

On how charities make a judgment as to what is a correct social investment, which is particularly relevant given what the Minister said in his response to the previous amendments, we are talking not only about charities being able to make investments which are seen to be socially good but about such investments being both socially good and in pursuit of their charitable objects. That brings an important level of complexity to this matter because many charities would see making an investment in the sort of work which they do as not only being desirable but having the potential to get them out of some of the financial deficits which charities are getting into. They would say that that was quite a complex thing to do, whether or not it fell under this legislation.

I understand what the Government are trying to do by saying that, before trustees risk money, they should take early advice. There was some debate on subsection (2)(a), which states that before making a social investment charity trustees must,

"consider whether in all the circumstances any advice about the proposed social investment ought to be obtained".

There was a fear on the part of some people that that might give people carte blanche to go ahead and make investments without taking advice at all. Perhaps the Minister might make clear whether the Government envisage that there will be circumstances in which charities go ahead and make social investments without taking any advice.

I turn to the point of my amendment. If the investment concerned is truly to be a social investment, an interested party ought to be the beneficiaries of a charity. That is so for two reasons. First, they ought to be the people who can talk about the social value of the investment being made. Secondly, for different reasons, the beneficiaries of a charity have a direct interest in determining whether or not a social investment would be the best use of the assets of the charity from which they would otherwise benefit. It is therefore not unreasonable for there to be a discussion that includes both them and other relevant stakeholders. In a way, this is supposed to add a bit of belt and braces to the social aspect of social investment. I beg to move.

Lord Cromwell (CB): We would all agree in principle that the beneficiaries of a charity should surely be involved as far as possible. My difficulty is where it is reasonable. Who decides, particularly if an investment goes wrong, whether or not it was reasonable to have consulted them?

I turn to Amendment 20, which is in my name and that of the noble and learned Lord, Lord Hope of Craighead, who cannot be with us today as he is required elsewhere: I am sure that the Committee, like me, will be happy to know that he was today confirmed as the new Convenor of the Cross Benches. I declare my interests: I have worked for and with a number of UK and international charities for much of my life. Latterly, in about the last eight years, I have moved much more into the investment world, where I look after some quite substantial investment portfolios for clients that include charities.

I am going to take a slightly different approach from some of the other speakers, which may or may not make me popular. I shall approach this amendment in three steps: first, what happens currently; secondly, what I think the Bill as it stands would mean for trustees; and, thirdly, why I think the amendment is needed. So what happens currently? Much of what is called social investment already probably happens in two ways. The first is that some charity investors seek to use various degrees of what we might call "ethical overlay" to their investment portfolios. At its simplest that is an ethical portfolio, and you can buy them off the shelf. It might involve avoiding certain companies or sectors, and tobacco and arms are obvious examples

[Lord Cromwell]
of that. These are available now; you can buy them online as a private investor if you wish to, or a charity could do the same. A common difficulty, of course, is the divergence of opinion about what is an ethical investment; I do not propose to dive into that today as I suspect we could spend most of the evening on it.

However, the provisions of the Bill go well beyond this type of investing. Moving perhaps closer to what the Bill envisages, some trustees invest in projects or activities where there is an expectation of some element of financial return beyond mission-related benefits. I agree about "mixed motive"; I prefer "mission-related"—it is a case of potayto/potahto. One might cite social enterprises, revolving credit funds, concessional lending to development projects or just models of work that require an element of repayment by the beneficiaries to recycle the money and ensure that they treat the money that they receive responsibly.

Last week I chaired a group in Birmingham for the Prince's Trust, which advances modest sums to individuals seeking to start their own businesses. These loans are repayable to the trust to fund further such work, and that is made very clear to the beneficiaries when they receive these loans. My view, however, is that realistically these types of projects fall within the spending activities of that charity rather than being classed as investments, for reasons that I will come on to—the "two pockets" approach that the Minister referred to earlier. Nevertheless, the 2006 report of the noble Lord, Lord Hodgson, showed that there is anxiety among some trustees about how such activities fit within their responsibilities to invest charitable resources prudently. His report suggests specifically that a fear that social investments might not be within these rules is holding back and inhibiting investment into them and that it should be put into law that social investments are in line with trustees' responsibilities—something that most of us have touched on already today. The Law Commission came to a very similar conclusion in its 2013 report and the wording of this section of the Bill follows very closely what it said. It comes as little surprise that the Minister told us that it had drafted this section. I am also glad to hear that better guidance, associated with that, is on its way, because my first instinct on reading the Bill was that this might be better dealt with through guidance than law. However, I bow to the far greater expertise that has been deployed on that matter than I have to offer.

So far, so good, but there are four other aspects of social investing that cause disquiet for trustees. Simply passing a Bill to say that they can make social investments does not sufficiently address those. First, social investing is poorly defined. It lies somewhere between charitable spending on worthwhile activities and investing for purely financial return. It is widely covered elsewhere, particularly in the Law Commission report, where one witness stated that it is,

"an unclear concept and capable of being used by a proponent to mean precisely what the proponent wants it to mean".

The Bill seeks to define it; we have agreed to discuss that point separately, on the head of a pin, so I will not elaborate further today.

The second issue is that the returns on a social investment can be extremely difficult to quantify. The old cliché that two economists in a room will give you three opinions multiplies exponentially in this sort of area. Measuring and attributing a numerical value to social benefits, which trustees are going to have to compare between, can produce a very wide dispersion of arguably equal returns, depending on which criteria you use, how you weight them and—let us be candid—how keen you are to promote that particular investment to whoever is listening to you on the other side of the table. The prospect of asking trustees to leave the realms of quantifiable financial return, which they could then use for good works, and enter the world of social, environmental and other forms of accounting puts off as many as the worries about whether they are entering into something they should not be doing. The whole idea ends up, very quickly, in the "too difficult" box or, as I suggested earlier, allocated to the spending committee, a topic touched on widely in the Law Commission report.

Thirdly, if social investing takes off as a significant asset class—and it is already well on its way—it is, inevitably, going to attract an increasing number of purveyors and advisers who want to attract funds, recommend certain types of investments or manage funds within them. That is no bad thing in itself, but only if it is properly regulated. If it is not, whole new areas of mis-selling arise, where social investments could be knowingly or just irresponsibly hyped to investors and trustees. The danger in that is exacerbated by the difficulty in calculating, quantifying and comparing returns.

Finally, the Bill gives the power to make social investments, but it does not look at the possibility that some charities themselves may well want to use this as a fundraising opportunity and market them to other charities or the public. Add to this formula a situation where a trustee is involved both as a trustee of a charity marketing a social investment and as a trustee being invited to invest in it and you can see the complexities. I have not put forward a specific amendment on that point but I urge the Minister to think about whether we could address it at the next stage in terms of enabling charities to use social investments to raise much-needed funds, without the hideous cost of compliance which will probably come with it, but at the same time restrain them from being overexuberant in doing so.

That brings me to my underlying concern and the reason for the amendment: in pretty much every case, charities that have traditional investment portfolios have highly regulated individuals managing those portfolios. I believe the noble Lord worked with the FCA—FSA as was—so he will have background on this but an individual recommending investments has to be very specific on the expected returns, the level of risk, the previous track record of this type of investment and the previous track record of the person, object or company providing it. You have to be able to evidence that you know your customers in great detail and that what you are recommending to them is suitable. That may not be the case in the world of social investment. Social investments may be more risky, more volatile, more concentrated and certainly

less liquid—an important consideration for charity trustees with bills to pay—than what I might call mainstream financial investments. You can sell a blue-chip investment at the press of a button but if you are putting money into a 10-year health project in a developing country, pulling your money out halfway through because you need the cash is not only technically but reputationally and morally a very difficult place to be.

7 pm

Where does that leave us? My contention is that as soon as trustees are asked to put money into something that offers a financial return—rather than being, for example, a grant of money—they are entering the highly regulated world of financial investments. My concerns are not only that social investments end up being poorly understood but that there is a temptation to overegg the returns and underplay the risks, both of which would be offences in the world of regulated investing.

The first part of my amendment seeks to save both the providers and the trustees from themselves. It does not preclude them from making social investments, which would be completely perverse in a Bill that seeks to enable them, but it requires them to ascertain whether the investment they are going into is subject to the same scrutiny and reporting and FCA requirements as their financial investments are. If they are, that is a comfort to the trustees. If they are not, they may well wish to proceed anyway but they need to recognise what they are doing. My concern is that we make explicit to trustees the permissibility of social investment but that they are required to get clarity on the regulatory status of such investments.

The second part of the amendment, on which I will be far more brief, is linked to the first. The noble Lord, Lord Hodgson, referred in his report to trustees wanting to make social investments having to fight their way through the serried ranks of accountants, lawyers and investment managers for whom risk aversion is the default setting. I am not sure if that is a verbatim quote but I think it is pretty close. I sympathise with that a great deal but it arises directly from the fact that commercial investments are made in a highly regulated context and it is not clear from the definition in this Bill of social investments—however it emerges—that they are going to be so regulated. If that is the case, it is the role of those serried ranks of advisers to sound those notes of caution to trustees. As the number of providers specialising in social investment vehicles increases—and the Bill creates the opportunity for them—there is a risk, at least in an intervening period of a number of years, that trustees are going to be faced with conflicting advice from different advisers and they are going to have to reconcile that situation and record it in their decision-making processes.

This is a probing amendment. It seeks to encourage trustees to reflect transparently on what they are doing in making their decisions. I am grateful for your Lordships' patience in letting me walk through it. I hope my comments have given a bit of colour to my concerns about this very exciting area of investment and the steps that need to be put in place to protect both the trustees and their beneficiaries.

Lord Hodgson of Astley Abbotts: My Lords, perhaps it because it is the end of a long day or because I had a spat with the noble Lord, Lord Lea of Crondall, but I feel slightly scratchy about these two amendments and I feel bad about feeling scratchy about them because the noble Lord, Lord Cromwell, has sat patiently through a couple of days of our debates. But I do not find myself happy with what is being proposed.

If we take new Section 292C and what the trustees of a charity must do,

"before exercising a power to make a social investment",

they must consider,

"whether in all the circumstances any advice … ought to be obtained".

Having done that, they need to obtain and consider the advice they think ought to be obtained. Thirdly, they must satisfy themselves that it is in the interests of the charity to make the social investment. That seems to me to be about as simple, as dutiful and as clear as could be. If we are not careful, we will constrain trustees further and put them in a position where they say, "Ought we to be doing more?". That absolutely lays it on the line: do you need to take advice? Have you taken the advice that you decided you needed to take, and does it all match up with your charity's objectives?

I can live with Amendment 19, tabled by the noble Baroness, Lady Barker, but, as she said, any good charity would make sure that the beneficiaries were involved and it would take the stakeholder beneficiaries with it. Because I am a minimalist on these things, I do not think that it is necessary to put this into statute. Good charity trustees will do it anyway.

Amendment 20 is a different matter. I accept what the noble Lord, Lord Cromwell, has said about the social return on investment; there is a lot of work to be done on that. I accept what he says about suitability, knowing your customer and so on, but to suggest that social investment has to be undertaken in the same form as that undertaken in the regulated financial markets is actually to shoot the whole thing straight in the head. The whole purpose of social investment is that it is different: not better or worse, but different. To try to force social investment into the pattern of regulation that is available for financial investments is to hobble and cripple it.

Lord Cromwell: Will the noble Lord give way? I thank him for his patience because I could see that he was getting quite scratchy as I was speaking, so I am grateful to him for taking pity on me in that way, and for giving way. I think that we may have misunderstood each other. I am perfectly in support of, first, social investment, and secondly, social investment not necessarily being subject to the rigour of FCA supervision, as would be the case for financial investments. My proposition is that trustees, if they make such an investment, should be conscious that they are entering into an investment that is not so regulated. I hope that that closes the distance between us a little.

Lord Hodgson of Astley Abbotts: Of course it closes the distance between us, but what it does not do is make clear why we need paragraphs (a) to (c) of

[Lord Hodgson of Astley Abbotts]
proposed new Section 292C. In my view those paragraphs cover all these things, so in my view adding more to them means that you are trying to force a regulatory system on to a new type of investment that does not fit with it at all well. On Monday next we shall be talking about the financial promotions regime and all that goes with it. Once an adviser says to the trustees, "How does this compare with regulated financial markets?", they will say, "We need to be exceptionally careful". You will find that the costs that apply to the regulated financial markets will be applied to social investments, most of which are quite small. We are still finding our way through, but there will be a very high fixed cost that will make it almost impossible for people to bring these ideas forward. If it is accepted, when trustees look at this amendment they will say, "Is it the same as an undertaking in the regulated financial markets?". They will be scared off by their advisers. I hope very much that my noble friend will not accept the first part of the amendment.

I turn to the second part of the amendment, which states,

"consider whether there is a conflict between the investment vehicles".

Every single investment decision has an option. There is never one thing you can buy. Are you going to buy BP or Shell? You have to think about how to deal with that. The way it is dealt with is by diversification—not putting all your eggs in one basket—and by a readiness to accept risk. That is the way to do it and it is the way that trustees should do it. They should not be forced through further hoops or jump over hurdles because of additional things being added to the Bill at this stage.

At the very least, the chilling effect of Amendment 20, if it were accepted, would be stupendous. I will give the Committee an example: when we were doing the review, we came across a case of a £100,000 investment going to a charity that was going to relieve third-world poverty. The charitable investment was to be made to enable local people to produce goods that could be sold. If it worked, the charity would get some money back because it would have proceeds from the sales. By the time the charity had gone through all the due diligence recommended by the serried ranks of investment advice, it was £40,000. The trustees said, "What on earth are we doing this for? Why do we not just give the money?". And, as I shall say more vehemently still on Monday, we have got to a situation where I can give the noble Lord £100,000 for his charity but I cannot invest it because I might get some money back. That simply cannot be sensible. That I could get 5% or 10% back—a small return—must be encouraged, as opposed to giving it for ever.

I hope very much that my noble friend will not accept these amendments, not because I do not think that they are important points; indeed they are. There will be scandals and difficulties in this emerging market but we must trust trustees. They have the framework and they must take the decisions. That is what they do and should be encouraged to do. We should not be trying to guide them and say, "Don't worry about this and look after that". They must be given the self-confidence to take the decisions on their own account.

Lord Cromwell: Perhaps I may have one more try at this. I hear what the noble Lord says but I have to say to him that I think that trustees should be careful. Batting this aside and saying, "Oh, there will be scandals and mis-selling" is not the approach that perhaps he meant. I could offer one further comment that may be helpful. The FCA currently offers guidance to investors on proportional investing—that is, the sort of recommended amount that it would say you should put into a particular type of investment, be it a private equity fund, a structured product or whatever. Perhaps here there is something about which the Minister could talk to the FCA. A social investment could be a very exciting but possibly, in risk management terms, relatively modest part of an investment portfolio. I still stick to my dictum that trustees are required to be careful. On the prospect of the noble Lord giving me £100,000, I would be very happy to discuss it with him afterwards.

Lord Watson of Invergowrie: My Lords, I was slightly taken aback by the response of the noble Lord, Lord Hodgson of Astley Abbotts, to Amendment 20. We believe that these amendments would enhance the Bill. In respect of the noble and learned Lord, Lord Hope of Craighead, who is a signatory to Amendment 20, perhaps I may further record my congratulations on his election as Convenor of the Cross-Bench Peers. New Section 292C(2) to (4) covers the scope of the duty applying to trustees. This will apply in relation to social investments made after this part of the Bill comes into force, whether or not these were made by the exercise of the new statutory power. The duty in the Bill will require charity trustees that have existing powers to make social investments to adapt their current processes in so far as they do not currently comply with the duties set out in the aforementioned sections.

The Bill is not clear as to how the duty in new Section 292C would apply where the trustees delegate their power. We believe that Amendment 19 offers clarification on this point. The section does not take into account that larger charities are more likely to want to set a social investment policy at board level and delegate to staff the responsibility for putting the policy into practice when implementing individual transactions.

Amendment 20 adds two further requirements that charity trustees must consider before exercising the power to make a social investment. I can only echo the comments made by the noble Lord, Lord Cromwell: surely it is important that care is taken and that trustees are absolutely clear that they are doing what is in their charity's best interests. This amendment would require trustees to reflect on what type of investment they are making and the associated level of regulation, risk, concentration versus diversification and the type of qualified advice that was taken, all of which seems to be sound common sense. I cannot ascribe to the chilling effect that the noble Lord, Lord Hodgson of Astley Abbotts, suggested.

7.15 pm

Lord Hodgson of Astley Abbotts: Does the noble Lord accept that charity trustees now understand that if they are making financial investments they must get

advice? Do we need to write into the Bill that charity trustees ought to get appropriate advice before making financial investments? It is understood that they must do that—everyone understands that. All that is happening here is that social investment will have exactly the same requirements. At the moment, everyone understands that if you are going to make financial investments you will take advice. You will now take advice over social investments too. It does not need special categorisation. If it were categorised especially, people would start to say, "That is more difficult. We should not do it".

Lord Watson of Invergowrie: Of course I accept that advice would be taken; advice has been taken with normal investments up to this point. However, we are going into new areas here and, at least at the start, there needs to be caution and careful consideration by charity trustees. I do not think that because something is in the Bill it will have a chilling effect. If, as the noble Lord, Lord Hodgson, says, it is being done anyway, I do not see a problem. However, some charities might not be as circumspect as others and I would like to see that measure in the Bill as a back-up.

The amendment would require trustees, in deciding whether a social investment would be in the interests of the charity, to consider how far they think a social investment would further one or more of the charity's purposes and to consider the financial return. The trustees would have to be comfortable with the social investment.

As I say, I was rather taken aback by the noble Lord's response. I defer to his vast experience in this field, and in many other aspects of the Bill I have agreed with most of what he has said; that is why I was rather surprised. However, it is perhaps important to ask the Minister what consultations he has had or intends to have—I hope he has had them—with the charity sector on this point. Equally, we should consider the point made by the noble Lord, Lord Cromwell, about meeting with the FCA in future.

We have now completed three days in Committee on the Bill and, unless I have missed them, there have not been any concessions by the Minister, which is quite unusual. The wording of the Bill is not beyond improvement and I invite the Minister to bear that in mind—hopefully, in relation to these amendments—when we return on Monday. The point of the Committee is to seek to improve the Bill. We are not dealing with different political agendas on the vast majority of the amendments, and I hope that the Minister will take these comments in the spirit that I have made them.

Lord Bridges of Headley: I thank the noble Baroness, Lady Barker, and the noble Lords, Lord Cromwell and Lord Watson, for their contributions. As to what the noble Lord, Lord Watson, has just said, I have said that I will consider a number of amendments. Obviously I am always looking for ways in which we can improve the Bill. Before I turn to the amendments, I too would like to put on the record my congratulations to the noble and learned Lord, Lord Hope, on his election as Convenor of the Cross Benches.

I thank the noble Baroness, Lady Barker, for drawing attention in Amendment 19 to the important role of a charity's beneficiaries, as well as its wider stakeholders, in the process of good governance. Trustees would be well advised to maintain close contact with their stakeholders and to make sure that they understand the full range of views that such a broad group is likely to represent.

As to social investment, there is a clear duty on trustees to consider all the circumstances relating to the proposed transaction before deciding whether to take advice and from whom. The scope is deliberately wide and inclusive, such that if it is determined that beneficiaries or other stakeholders should be asked for advice, there is no impediment to this course of action. However, the breadth encompassed by the duty does not benefit from an enumeration of the range of possible advisers to whom trustees might turn. It might also lead to practical difficulties relating to identifying the relevant stakeholders, as well as ambiguity as to what is represented here by the term "reasonable", a point made by my noble friend Lord Hodgson. I hope that the noble Baroness will be content that the aspiration and intent are there in the Bill and will feel able to withdraw the amendment based on this existing breadth.

With regard to Amendment 20, I thank the noble Lord, Lord Cromwell, for his extremely thoughtful and thorough speech, which I will read with care in *Hansard*. My understanding is that the amendment's intention is to strengthen the duties of trustees relating to the financial characteristics of social investments, and in particular that they should make a comparison with any similar investments that are subject to a stronger regulatory regime and satisfy themselves that the proposed social investment is suitable. The intention, I understand, is to prevent any potential regulatory arbitrage whereby minimal mission benefits might be used as a pretext for making, in effect, financial investments that would not pass muster if they were pure financial investments.

I am in full agreement with the intention here: to ensure that where social investments are made, they are undertaken for the right reasons and with proper analysis of both the mission benefits and financial returns. It would clearly be of detriment to the nascent market in social investments if the social aspect were to be used as a fig leaf to pass off financial investments that would otherwise be unsuitable. So I thank the noble Lord for raising this issue. However, I do not believe that that would be the effect of the Bill.

Under the current law, when making a financial investment the trustees of a charitable trust must comply with three principal investment duties under the Trustee Act 2000: first, to consider the standard investment criteria—namely, the suitability of an investment and diversification of investments in a portfolio; secondly, to take advice unless it is reasonable not to do so; and, thirdly, to review the trust's investments from time to time.

Sometimes, but not always, a social investment will be an "investment" under the Trustee Act 2000 and the three investment duties will apply to the social investment. The Law Commission reported:

"There was general agreement amongst consultees that the duty under the Trustee Act 2000 to consider the standard investment criteria (suitability and diversification of investments) created

[Lord Bridges of Headley]

difficulties for trustees making social investments and should be removed, or at least tailored to suit social investment, but that the duties to review investments and to consider obtaining advice were appropriate".

In relation to the first duty, the Law Commission said:

"A particular problem is the duty to consider diversification of investments, as part of the standard investment criteria. A social investment is unlikely to play a part in a diversified portfolio, because it is selected not with a view just to financial return but also for the mission benefit that it will produce. When compared with a mainstream financial investment, a social investment may carry a particularly high risk or it may be unjustifiably large within a charity's investment portfolio (or conversely, unjustifiably small and disproportionate to the fixed transaction costs), and all the more so where the expected financial return is modest".

The Law Commission concluded that the second and third duties were, with some modification, appropriate for social investment. The commission therefore recommended tailored duties which are set out in the Bill. It said:

"The new duties, being tailored to social investment, should apply in place of the duties imposed on trustees by the Trustee Act 2000".

For completeness, I should say that in so far as there are any other duties on charity trustees in respect of financial investments, the Bill does not change them, so classifying a financial investment as a social investment would not change those duties. All the Bill does is exclude the Trustee Act investment duties if they would otherwise apply. It may be that the Trustee Act investment duties would not have applied to a social investment in any event. For example, if the charity takes the form of a company rather than a trust, the Trustee Act investment duties will not apply.

I return to the question of whether there would be any regulatory arbitrage; whether a social investment could be used as a fig leaf to pass off financial investments which would otherwise be unsuitable. The new duties are not less stringent for social investment; rather, they are tailored to social investment. The Bill has been drafted such that both sets of duties would generally produce the same result.

Tailoring the duties means that trustees do not have to try to shoe-horn a social investment into the Trustee Act regime for financial investments. The Law Commission reported that this approach,

"creates consistency between the duties that apply to financial investment under the Trustee Act 2000 and social investment, whilst properly catering for their differences".

While in theory unscrupulous trustees might try to justify an inappropriate financial investment under the guise of a social investment, I do not think that they would succeed in this endeavour; the tailored duties should still produce a sensible result that showed the transaction to be inappropriate. Furthermore, the Charity Commission and the courts would be astute to shams; they would look at the substance of a transaction and if it is a financial investment, the trustees will be expected to comply with the financial investment duties. Taken as a whole, I believe that the Bill already contains sufficient safeguards in respect of financial regulation. In response to the good point made by the noble Lord, Lord Watson, about the FCA, I am happy to talk to the authority and to other financial advisers about this new power. I hope that the noble Lord, Lord Cromwell, feels comfortable about not pressing the amendment.

Baroness Barker: That was a useful go-round. This is a very complex subject and it is extremely helpful to get the Minister's words on the record, not least because I am sure there will be court cases and legal challenges to the investment decisions that trustees make. Some of those investments will turn out to be losers, so it is important that we have on record as much as possible the steps that we believe it is right to expect trustees to take. As the noble Lord, Lord Hodgson of Astley Abbotts, said, this is different from straightforward financial investment. We cannot take a direct read-across from the work of organisations such as the FCA and put it into this Bill. None the less, it is important. I am glad to have established in the form of a statement from the Minister that one would reasonably expect trustees to have consulted with stakeholders and beneficiaries before putting some of their assets into this form of investment. I take his words at this stage and beg leave to withdraw the amendment.

Amendment 19 withdrawn.

Amendments 20 and 20A not moved.

Viscount Younger of Leckie (Con): My Lords, I think this may be a convenient moment for the Committee to adjourn. The Committee is due to return to reconsider this Bill on Monday 6 July.

The Deputy Chairman of Committees (Viscount Simon) (Lab): My Lords, the Committee stands adjourned.

Committee adjourned at 7.28 pm.

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