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

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House of Lords

Monday, 20 July 2015.

2.30 pm

Prayers—read by the Lord Bishop of Peterborough.

Oaths and Affirmations

2.35 pm

Lord Mountevans took the oath, following the by-election under Standing Order 9, and signed an undertaking to abide by the Code of Conduct.

Asylum: Sexual Orientation

Question

2.36 pm

Asked by ***Lord Scriven***

To ask Her Majesty's Government whether they plan to implement the recommendations in the report by the Independent Chief Inspector of Borders and Immigration of March–June 2014 regarding the handling of asylum claims made on the grounds of sexual orientation, and if so, when.

The Minister of State, Home Office (Lord Bates) (Con): My Lords, the Home Office has been actively working to implement the recommendations. An updated asylum instruction considering sexual identity issues in the asylum claim has been issued. Approved training for staff is under development. These will ensure the sensitive and effective exploration of asylum claims based on sexuality. The Home Office is conducting "second pair of eyes" checks on all such claims to ensure the consistent recording of cases and more accurate data.

Lord Scriven (LD): I thank the Minister for that Answer. He may be aware that an action plan has been agreed with third sector organisations that has become more "plan" than "action". Can he say when the action plan will be implemented and, if not, will he write to me giving a date? Also, could the person overseeing the action plan be someone equivalent to the director of asylum, rather than a junior policy officer, as is presently the case?

Lord Bates: I am aware of the action plan; it has been drawn up in consultation with the national asylum stakeholders group, which includes groups that work specifically with lesbian, gay and bisexual organisations. He will be aware of the report of the Independent Chief Inspector of Borders and Immigration: we have accepted all its recommendations and they are in the process of being implemented. I do not have a final date for when that will be concluded, but I shall certainly speak with officials about that and write to him.

Lord Lexden (Con): What action is being taken to combat the harassment and bullying of LGBT people in certain immigration centres, as documented by the All-Party Parliamentary Group on Refugees and other bodies?

Lord Bates: A review is going on into the very serious accusations that were made. It has been part of the Stephen Shaw review, which will report shortly. We take those accusations very seriously, and new guidelines are being prepared to ensure that such things do not happen again.

Lord Rosser (Lab): Bearing in mind that the chief inspector made a number of critical observations in his report, including on training, inconsistency of approach, the recording of information and the stereotyping of applicants—as well as the very differing appeal rates for detained fast-track sexual orientation decisions compared with detained fast-track asylum claims as a whole—when is a further independent investigation going to be carried out to check whether the required improvements in dealing with claims made on the basis of sexual orientation have actually been made, as opposed to the Home Office saying that they have, and are actually being delivered?

Lord Bates: We have to be very careful that we do not have overlapping investigations. A serious piece of work was done following some very serious accusations by the Independent Chief Inspector of Borders and Immigration last year, and we have undertaken to implement all the recommendations. In addition, as I mentioned to the noble Lord, Lord Scriven, a further action plan is being discussed with non-governmental organisations. We should allow those to go forward and ensure that the independent chief inspector continues to do his job in monitoring how his recommendations are implemented.

Baroness Hamwee (LD): My Lords, it is good to hear that the action plan has been worked up in consultation with the organisations mentioned by my noble friend. Will they be involved in monitoring, and will the Home Office keep them in line not just for consultation on snapshot investigations and checks, but to ensure that the procedures and practices of the Home Office and of immigration officials are as we would all wish to see?

Lord Bates: That was indeed one of the recommendations. Recommendation 4,

"Ensures that all asylum claims recorded on the grounds of sexual orientation are accurately recorded as such".

I expect that that recording and keeping of records will help us to identify where problems might exist in the system.

Lord Cashman (Lab): My Lords, first, I declare an interest as a founder of Stonewall. Will the Minister encourage the Government to work in conjunction with the UK Lesbian & Gay Immigration Group, the Human Dignity Trust, the Kaleidoscope Trust and Stonewall, so that we deal sensitively with people who apply for asylum at probably their most vulnerable time—when they enter this country—and that their sexual orientation in no way becomes a bar to their gaining entry or consideration for asylum status?

Lord Bates: The noble Lord is absolutely right, and of course, in addition to that not being a bar, the persecution of that particular social group is one of the reasons why they might be granted asylum under

[LORD BATES]
the Geneva Convention. The UK Lesbian & Gay Immigration Group is a member of the national asylum stakeholders group, to which we referred earlier, so I absolutely endorse what the noble Lord said.

Baroness Northover (LD): My Lords, can the Minister tell me whether DfID is still taking forward the protection and support of LGBT groups—a plan that was of course devised by my former colleague Lynne Featherstone, and if he does not have the answer, could he write to let us know?

Lord Bates: I pay tribute to the noble Baroness's work in her role as a DfID Minister. We continue to work through the Foreign and Commonwealth Office and public diplomacy to try to ensure that discrimination of that nature is tackled at source. I will look into the projects she referred to, but perhaps we can compare notes to ensure that we are looking at the right ones. However, I will be happy to look into them and ensure that they continue to receive funding.

Lord Harris of Haringey (Lab): My Lords, I understand that the former chief inspector of borders had some issues with the flexibility he was allowed in the investigations he could conduct and the publishing of his reports, rather than waiting for the publication of his annual report. Have those issues been resolved for the new inspector of borders?

Lord Bates: That matter was looked into by the Public Accounts Committee, which made some observations on how those reports are laid. They are laid in accordance with the UK Borders Act 2007, so we feel that that is consistent. The only reason why there was a change in the way they were routed through the department was to ensure that the Home Secretary had an opportunity to look at them, as is consistent with other reports, and in line with national security and public safety.

Lord Ramsbotham (CB): My Lords, this is one of the issues raised by the charity, Medical Justice, in connection with the general handling of complaints about various immigration issues. Can the Minister say whether there is any concerted attempt to improve the handling of complaints on such issues?

Lord Bates: Yes, I can certainly say that. In fact, one of the recommendations in the chief inspector's report was precisely that there should be a change to the training module that deals with how sensitively questions are asked of people making asylum applications on the grounds of sexuality. I am pleased to say that, as of this August, everyone in the asylum claims assessment directorate will have undergone that additional training.

Lisbon: Lapa Palace

Question

2.44 pm

Asked by ***Baroness Rawlings***

To ask Her Majesty's Government what information they have on the whereabouts of the historic Portuguese tiles from the British Residence in Lisbon after its former premises were sold in 2003.

The Earl of Courtown (Con): My Lords, the former British ambassador's residence known as Lapa Palace, which was sold in 2008, contains fine examples of traditional Portuguese azulejos tiles. These were included in the sale and are still in place in the house.

Baroness Rawlings (Con): My Lords, I am most grateful to my noble friend the Minister for all the trouble he has taken to find these historic tiles and for his satisfactory Answer. These tiles are important. They are part of our heritage, having been installed for Her Majesty the Queen's state visit in 1957 to commemorate the Anglo-Portuguese Treaty of 1373. This is the oldest active treaty in the world today. Will the Minister see whether the Foreign Office will ask the present owner's permission for these very special tiles to be officially documented and, in the future, to be viewed on request?

The Earl of Courtown: My Lords, the tiles have been documented at pages 75 to 78 of Appendix B of *The Residence of the British Ambassador at Lisbon* by TA Bull, published by the British Historical Society of Portugal in 1995, plus there is a selection of photographs by former Ambassador Stephen Wall. I can tell my noble friend that in December 2014 the British ambassador visited the property and was able to view the tiles, which she found to be in good repair and condition.

Lord Howarth of Newport (Lab): My Lords, the Treasury, which has an institutional blind spot about the value of soft power and culture, has for decades been bullying the Foreign Office to get rid of its fine buildings around the world. Can we have an assurance that the Chancellor will not, in his obsessive and indiscriminate cheese-paring, flog off our embassy in Paris, the residence in Vienna and indeed the Government Art Collection?

The Earl of Courtown: My Lords, as the noble Lord is no doubt aware, there are 38 designated residences that require the permission of my right honourable friend the Foreign Secretary before they can possibly be sold. The Lapa Palace was the last one to be sold. Two others are under consideration—Geneva and Cape Town, the latter because it is occupied for only two months of the year and Geneva because it is not best positioned.

Lord Addington (LD): My Lords, will the noble Earl give us an assurance that in future when this type of event occurs, the Government will publish what has happened so that there is no confusion?

The Earl of Courtown: My Lords, our heads of mission must certify annually that all Government Art Collection artwork, as well as antiques and other art, are present, in good order and properly recorded on an internal database. I recommend to the noble Lord the Government Art Collection website, where he will be able to pinpoint exactly where all the works of art are.

Lord Higgins (Con): My Lords, is my noble friend aware that civil servants appear to have a list of things to place on new Ministers' desks as soon as they arrive, which reflects their own enthusiasm. Indeed, when I first arrived at the Treasury, I immediately got a proposal to sell off the French, American and Italian embassies, which I turned down.

Noble Lords: Hear, hear!

Lord Higgins: Am I to understand that the same thing is happening again?

The Earl of Courtown: I do not think so. My noble friend, with his great experience, informs the House of what happened a number of years ago. I assure him that, as I said earlier, any decisions or requests to sell any of these designated residences would have to go over the desk of my right honourable friend the Foreign Secretary.

Lord Wright of Richmond (CB): My Lords, is the Minister aware that during my time as head of the Diplomatic Service there was a proposal from the Treasury that we should sell the British ambassador's residence in Tokyo? We were able to persuade the Treasury that this would not be a sensible idea, since it had been a gift from the former Emperor of Japan in exchange for a peppercorn rent.

The Earl of Courtown: As ever, the noble Lord, Lord Wright of Richmond, informs the House with his great knowledge.

Lord Stevenson of Balmacara (Lab): In the year in which we are celebrating our great victory at Waterloo, my attention has been drawn to the fact that we also have a responsibility to ensure that the extraordinary campaign waged by Lord Wellington in Portugal in the preceding years to that also should be celebrated. Yet when I visited Portugal only a couple of years ago I discovered that all the work that has been done there and all the activities in support of commemorating our great joint venture to defeat the French is actually being funded by the EU and small countries outside the normal range. I wonder whether Her Majesty's Government might consider putting more money into celebrating these great victories.

The Earl of Courtown: Last week there was an event in the Royal Gallery in your Lordships' House concerning the Waterloo victory and at which the present Duke of Wellington was present. However, I take note of what the noble Lord said.

Lord Lawson of Blaby (Con): My Lords, when I became Financial Secretary to the Treasury in 1979, this was one of my delegated responsibilities under Chancellor Geoffrey Howe, and I thought that it was absolutely ridiculous to waste all this time on all this nonsense. I am glad to say that I was successful in persuading the present Lord Howe that this system should be changed and we should just cut the Foreign Office budget and leave it to decide how it is going to meet it.

The Earl of Courtown: A very interesting question, my Lords.

Lord Cormack (Con): Will my noble friend ensure that the Government are a little careful in taking that precedent? Would he not agree with me that a British embassy and its contents should represent the best of what is British?

The Earl of Courtown: The noble Lord is quite right. It is very important that these residences reflect the importance of the British ambassador in these various countries.

Student Loans

Question

2.51 pm

Asked by ***Baroness Garden of Frognal***

To ask Her Majesty's Government what assessment they have made of the impact on the part-time higher education sector in England of extending loans to students with Equivalent or Lower Qualifications in certain subjects.

Baroness Evans of Bowes Park (Con): The UK is a world leader in science and innovation, having the most productive science base in the G7. To continue to support this investment we announced a relaxation of the student support rules for those taking a second degree in part-time engineering, technology and computer science courses. This comes into force in the 2015-16 academic year, so it is too early to assess the impact of the policy.

Baroness Garden of Frognal (LD): My Lords, while that is some good news, the UK's current skills shortage can be met only if adults reskill and retrain to meet that shortage. On the advice of the CBI and in the interests of productivity, will the Government consider reviewing the whole policy introduced by Labour in 2008-09 and reinstating loans for ELQ students? If not, what other support are they offering in the other sectors?

Baroness Evans of Bowes Park: I agree with the noble Baroness that providing opportunities for adults to reskill is important. However, university alone is not the only route to do this or to help us meet the productivity challenges ahead. She will be aware, for instance, that apprenticeships are not just for young people. In fact, last year, more than half of higher apprentices were over the age of 25. This Government have ambitious plans to deliver more than 3 million apprenticeships, including at degree level, over this Parliament. Just last week, the Advanced Manufacturing Research Centre announced a pioneering new education route for successful apprentices to study advanced vocational university degrees as part of their training.

Lord Stevenson of Balmacara (Lab): My Lords, part-time students are more likely to come from groups underrepresented in higher education and therefore need to be supported. However, there were almost

[Lord Stevenson of Balmacara]
55,000 fewer part-time higher education students in the UK in 2013-14, and that has been a continuous reduction of more than 40% since part-time fees were allowed to rocket. Now, the Chancellor proposes to axe maintenance grants. What is the forecast for HE part-time students in 2015-16 and beyond?

Baroness Evans of Bowes Park: As I said to the noble Baroness, there is a range of ways in which students can engage in higher education, including the 43% increase in the number of higher and degree apprenticeships compared to 2013. In 2013, 12.3 million people held a higher education qualification compared to 2.6 million in 2006. Of course one of the key impacts on people deciding what they want to do is the fact that the economy is improving. Almost 2 million jobs have been created since 2010, so people have security in their job and therefore may be deciding not to study.

Baroness Bakewell (Lab): Will the Minister acknowledge that part-time study for a full degree, done by people who already have jobs, does not allow the flexibility that she suggests is available generally? The fall in the number of students doing part-time higher degree courses is critical because the future of education may well lie in the willingness of people to take further degrees, to further their careers, while they are holding a full-time job.

Baroness Evans of Bowes Park: As I said, we are keen to continue to support part-time students. The higher and degree apprenticeships are widening access to a broad range of professions, including the automotive, aerospace and digital industries, and to occupations as diverse as solicitors, dental technicians and accountants. These apprenticeships are helping people to develop the high-level technical skills that they need, but which are also needed for the UK economy.

Lord Winston (Lab): Can the Minister give us some idea how the Government decide what degree courses are selected for this kind of support? It seems that this is not an equal issue for many of the arts and humanities.

Baroness Evans of Bowes Park: As I have said, the Government have announced a relaxation for a number of professions. I am sure that they will continue to do so to ensure that that as many people, both the young and the more experienced, have access to education and further training if that is what they wish to undertake.

Lord Stoneham of Droxford (LD): My Lords, to be successful the Government's productivity plan has to deal with skills shortages and the recent decline of part-time higher education. Do the Government have the ambition to link the shortages of skills identified by the Migration Advisory Committee with extending the exemption for loans for part-time higher education attendees?

Baroness Evans of Bowes Park: In some sectors there has been a relaxation of the rules, which has also been driven by some of the needs of the economy. We are very keen to ensure that as many people have access to higher education as possible. We will continue to look at this but, as I have said, we have seen a 43% increase in the number of higher and degree apprenticeships compared to 2013—and, crucially, we are now seeing a growing economy. Since 2010, 2.4 million private sector jobs have been created. What people really want is job security; that is what we are providing.

Lord Lucas (Con): My Lords—

Baroness Wall of New Barnet (Lab): My Lords—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, we have not yet heard from the Conservative Benches.

Lord Lucas: My Lords, do the Government plan to take forward the recommendation in the House of Lords Digital Skills Committee report that we should involve the Tech Partnership in reviving and modernising IT qualifications, particularly for the benefit of adults who wish to change career?

Baroness Evans of Bowes Park: I am sure that the Government are considering the conclusions of that report. I am happy to follow up on that with the noble Lord.

Baroness Wall of New Barnet: My Lords, it is music to my ears and, I am sure, to those of the noble Baroness, Lady Garden of Frognal, who has obviously been very involved in apprenticeships, to hear the Minister say how important they are. How does the Minister feel about the progress that is not being made in attracting women to take some of the STEM subjects apprenticeships? Many of us have been working hard to achieve that.

Baroness Evans of Bowes Park: I entirely agree with the noble Baroness that it is critical that women have access to these jobs and, in fact, to whatever career they so desire. Another obviously important thing is making sure that our schools are providing high-quality education for all students of all backgrounds, male and female, so that they have every opportunity they can in life to do what they so desire.

The Earl of Listowel (CB): My Lords, from the Cross Benches, is the Minister aware of the importance of offering basic numeracy and literacy courses to parents who may never have done very well at school? That is for their own opportunities in employment but also because of the huge advantage to children if their parents start learning, as highlighted by the National Institute of Adult Continuing Education's report, chaired by my noble friend Lady Howarth of Breckland.

Baroness Evans of Bowes Park: The noble Earl makes a very good point. In fact, under the previous Government the number of students from disadvantaged backgrounds starting at university rose to its highest level ever. This Government want to double the rate of disadvantaged young people entering university by 2020 but in order to access university, young people have to have a high-quality schooling education. That is

why we are delighted that more than 1 million more students are being taught in good and outstanding schools now than in 2010.

Death Penalty: Worldwide Abolition

Question

3 pm

Asked by ***Lord Faulkner of Worcester***

To ask Her Majesty's Government what progress they have made in securing the worldwide abolition of the death penalty.

The Earl of Courtown (Con): My Lords, during the last Parliament, the Government worked with partners, notably the Swiss Government and experts such as the Death Penalty Project and the all-party parliamentary group, to promote global abolition. This policy was successful. In 2014, only 22 countries executed, while 140 were abolitionists. We will continue to raise death penalty cases abroad. The Diplomatic Service will make the practical and moral cases against the death penalty to retentionist countries.

Lord Faulkner of Worcester (Lab): My Lords, the Government's continued commitment to the abolition of the death penalty is very welcome, but the Minister will be aware that some countries pose particular problems. Perhaps I may ask particularly about Iran, much in the news lately because of the welcome news about the signing of the deal on its nuclear programme. Is he aware that, according to Amnesty International, around 743 people were executed in Iran last year, most in secret, including juvenile offenders, drug offenders and political activists? That is probably more per head of the population than in any other country in the world. Can he give an assurance that, as UK-Iranian relations develop, Foreign Office officials will take every opportunity to demand improvements in Iran's human rights record and that the barbarous use of the death penalty on such a grotesque scale comes to an end?

The Earl of Courtown: The noble Lord, Lord Faulkner, mentions quite horrific figures from Iran. He is right about pressure. I hope that the agreement reached only last week will open the door to more work that we can carry out. The recent diplomatic breakthrough may enable more dialogue, and our diplomatic staff will take advantage of any opening possible.

Baroness Stern (CB): My Lords, I declare an interest as co-chair of the All-Party Parliamentary Group for the Abolition of the Death Penalty and express appreciation for the principled stance that the Government have taken on this matter. The Minister will be aware of Lindsay Sandiford, the British grandmother, who is on death row in Indonesia for drug trafficking. What are the Government doing to ensure that vulnerable British nationals under sentence of death like Lindsay Sandiford have effective legal representation?

The Earl of Courtown: My Lords, the noble Baroness mentions a particular case in Indonesia and legal representation. It has been the policy of all Governments in the past not to fund legal costs for those in this position, but we will work as hard as we can both bilaterally and multilaterally to protect individuals who end up in this situation.

Lord Avebury (LD): My Lords, the coalition Government produced the *Strategy for Abolition of the Death Penalty 2010-2015,* but that does not appear to have been succeeded by another strategy covering the years 2015 to 2020. Will that happen? Perhaps I may also ask the Minister about the case of Saudi Arabia. The Foreign Office website points out that 100 executions have taken place there so far this year and that we raise the matter on every possible occasion, bilaterally and through the European Union. When we do that, can we concentrate on the safeguards developed by the United Nations that are recommended for use in death penalty cases, in particular those regarding the ingredients of a fair trial?

The Earl of Courtown: My Lords, the noble Lord mentioned Saudi Arabia. We frequently raise the issue of the death penalty with the Saudi authorities both bilaterally at the highest levels and through the European Union. The noble Lord also mentioned the 2010 to 2015 plan. I can tell him that we are still funding projects through the Human Rights and Democracy fund in the US, China and south-east Asia, the Middle East and north Africa. We provide training for defence lawyers in the United States and we have supported a regional organisation in the greater Caribbean area, as well as providing support for defence lawyers in the Caribbean. We also fund important work to support abolitionists. These works are ongoing.

Lord Dubs (Lab): My Lords, is the Minister aware that we in the All-Party Parliamentary Group for the Abolition of the Death Penalty are grateful for the support we get for visits we pay to overseas countries? The United States has always been a particular difficulty. Is the Minister aware that as recently as 29 June, two judges in the Supreme Court said in a dissenting judgment that they were asking for a full briefing on a basic question of whether the death penalty violates the constitution? Although it was not a majority view, it was pretty well a landmark conclusion. Does the Minister agree that the time has come to push the United States a bit further?

The Earl of Courtown: I think that the noble Lord, Lord Dubs, is correct. The situation in America is difficult to believe, but there has been progress. Nebraska has abolished the death penalty, while Oregon and Washington State have entered a moratorium. Since 2010 we have banned drugs being exported to the United States, which was followed by the whole of the EU in 2012.

Baroness Smith of Basildon (Lab): Further to what has been said about the USA, perhaps I may raise with the noble Earl a specific issue which I would ask him to raise with the US authorities and perhaps also with our EU partners. Thomas Knight was executed in

[Baroness Smith of Basildon]
Florida on 7 January 2014 for a murder he committed at the age of 23. However, he had been on death row for 39 years. There are numerous incidents of young men being held on death row for years and years when presumably they are quite different people by the time they are executed. I ask the noble Earl to raise this very serious issue to ensure that we do not have people on death row for such inordinate lengths of time, waiting for their execution.

The Earl of Courtown: I thank the noble Baroness for bringing that to my attention. Spending that length of time on death row is quite inhuman. I will of course raise it with officials in the department.

Palace of Westminster Committee

Membership Motion

3.07 pm

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

That the Commons message of 16 July be considered and that a Committee of six Lords be appointed to join with the Committee appointed by the Commons to consider the restoration and renewal of the Palace of Westminster;

That the following members be appointed to the Committee:

Lord Carter of Coles, Lord Deighton, Lord Laming, Baroness Smith of Basildon, Baroness Stowell of Beeston, Lord Wallace of Tankerness;

That the Committee have power to agree with the Committee appointed by the Commons in the appointment of a Chairman;

That the Committee have power to send for persons, papers and records;

That the Committee have power to appoint specialist advisers;

That the Committee have leave to report from time to time;

That the Committee have power to adjourn from place to place;

That the reports of the Committee from time to time shall be printed, regardless of any adjournment of the House; and

That the evidence taken by the Committee shall, if the Committee so wishes, be published.

Lord Richard (Lab): My Lords, I am not sure whether it is in order for me to ask the Chairman of Committees this question, but why is he not in the delegation of six? I raised this matter last week on the basis that this House needs the same quality of representation as the House of Commons. As I understand it, the man who has the equivalent duties to those of the Chairman of Committees in relation to the fabric of the House in the House of Commons is going to be on the committee, while the noble Lord the Chairman of Committees is not. That seems to be a little odd, and I would be grateful for some explanation as to why this was decided upon.

Lord Foulkes of Cumnock (Lab): My Lords, I endorse what my noble friend has just said. A number of people raised this issue in the short debate we had last week, to which the Leader of the House replied. A number of people also raised the matter of equivalence of membership between the Commons and the Lords. My quite clear recollection is that the Leader of the House said that there would be two joint chairmen, but this Motion provides for the appointment of "a chairman". We cannot have two joint chairmen, one from the Commons and one from the Lords, which is the ideal we wanted, if there is to be the appointment of a chairman. I hope that the Chairman of Committees will clarify that and give us an assurance that there will be a joint chairperson from the Commons and the Lords.

The Chairman of Committees (Lord Sewel): My Lords, I should say first that I think we are fortunate that the two Back-Bench Members of the Joint Committee from this House will bring to its deliberations a very deep level of expertise and experience of the issues. I do not think that we could have selected two stronger candidates.

On the particular issues that the noble Lords raised, the basis of selection for the Joint Committee is party allocation. I understand that the usual channels in both Houses decided a party allocation to represent the relative strength and standing of the parties in the two Houses. Of course, in this House the three officeholders—the Lord Speaker, the Chairman of Committees and the Deputy Chairman of Committees—put aside all party affiliations during their terms of office, so clearly could not be considered in a scheme based on party allocations. I also point out that the individual who does my equivalent job in the House of Commons has not been nominated as a member of the Joint Committee.

Lord Foulkes of Cumnock: The Leader—sorry, he is the Chairman of Committees. He would be better as Leader of the House, but that is another story. Will the Chairman of Committees clarify the position of the joint chairman? It was made absolutely clear by the Leader of the House in our debate last week that there would be equal chairs from both Houses.

The Chairman of Committees: I am sorry that I forgot the question asked by the noble Lord, Lord Foulkes—a sin of omission indeed. My understanding is that the committee will operate on the basis of Mr Grayling in the Commons chairing one session and the Leader of this House chairing the alternate session. I understand that that is how they will proceed.

Lord Richard: Before the noble Lord concludes, for the purpose of clarity can I ensure that, as the representation from this House is six, the representation from the House of Commons is also six, and not more?

The Chairman of Committees: I can give that confirmation: it is six each.

Motion agreed.

Supply and Appropriation (Main Estimates) Bill

Second Reading (and remaining stages)

3.11 pm

Bill read a second time. Committee negatived. Standing Order 46 having been dispensed with, the Bill was read a third time, and passed.

Psychoactive Substances Bill [HL]

Third Reading

3.12 pm

Clause 58: Interpretation

Amendment 1

Moved by ***Lord Bates***

1: Clause 58, page 35, line 14, at end insert—

""access prohibition" has the meaning given by section 21(b);"

The Minister of State, Home Office (Lord Bates) (Con): My Lords, Amendment 1 simply adds a definition of an "access prohibition" to the interpretation clause.

I take this opportunity to thank all noble Lords who have participated in the debates on the Bill over the last couple of months. I am particularly grateful for the support that I have received from my noble friend Lady Chisholm. I am pleased that we have been able to make common cause with the Opposition Front Bench and I am grateful to the noble Lords, Lords Rosser and Lord Tunnicliffe, for their support. I will not hold against them the little matter of the Government's defeat last Tuesday, which was a hawkish move to strengthen the Bill as it relates to prisoners. I know that they share the Government's objective of seeking to make the provisions of the Bill as effective as possible in tackling the trade in psychoactive substances, whether in prisons or elsewhere. We will, of course, reflect over the Summer Recess on the amendments to Clause 6.

3.15 pm

I am also grateful for the valued contributions to our debates from the noble Lords, Lord Paddick and Lord Howarth, and from the noble Baronesses, Lady Hamwee and Lady Meacher. We clearly take a different view on drugs policy, but I am pleased that we have been able to find common ground and I recognise their genuine desire, which they share with the Government, to reduce the harms caused by these unregulated substances.

We are committed to bringing forward further amendments to the Bill in the House of Commons, in particular to the list of exempted substances in Schedule 1, so this House will have a further opportunity to return to these issues later in the year. As I indicated on Report, we will also give very careful consideration, following further discussions over the Recess with the Advisory Council on the Misuse of Drugs, to strengthening the definition of a psychoactive substance. However, these are matters for another day. For now, I beg to move Amendment 1.

Amendment 1 agreed.

3.15 pm

Motion

Moved by ***Lord Bates***

That the Bill do now pass.

Lord Bates: My Lords, I beg to move.

Lord Rosser (Lab): I take this opportunity to thank the Minister for his courtesy and thoroughness in responding to points raised and amendments tabled by noble Lords during our considerations of the Bill, including when the response has been made subsequently in writing. Although reservations about the likely effectiveness of the Bill have been expressed by some noble Lords during our deliberations, I am sure we all hope that, when the Bill is finally passed, it will make a favourable impact on the very real problem that it is intended to help address.

Lord Paddick (LD): My Lords, I, too, thank the Minister for the way that he has conducted proceedings on the Bill. We have had disagreements over how effective we think that this legislation will be, but, as the Minister said, we share the aim of reducing harm. We hope that, with the assistance of the Advisory Council on the Misuse of Drugs, the Bill will be further improved in the other place so that the harmful effects that could possibly arise from it are at least lessened.

Bill passed and sent to the Commons.

Charities (Protection and Social Investment) Bill [HL]

Report

3.17 pm

Clause 3: Range of conduct to be considered when exercising powers

Amendment 1

Moved by ***Lord Bridges of Headley***

1: Clause 3, page 2, line 42, leave out "or privy to"

The Parliamentary Secretary, Cabinet Office (Lord Bridges of Headley) (Con): My Lords, before I address this amendment, I thank all those who have debated, scrutinised and kicked the tyres, so to speak, of this Bill, not just in Committee but also during its pre-legislative scrutiny. Although I know there may be points on which some of us may differ, the Bill before your Lordships today has greatly benefited from the wisdom, experience and insight that a number of your Lordships, sitting on all Benches, have brought to the debate. The fact that we have managed to agree on so much reflects

[Lord Bridges of Headley]
the overwhelming wish of this House to ensure that charities continue to have the trust and confidence of the general public.

This group of amendments is focused on providing greater clarity in the Bill, and more modern language. The noble and learned Lord, Lord Hope of Craighead, who has been involved in this Bill since its publication in draft last year, raised these points in Committee.

These amendments address the old-fashioned language of "privy to", replacing it with a much clearer form of words while maintaining the threshold for intervention at the same level. Being "privy to" something can comprise more than mere knowledge, and includes an element of concurrence, or agreement, as well. We believe that the new formulation captures that.

There are two elements to the new wording: first, that the person,

"knew of the misconduct or mismanagement";

and, secondly, that they,

"failed to take any reasonable step to oppose it".

We believe that, together, both elements equate as closely as possible to "privy to" but are much clearer for the lay reader of the legislation. The amendments replace "privy to" throughout the Bill and the Charities Act 2011, except in one place in the Charities Act 2011, in Section 71. Here the context is quite different and privity does not appear to refer to anything more than just knowledge.

I apologise for the late tabling of Amendments 13A, 13B and 13C. I confess that there was an oversight on our part but we decided to table them late because without them we would have left "privy to" in one part of the Bill while addressing it in all others.

These amendments, while relatively minor changes, will improve the clarity of the Bill and make the law more understandable for the lay reader. I beg to move.

Lord Hope of Craighead (CB): I am very grateful to the Minister and those who have been advising him for this group of amendments. As the Minister pointed out, it achieves much greater clarity than the rather old-fashioned word "privy"—being used as an adjective—did. It has been replaced by two very important verbs. The value of the clarity is that there are two sides to each of these clauses that one has to consider: the person who is being suspected of having engaged in the prohibited activity; and the commission itself, which has to police the activities of the person. Clarity is needed on both sides and the way in which the clauses have been reworded achieves that.

I congratulate the Minister on finding a better form of words than I think I was able to do—or indeed the Joint Committee was able to do when it was looking at the matter. The formula is much improved. I think I must bear some responsibility for not having searched through the whole Bill and traced all the various places in which "privy" was being used. I think we have now reached finality on that issue and for that, too, I am extremely grateful.

Amendment 1 agreed.

Amendment 2

Moved by ***Lord Bridges of Headley***

2: Clause 3, page 2, line 43, after "mismanagement," insert—

"( ) that a particular person knew of the misconduct or mismanagement and failed to take any reasonable step to oppose it,"

Amendment 2 agreed.

Clause 4: Power to remove trustees etc following an inquiry

Amendments 3 and 4

Moved by ***Lord Bridges of Headley***

3: Clause 4, page 3, line 31, leave out "or privy to"

4: Clause 4, page 3, line 32, after "mismanagement," insert—

"( ) who knew of the misconduct or mismanagement and failed to take any reasonable step to oppose it,"

Amendments 3 and 4 agreed.

Clause 8: Power to direct property to be applied to another charity

Amendment 5

Moved by ***Lord Bridges of Headley***

5: Clause 8, page 6, line 41, leave out "In"

Lord Bridges of Headley: My Lords, this second group of amendments also responds to a point raised by the noble and learned Lord, Lord Hope of Craighead, and I am grateful to him for bringing this to our attention as well.

Amendments 5 and 6 relate to Clause 8, which amends the Charity Commission's power in Section 85 of the Charities Act 2011 to direct the application of charity property where the person holding it is unwilling to apply the property. The purpose of Clause 8 is to enable the commission to make an effective direction in cases where the person holding the charity property may be willing but is unable to apply it. The most common example of this problem was considered to be where financial institutions hold a charity's property but are unable to comply with a commission direction to transfer that property because to do so would result in a breach of their contract with the charity.

I am conscious that we have gone back and forth on this issue. Our initial drafting sought to remove any obstacles by allowing the commission's direction to overcome a contractual obligation owed to the charity. Importantly, Clause 8 continues to provide the specific statutory protection for a financial institution in cases where compliance with a Charity Commission direction in these circumstances might constitute a breach of its contract with a charity.

However, we have been made aware that there are other barriers that may make a person unable to comply with a commission direction of this type; for example, a person may be willing in principle to apply a property properly but lack the power to do so. Therefore, our new formulation in Amendment 6 clearly

amends Clause 8 to reintroduce "unable" so that it is clear that the commission's power to direct the application of charity property can be exercised where the person holding the property is either unwilling or unable to transfer it.

Again, this is a relatively modest amendment but it will, I believe, improve the effectiveness and practicality of this provision. I beg to move.

Lord Hope of Craighead: My Lords, here again I express my gratitude to the Minister for bringing this amendment forward. He has explained very precisely the value which can be seen in the introduction of the additional word. I know from communications with the Charity Commission that it is delighted that this amendment is being made. As I endeavoured to explain in Committee, the wording in the Bill when it was introduced left it with a problem, which has now been solved. On behalf of the commission, I am extremely grateful.

Baroness Hayter of Kentish Town (Lab): I offer the same thanks to the Minister for having listened to the arguments and for moving this amendment, which we are happy to agree to.

Amendment 5 agreed.

Amendment 6

Moved by ***Lord Bridges of Headley***

6: Clause 8, page 6, line 42, after "unwilling)" insert "is amended as follows.

(00)") In subsection (1)(a), after "unwilling" insert "or unable".

(00)") "

Amendment 6 agreed.

Amendment 7

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

7: After Clause 8, insert the following new Clause—

"Conduct of charities: disposal of assets

The Charity Commission shall ensure that independent charities are not compelled to use or dispose of their assets in a way which is inconsistent with their charitable purposes."

Baroness Hayter of Kentish Town: My Lords, Amendment 7 stands in my name and those of the right reverend Prelate the Bishop of Rochester and the noble Lords, Lord Kerslake and Lord Palmer of Childs Hill. The amendment is about the rights and the duties of independent charities which hold in trust various assets for their beneficiaries, both today and in perpetuity. Charitable law, which dates from Elizabethan times, developed to preserve and protect such assets, which are normally bequeathed or gifted for very specific charitable purposes. There are therefore rules covering the disposal of assets and the role and responsibilities of trustees, all with the same aim—to ensure that a charity's resources are spent only on the purposes laid down in its trust deed and in compliance with fiduciary and charitable law. Amendment 7 essentially restates the existing legal position and aims to give comfort to charity trustees that they cannot, without a change in the law, be compelled to sell assets where it is contrary to their charitable purpose.

We are not against the right to buy. Indeed, it was only because of the then GLC, which gave 100% mortgages to single women, and on converted premises, that I was able to move from renting to buying. I have had a letter from the CLG Minister, the noble Baroness, Lady Williams, saying that her party supported home ownership, implying that my party does not, but I take no lessons from any other party on this. Right to buy has helped many, but so did MIRAS, better regulation of mortgages, the end of the pernicious mis-selling of endowment mortgages and the setting up of the estate agent ombudsmen—all of which took place, of course, under a Labour Government. Many other interventions help people get into the housing market, but we do not want the right to buy to be at the expense of the charitable aims of those charities which, for example, have been donated land, money or property for a specific purpose, whether it is to help house the elderly or rural workers or to rent to low-income families or other particular categories of beneficiary.

The National Housing Federation worries that forcing trustees to sell property, even if they are fully compensated financially, sets a dangerous precedent for government intervention in independent charities. It does not support giving government a role which should be the preserve of housing associations' own charitable trustees. Similarly, the NCVO says:

"It would also contradict the rule according to which charities cannot dispose of assets … other than in pursuit of charitable objectives"—

that is, the use of such assets,

"for charitable, rather than political or private benefit".

There are other charitable concerns about the policy, such as whether any bequests could be invalidated in the circumstance of a forced sale. There are particular worries where a charity holds designated land that is required by the terms of a gift to be used to carry out the charity's purposes and where such land cannot be replaced by other appropriate property or land. That could be the case where a charity holds a house once owned by a particular local figure or associated with a former convent or an almshouse sponsor.

3.30 pm

Charities must also consider who else would be affected by the disposal, such as if the home forms part of a supported community for the elderly, the infirm or those with learning difficulties, where the whole is much more than a collection of residences. The sale of one or more of those units, where those not from that background move in, would have a considerable impact on the viability of the community and its shared values and resources. All that affects charities law, which is why this debate must take place on this Bill and not simply when the housing Bill finally comes to Parliament.

In terms of this Bill, the concern is that the Government want to interfere with the duties of charitable trustees to put their beneficiaries first and comply with their own trust deed. Many housing associations might sometimes welcome right to buy for their tenants where that accords with their charitable objectives. We support that. The problem, of course, is where it

[Baroness Hayter of Kentish Town]
conflicts. The amendment seeks to prevent a charity being compelled to do something that is not in its best interest. In the letter of 16 July written to me by the noble Baroness, Lady Williams of Trafford, she admitted that what the Government propose would be a "substantial change". She acknowledged that housing association charities have some apprehension about being compelled to dispose of their assets and how that fits with charities law. Quite so—that is why this Bill is the place to debate this issue.

Our amendment is about charities, many of whose tenants live in homes built with private charitable money. They are different from local authority tenants or tenants whose homes were built with some public money after 1974. Amendment 7 confirms the existing position that assets belonging to a charity must be used for that charity's purpose. Sometimes, indeed, that will be by sale to raise money or replace stock. The amendment simply says that it is for the trustees of these independent organisations to decide that—not some outside body. I beg to move.

Lord Kerslake (CB): My Lords, I declare my interests as chair of Peabody and president of the Local Government Association. I speak in favour of this amendment in light of the Government's stated intention to extend the right-to-buy policy to housing associations. I entirely support the Government's aim to extend home ownership but have serious concerns about this proposed way of doing so.

Currently, tenants in housing association properties—unless their property was transferred from a local authority and therefore covered by a preserved right to buy—are able to purchase their properties only through right to acquire. That is limited to properties built or bought after 31 March 1997 and—this is crucial—funded through social housing grant. Under the Government's current proposals to extend right to buy, all properties would be open to purchase and the available discount of up to £104,000 on a flat after three years' occupation would be much greater. That would include significant numbers of properties built with absolutely no contribution from government.

Peabody was established 153 years ago by an enlightened, London-based but American-born banker, George Peabody. The aim of the Peabody Donation Fund that he launched in 1862 was to,

"ameliorate the condition of the poor and needy of this great metropolis, and to promote their comfort and happiness".

His contribution was £500,000, equivalent to nearly £1 billion at today's prices. By 1882, 3,500 properties had been constructed, including the Whitechapel estate in east London and the Wild Street estate in Covent Garden. By 1939, there were 8,000 properties. Today, Peabody is established by statute and has 28,000 properties, but its mission has remained essentially the same. In all of its 153 years, it has received public funding for only 40.

Given that the average value of a Peabody property is over £350,000, it is likely that, even with the discount, sales will be to the better-off residents. Experience from local authority sales though right to buy is that, over time, substantial numbers of the properties are sold off, so that one-third of the homes become buy-to-let properties at market rents. These can be as much as double social rents, and so not accessible to low-income families, as was originally intended. The Government's intention is, rightly, to see one-for-one replacement but, again, local authority experience is that this is unlikely to be achieved, and certainly not at the pace of the sales or in the locations where the sales have occurred.

I have spoken extensively of Peabody, but since I first raised this issue I have been inundated by many people and organisations of all shapes and sizes with very similar concerns. For example, the Holt and Neighbourhood Housing Society was brought to my attention by Norfolk county councillor, Dr Marie Strong. This is what the chairman of that society has to say:

"The Society was funded in 1960 with land and finance by a local family because of concern for affordable local housing. Now, with the generosity of local people, the Society has 35 properties in Holt, Glandford and Letheringsett, managed by a committee of local volunteers. The aim is to provide affordable housing for local people in housing need. Not bound by local authority rules the properties are always allocated to local people which helps ensure a continuity of the community. The rents are around one-half to two-thirds market rent. The government proposal would be a gross violation of what was intended—that the properties would be let in perpetuity to local people".

If the policy is pursued in its current form, it will be contrary to the charitable intent of Peabody and housing associations like it. It would also—this is the critical point—be a major disincentive to charitable benefactors such as George Peabody and the local family in Norfolk that I referred to, to donate their money or their land for good causes, if the Government can intervene and direct the sale of those assets for very different purposes.

One wonders what George Peabody would have made of this. In 1866, he said that his donation would,

"act more powerfully in future generations than in the present; it is intended to endure forever".

Far from enduring for ever, the sequestration of property built with private philanthropic money would seriously undermine the charitable foundations and ongoing objectives of Peabody and other charitable housing associations like it. The amendment would protect charities from this, both now and in future.

Lord Palmer of Childs Hill (LD): My Lords, being on Report and bearing in mind all the comments made by the noble Baroness, Lady Hayter, and the noble Lord, Lord Kerslake, I can keep my remarks to the minimum, although I agree with all that they have said—and I certainly support the amendment. My brief point is that we should put ourselves in the place of the charity itself, which in this case may be a housing association that is told by the Government that it has to sell off its properties at a discount, as the noble Lord, Lord Kerslake, said, of up to £104,000 per property. That housing association has an ongoing business and ongoing logic of providing housing—not just the houses that it has already, such as in Peabody, but the houses that it might build for the future.

Let us put ourselves in the place of chief executives of housing associations asking their banks for finance to build more properties as registered social landlords. Any bank manager would look at them and say, "I would lend you the money, but how can you deal with

the fact that the Government are going to take a proportion of those properties away by forcing you to sell them at a massive discount?". No bank manager would lend. Therefore, if the Bill is not amended, it will take away not only housing associations' assets but their ability to borrow and build more housing for people in need. Therefore, I heartily support this amendment and hope that when we get the housing Bill we will be able to go into this in great detail.

When I asked the noble Baroness, Lady Williams, how housing associations are going to build like for like when there are discounts of up to £104,000 she replied in this Chamber and in a letter that it is government policy. It is a government policy without any arithmetic. If that is the way the Government are going, they are headed for disaster.

Lord Cormack (Con): I hesitate to rise on this occasion because I have a great deal of sympathy with what has been said so far. I was concerned when the pledge to sequester the assets of charities was made during the election, and I believe that it is very difficult to justify. However, this is not really the time or the place to debate that. Whether we like it or not—and as I made plain, I do not particularly like it—it was a government pledge. The Government have every right to introduce a Bill, just as we have every right to seek to amend that Bill, and if it is defeated in another place, I am not going to be heartbroken.

However, for us in this Bill to anticipate a crucial part of another Bill which has not yet come before us is not the right parliamentary approach. Colleagues in all parts of the House should signify their concerns and misgivings, just as the noble Lord, Lord Kerslake, did in a notable maiden speech on the Queen's Speech, and that is fine. It is good that colleagues should voice their concerns. We in this House have a reputation of which we are all proud and which I trust we will always deserve. It is for looking in minute detail at Bills that come before us to seek to amend them, for asking another place to think again and even for asking another place to think yet again.

This Bill, which in broad general terms has the support of colleagues in all parts of this House, is not the way to approach the crucial social issue which colleagues have touched upon this afternoon. I hope that, the subject having been aired, this amendment will be withdrawn. When we come to the housing Bill, that is the opportunity for all of us who have misgivings, if those misgivings are still justified, because we have not seen the final form of that Bill. It may be, and I very much hope it will be, that the Government will have taken on board many of the points that have been made in your Lordships' House this afternoon and on other occasions. Now is not the time, now is not the place, this is not the Bill to tackle this extremely important social issue, and I hope that we do not proceed to a Division this afternoon.

3.45 pm

Lord Campbell-Savours (Lab): My Lords, the noble Lord, Lord Cormack, would have a case but for the fact that the Government are relying on charitable organisations to deal with the housing crisis. We are dealing here with the nub of the issue: the charitable status of organisations that are responsible—or, in many cases, have been given that responsibility—for building homes to house people in areas of stress.

I have spoken twice on this matter in the past month. On the first occasion I read to the House a letter from a Mr Bill Bewley in Keswick, the chairman of Keswick Community Housing Trust, expressing anger and concern on behalf of the trust in Keswick, which comprises an ecumenical gathering of people, including Catholics, Protestants, Quakers, Kings Church, Methodists and others, who all voluntarily, without remuneration, give their time to build houses in Keswick through a local charitable organisation, all motivated by the single objective of helping those in need in the Keswick area. What troubles them is that, having worked in this climate of charity for so long and made that effort, they are now being engaged to build even more in the town, with another project to come on stream in the next year or two, but they will find that they are obliged by law effectively to sell their properties at a subsidised rate.

That brings me to an accompanying issue, which is what happened in the Budget. We were told in the Budget that housing associations are going to be required over the next five years to reduce rents by 1% per annum. If you take into account that requirement, which I understand might apply to the charitable organisations that I am referring to, in conjunction with the provisions that we are talking about today, you can see why we are driving these organisations, comprising people whose only wish is to serve the public, into a position where they have to relinquish their property. That is why I hope that the Minister, who has been given much notice of this issue during the course of previous debates in Committee, will come to the Dispatch Box today and put all our minds at rest.

Lord Hope of Craighead: My Lords, I absolutely understand the force of the points that have been made by the noble Lord opposite, and particularly the impressive speech from the noble Lord, Lord Kerslake, but I wonder whether the mechanism that this amendment seeks to use to solve the social problems that have been talked about is the right one. It would put a duty on the Charity Commission and expresses that duty in the widest possible terms without qualifying the charities being talked about, the nature of the compulsion that they face or what the assets are that are sought to be disposed of. It is not a targeted amendment in the sense of dealing specifically with the point about the right to buy and interference with the assets of charities in the social housing field; it is entirely general.

I have no remit for the Charity Commission, and I am not advocating anything on its behalf on instructions, but one advantage of the procedure that was used before the Bill was introduced into this House was the pre-legislative scrutiny through the Joint Committee. This issue was not raised in the course of the Joint Committee's proceedings. That is a pity because among those who gave evidence were representatives of the Charity Commission itself, who had an opportunity to comment on the various amendments to the Bill that are being proposed and to suggest improvements, as indeed we are discussing first thing at this stage.

[LORD HOPE OF CRAIGHEAD]

I do not know what the commission's position is on this clause but I suspect that it would be extremely concerned about being faced with a duty in these very broad terms and its ability, given the resources that it has to deploy right across the charitable sector, to do what the amendment requires. So, without commenting on the underlying substance, I respectfully suggest that this is not the right mechanism, and that the wording of this amendment is certainly far too wide to address the particular problem that has been discussed so far.

Lord Mackay of Clashfern (Con): My Lords, I will raise a question in relation to this amendment which has nothing to do, primarily, with the issue that has been raised, and which will come forward in another Bill. One of the problems for charities is that from time to time they are subject to compulsory acquisition. For example, if a charity owns property which is required for a road or something of that sort, the authority that has compulsory powers in relation to that will be able to acquire it. I am not clear that this amendment is consistent with that possibility, because the Charity Commissioners would find it impossible to block a compulsory acquisition if it was made within the terms of the particular statute which authorises the acquisition.

As your Lordships will know, there are many statutes which authorise compulsory acquisition. However, an important aspect of compulsory acquisition is that the acquiring authority has to pay the full value of what is required. I do not know what the Government's proposals will be in relation to this other matter, but all I can say at the moment is that the amendment does not seem properly to recognise the possibility of charitable property being acquired by compulsory acquisition under one of the compulsory acquisition statutes. I would be glad if the noble Baroness would deal with that.

Lord Best (CB): My Lords, I will raise a somewhat technocratic reason why the amendment could be very important. If government compels charitable housing associations to sell their assets—even if they are reimbursed by the Government—and then tells them how to spend the money they receive from selling their assets, these charities may become classified by the Office for National Statistics as "public bodies". If government takes away the autonomy of charities and assumes the role of their boards or trustees in crucial decision-making, a line may be crossed. Already, government heavily regulates the activities of charitable housing associations and determines their income by instructing them on the rents that they must charge. In the event that government also tells them when to dispose of their assets and at what price, and subsequently instructs them on how to use the money, intentionally or not, the charitable housing associations could be deemed by the independent Office for National Statistics as public bodies.

Does that matter? I am afraid that it matters a lot. At present, only the grants these bodies receive from government count as public expenditure, so their borrowing from banks, building societies, et cetera, adds nothing to government debt. All that changes if housing associations are classified as public bodies. The £60 billion they have already borrowed would be added to the national debt and all their new borrowing—around £4 billion this year—would be added to the Government's annual deficit. So if compelling housing associations to sell their homes—and compelling them to use the proceeds, perhaps to replace the ones they have sold—leads to these bodies being classified as public bodies, government finances will take a huge hit. Government would then feel obliged to curtail drastically further borrowing by housing associations, which would stop them delivering the affordable homes that the nation so clearly needs. There are other reasons for not pursuing the latest right to buy sales policy, but this may be the one that causes the Treasury the greatest concern. This amendment would prevent government making a mistake that it could later regret deeply.

Baroness Barker (LD): My Lords, at the moment I am training for a charity event and I spend quite a lot of time, mostly at weekends, cycling rounds the parks of south London and north Surrey. The existence of alms houses and charitable housing associations is a timely reminder of the importance that the charitable sector has always had in this field and of the extent to which the charitable housing sector has always been an irritant to government, both locally and nationally. There is something marvellous about preserving its values in concrete.

We should remind ourselves that this is the protection of charities Bill. It is principally concerned with the extent to which the Charity Commission has the power to act against charities and individual trustees to ensure that the general public continue to have faith and confidence in charities. The amendment moved by the noble Baroness, Lady Hayter, may not be perfect for her intent, but the way that I read it is that she is seeking to get from the amendment and the discussion of it an undertaking that, should the Charity Commission be called upon to judge the performance of a charity or its trustees under the policy that is being brought in—as the noble Lord, Lord Cormack, explained, it still being formulated—the test which the commission will apply is: did the trustees act in alignment with the charity's objectives? Of course, those objectives may not change in ways that are consistent with government policy. That is simply what the noble Baroness is trying to get on the record. For that reason, although the wording may not be perfect, the intent behind the amendment is worthy of our support.

Lord Graham of Edmonton (Lab): My Lords, the Government's housing policy is in a mess, and I speak of the problems being faced by a number of good people who have so far done well from legislation. The right to buy was approved by everyone who was interested in wanting to give people an opportunity to get their foot on the property ladder. However, I remind the House of what has happened. The right to buy carries with it the right to sell. Over the last 30 years those who have bought their houses at a discount, having justified and verified their entitlement to it, have been glad to have the opportunity not only to buy but to sell. As a consequence, the whole policy has been warped and needs to be looked at in general. I shall give your Lordships an illustration.

There is a couple who operate in the Ashford area. The *Guardian* newspaper last year reported that they have amassed not just one or two properties but, by purchasing in the main ex-council houses, a portfolio of 1,000 properties. That situation, with people looking for an opportunity to make money, existed when I was the Member of Parliament for Edmonton. They bought their house and then rented it out. I hope to speak in tomorrow's debate on the Budget and extend this argument. People should not kid themselves that the main beneficiaries of the purchase of council houses have been the people who occupied them at the time. The people quoted in the newspaper said that they were thinking of selling their portfolio. They already had an estimate of its value: through their empire having grown and grown, it was estimated to be worth £100 million.

4 pm

The sad fact is that people paying exorbitant rents means that they may find themselves in a situation where they have difficulties. These people in Ashford say that, if the law allows them to seek an eviction, they will. The problem is that the money that this couple have been making out of their skill in managing property has caused a build-up of properties in that way. This may or may not be the right Bill in which to do it, but I hope that, when the dust dies down, a serious look will be taken at whether it is possible to curtail the building up of an empire built, in the main, on ex-council houses.

It is all very well for the person who sells the house at the time and the person who buys the house at the time, but nonsense situations, such as the one that I have outlined, mean that there is a good opportunity for the Minister and his colleagues to think again about what is happening. If they do not think again, they will allow empires to be built based, in the main, on the input of council and national money. These properties, originally as council houses, were wholly financed by the public sector. Now, that situation has changed.

I very much hope, without making a point, that the Minister has sufficient sense to realise that this is something that he ought to say kind words about in order to put a stop to this. If he does not, I think that he is in for trouble.

Baroness Gardner of Parkes (Con): I find this very disturbing, in that I strongly oppose the sale of housing association homes. So many valid points have been put forward, but I am concerned about the points made that various other aspects in this amendment might not be quite right. I intend to support the amendment today, which is very unlike me because I am normally a very loyal Member of this side of the House. However, I accept the point that individuals have given their money. For us to take it over from them in order to hand it out, as we would virtually be doing, would be wrong.

I agree with so much that the noble Lord, Lord Graham of Edmonton, just said about people buying houses, passing them on and their being turned into buy-to-let homes as commercial opportunities. That is worrying.

The point that perhaps concerns me most is what my noble friend Lord Mackay said about this law not being quite right and having other legal implications. Can the Minister assure me that, if this amendment is carried, he will make a commitment that by the time we get to Third Reading he will come back with further amendments to make this amendment work in the way we want it to? That is why I am supporting the amendment today. However, I understand that, technically, unless the Minister indicates that he will look at it again, he might not have the right to do that at Third Reading. We have to be aware of that technicality as well.

Baroness Hollis of Heigham (Lab): The noble Baroness, Lady Gardner, made a very powerful point about the Minister considering the opinion of the House. Whether my noble friend will vote or not will be her judgment call.

The noble Lord, Lord Cormack, was absolutely right—this is the right amendment to the wrong Bill. The reason it is the wrong Bill is that we are actually back to front on this. I speak as chair of a housing association; I will be time-expired in the autumn. I remind the House that the bedroom tax is forcing up arrears; tenants' incomes have been not only frozen but cut, given some of the Budget changes; rents will be reduced; the HCA grant no longer makes new build possible; and we are increasingly dependent, therefore, on arrangements with local authorities, private bodies or charitable bodies to get the land on which we can continue to build affordable homes. Given the proposal to add the right to buy, I am going to be spending a lot of the rest of this month trying to see whether a housing association such as mine will actually be around in a few years' time. In fact, I think it will be gutted.

As I say, I hope I am wrong. I very much hope, as the noble Lord, Lord Cormack, said, that the other place will make adjustments to the Bill. We all want to promote home ownership and the shared ownership that housing associations can build; that would be the best way forward. None the less, we should protect and ring-fence housing associations, which can make an unequalled contribution, particularly in rural areas, to the viability of communities and enable young people who have nowhere else to rent and can never afford to buy to stay in villages and small towns. My local authority has lost nearly 40% of its best stock—semi-detached houses, 12 to the acre, overlooking the park where the sun always shines. They have gone and we are left with maisonettes and walk-up flats. The properties that we sold have been recycled and are now occupied by three or four students—often creating some nuisance, I am afraid, for the next-door neighbours, but with great profits to the owners. That was never the intention.

We have a dilemma. If my noble friend is satisfied with the Minister's reply and does not think it right to test the opinion of the House on whether such protection for charities should be foremost in our minds when considering the housing association Bill, we will have missed an opportunity. Our colleagues in the other place should take into account the worries and views of this House, expressed so powerfully by the noble

[Baroness Hollis of Heigham]
Lords, Lord Kerslake and Lord Best, and my noble friend Lord Campbell-Savours. I do not usually use phrases like "sending a message" or "sending a signal" but we have an opportunity to say that, while we accept that this is not the right Bill to carry an amendment like this, the House is extremely concerned about the future viability of housing associations. Housing associations such as mine, which do not deal with stock transferred from local authorities, were charitable from the beginning. We may lose that stock and find that we do not exist as a charity in a few years' time; and here, we have a Bill that is about charities.

I understand the well founded misgivings of the noble Lord, Lord Cormack—he may be right intellectually—and the concerns of the noble and learned Lord, Lord Mackay of Clashfern, with whom this issue can be discussed further. He is absolutely right to say that CPO powers have always been used, but they none the less have to be verified all the way up to ensure that they are being used appropriately. As a local authority leader I have, in the past, gone for CPO powers. However, with those reservations, we need today to say that we are worried about charities. We could say to the National Trust that we will take its assets to refurbish the Palace of Westminster. Why not? Dealing with a grade 1 listed building would be a perfectly legitimate use of the trust's assets, but no one would go down that route. However, we are doing something similar to housing associations whose distinctive characteristic is that they are charities, and whose purpose, rationale, finances and viability may be deformed by proposals that are going to come our way.

In the light of everything that has been said—including the powerful remarks of the noble Lord, Lord Cormack—if this House decides to accept my noble friend's amendment and to say to the other place, "Think again before you go ahead with that Bill", on this occasion, that is the right thing to do.

Viscount Eccles (Con): My Lords, if signals are to be sent, *Hansard* is the place in which they can be read. Ministers on our Front Bench are also very good at passing on the feeling of this House. If we were to pass this amendment, we would be placing a duty on the Charity Commission that it would never be able to perform. It only needs Parliament to make some decision or another for this amendment to become inoperable by the commission. As the noble and learned Lord, Lord Hope of Craighead, said, the commission must be hoping that the amendment is not passed, because it would in no way be in its interests if it were.

Lord Beecham (Lab): My Lords, I declare my local authority interests, one of which is to represent the ward in which the mother of the noble Lord, Lord Graham, used to live, in a rather—at that point—grim housing association block. It was part of the Sutton's estate, which has been transformed over recent years. It now provides extremely good and very popular housing, and there are other housing associations in the same small ward in my local authority, Newcastle. Anchor in particular has two or three developments. It is worrying that the Government's arrant intention to nationalise with a view to privatising, which is effectively what their policies on social housing amount to, will impact on that provision.

The amendment does not address the issue of housing only. Other charities might well be caught by other developments of the kind the Government propose to bring forward in relation to housing. For example, one could envisage charities running medical services—hospitals, perhaps—being required to put those on the market and dispose of them to other organisations. There will be other examples. The National Trust is one; it is an interesting thought that your Lordships' House and others might be saved by acting towards them as is apparently intended towards housing associations—I suspect that that is unlikely to happen. But there is a principle here which is wider than the important and topical principle of social housing, and could apply across a range of functions carried out by charities. For that reason, it is important for this House to consider the amendment seriously.

Some of the questions raised by the noble and learned Lords, Lord Hope and Lord Mackay, and the noble Lord, Lord Cormack, are valid: the wording of the amendment is perhaps not ideal. But it is not enough simply to say that *Hansard* will be read by Ministers at the other end and that is all there is to it. An amendment passed by this House would require fuller consideration than simply a reading of *Hansard* would be likely to engender. In any event, in the House of Commons it is possible to refine and improve the amendment to meet the points that the noble and learned Lords raised about the precise wording.

While we may well have an opportunity, unfortunately, of returning to this subject in the event of a specific measure coming from the Commons in relation to housing, it would be a sensible course to take to pass the amendment, particularly in view of the great concern expressed by the social housing movement. I bear in mind particularly the reference of the noble Lord, Lord Palmer, to the financing of future development, given that housing associations borrow against the value of their stock. If that is to be diminished, as it would be over time, it would obviously weaken them. But, as I have said, it is not the only case which gives rise to concern. On that basis, I hope that, if my noble friend decides to test the opinion of the House, your Lordships will support her, and encourage and facilitate a review of the position by the Government and the Commons.

Lord Hodgson of Astley Abbotts (Con): My Lords, the House should not lose sight of the central purpose of this Bill, which is to make more effective—to improve—the regulatory powers of the Charity Commission and to enable the development of the social investment movement. This is the first in a series of amendments—including Amendment 17, on the right to make representations, and Amendment 19, on public benefit—that are outwith that purpose. I have heard all parts of the House rail and criticise Governments for bringing forth what they call Christmas tree Bills. If we are not careful, we are in danger of creating such a Bill here, because we are making amendments to the purposes of the Bill and the responsibilities of the Charities Commission that are quite outwith the original

idea. Indeed, they are outside the remit that the Joint Committee, led by the noble and learned Lord, Lord Hope of Craighead, undertook.

We need to focus on the central issue: we need to give the Charity Commission the additional powers that the sector believes it should have and that the Charity Law Association and others generally believe are needed. If we go down the slippery slope of trying to add more bells and whistles to the Bill at this stage, we will be making a big mistake. I hope that the movers of the amendment will not wish to test the opinion of the House, because that could land us in position we do not want to be in.

4.15 pm

Lord Bridges of Headley: My Lords, at the start of the debate, I said that I was delighted at the level of cross-party agreement on so much of this Bill. However, this is clearly one of the very few clauses and amendments on which we differ. I have obviously listened to the speeches that have been made this afternoon and read the debates with other points that have been raised by a number of noble Lords in recent weeks. Clearly, a number of noble Lords feel extremely strongly on this issue. We have heard passionate speeches from the noble Lords, Lord Kerslake, Lord Palmer and Lord Campbell-Savours, to name just three.

While I may disagree with some—and in some cases a little more than some—of what has been said, I obviously respect the arguments that have been made. As has been said by a number of noble Lords, I know that my right honourable friend the Secretary of State for Communities and Local Government will read this debate with not just interest but great care.

Noble Lords will be pleased to hear that I will not bombard them with statistics or facts to try to underpin the rationale behind the Government's policy for right to buy—for which, as noble Lords all know, the Government secured a mandate at the general election. Neither, at the risk of aggravating and frustrating noble Lords still further, will I get into the detail of how that policy will work. I regret that I cannot do so and I will not insult noble Lords' intelligence by trying to pretend that the right-to-buy policy has nothing to do with the charities sector—of course it does. But I ask noble Lords to consider the point has been made by a number of previous speakers—surely the time and place to debate the right-to-buy policy will be when the Housing Bill is before Parliament and the details of that policy are before this House.

Furthermore, many of us agree that although the Bill touches on the issue of other areas of law such as the financing of terrorist organisations, we should not in that case attempt to review counterterrorism legislation in the Bill. So, too, here and now is not the time to debate and decide on housing policy and how it interacts with the charities sector. Furthermore, I know that my noble friend Lady Williams of Trafford has an open door to any noble Lord who may wish to discuss this with her in the weeks and months ahead.

On the actual amendment, I beg to differ with the noble Baroness, Lady Hayter. It does not simply state the existing legal position. I will explain why. The law governing charitable assets is rooted in case law. As I am sure many noble Lords will agree, a real difficulty with creating a simple statutory provision for a large area of case law is that it will invariably fail to cover the many complexities that often arise, and it will be exceptionally difficult to find a satisfactory expression that would properly cover the explanation and nuanced analysis that is often afforded in judgments in case law. Moreover, there is a real danger of agreeing to a statutory provision that could give rise to unintended consequences.

The wording in the amendment that charities may not,

"use or dispose of their assets",

will cover property assets other than land, such as investments. This raises a whole separate issue with the duties that apply to a charity's assets that are not land.

Furthermore, Charity Commission guidance on the disposal of land makes clear that such disposal must be in the best interests of the charity and in furtherance of the charitable purposes, or for the best price available, rather than be consistent with charitable purposes. These concepts have very different meanings, the latter being much wider in its potential application. Giving the Charity Commission a new and enhanced role in policing the disposal of charity assets is inconsistent with the current aim of helping the commission to focus on its core regulatory responsibilities. Requiring it to ensure that charities are not required to dispose of assets would be more than just an unwelcome distraction for the regulator.

As I mentioned in Committee, there is also the preserved right to buy in relation to housing associations, and the right to acquire. These existing rights could be undermined by this amendment.

I hope that noble Lords will see that the amendment proposed is problematic for a number of reasons. That being said, I repeat: I recognise that there are significant concerns about how the proposed policy to extend right to buy will be applied to charitable housing associations, but I would respectfully reiterate to your Lordships that the time and the place for that debate is the housing Bill. Finally, although we clearly disagree on this issue, I should like to repeat my thanks to the noble Baroness, Lady Hayter, for her co-operation on and contribution to many aspects of the Bill. I hope that, on reflection on this point, she will decide not to press the amendment.

Baroness Hayter of Kentish Town: My Lords, I thank the Minister for that and I thank all speakers who, on the substance, it seems to me, agreed with what we are trying to achieve. The difficulties are over whether this is the right Bill or the right wording, which basically says that the Charity Commission must make sure that,

"independent charities are not compelled to use or dispose of their assets in a way which is inconsistent with their charitable purposes".

If the wording can be better than that—if it should be something such as the "best interests" of charities, as the Minister says—I will be very content, if the amendment is passed, to work with him at Third Reading to make the wording correct and acceptable

[Baroness Hayter of Kentish Town]
to the Charity Commission and to the charity lawyers, who know far more about wording than I do.

On the issue, there are two things that I want to say. The first comes from what the noble Baroness, Lady Barker, said. This is a Bill about the protection of charities, and we are trying to protect charitable assets so that the money can be used for what the donors wanted when they bequeathed it. The idea of putting it on to the Charity Commission is that, basically, somebody has to protect charities from being compelled by someone else—not by their charitable trustees—to do something with the money that those who gave it did not intend.

The noble and learned Lord, Lord Mackay, asked about compulsory purchase for a road. In a sense it is always the public sector that does that; it is nationalisation. The land is taken over so that a road can be built. I said in a meeting with the Minister that it was not normally his party that wanted to nationalise things, so I am interested that over charitable housing that is what the Government want. We are talking about a swathe of housing—not one or two in the way of a new train line—that over time will undoubtedly be held by the private sector.

My second issue is that we are not talking just about housing—albeit that we have heard about the Peabody, Keswick and Sutton housing associations. We are also talking about that wider big society. I used to work in alcohol misuse issues; we ran a lot of social care. It could be our assets, under another Bill, where the Government felt that they wanted to use them in a certain way that we as an independent charity, which had raised the money, did not want to do. We have heard about the National Trust—or indeed, it could be hospitals or hospices.

The issue is not just about housing, which is why it is not appropriate to leave it to a housing Bill. We want to state something very simply: where money has been donated to an independent charity for a particular purpose, the trustees must abide by their trustee duty to make sure that the assets are used there. That is something on which this House would like to take a view.

4.25 pm

Division on Amendment 7

Contents 257; Not-Contents 174.

Amendment 7 agreed.

Division No. 1

CONTENTS

Adams of Craigielea, B.
Addington, L.
Ahmed, L.
Anderson of Swansea, L.
Andrews, B.
Armstrong of Hill Top, B.
Ashdown of Norton-sub-Hamdon, L.
Avebury, L.
Bach, L.
Bakewell, B.
Bakewell of Hardington Mandeville, B.
Barker, B.
Bassam of Brighton, L. [Teller]
Beecham, L.
Best, L.
Bhattacharyya, L.
Blackstone, B.
Blood, B.
Boateng, L.
Boothroyd, B.
Bradley, L.
Brinton, B.
Brooke of Alverthorpe, L.
Brookman, L.
Browne of Belmont, L.
Cameron of Dillington, L.
Campbell of Surbiton, B.
Campbell-Savours, L.
Cashman, L.
Chandos, V.
Chidgey, L.
Christopher, L.
Clancarty, E.
Clark of Windermere, L.
Clarke of Hampstead, L.
Clement-Jones, L.
Clinton-Davis, L.
Collins of Highbury, L.
Colville of Culross, V.
Corston, B.
Cotter, L.
Cox, B.
Craigavon, V.
Crawley, B.
Crisp, L.
Cromwell, L.
Cunningham of Felling, L.
Davies of Oldham, L.
Dean of Thornton-le-Fylde, B.
Deech, B.
Desai, L.
Dholakia, L.
Donaghy, B.
Donoughue, L.
Doocey, B.
Drake, B.
Dubs, L.
Elder, L.
Elystan-Morgan, L.
Erroll, E.
Evans of Temple Guiting, L.
Falkner of Margravine, B.
Farrington of Ribbleton, B.
Faulkner of Worcester, L.
Fearn, L.
Finlay of Llandaff, B.
Foster of Bishop Auckland, L.
Gale, B.
Garden of Frognal, B.
Gardner of Parkes, B.
German, L.
Giddens, L.
Glasgow, E.
Glasman, L.
Goddard of Stockport, L.
Golding, B.
Gordon of Strathblane, L.
Gould of Potternewton, B.
Graham of Edmonton, L.
Greenfield, B.
Greengross, B.
Greenway, L.
Grender, B.
Grey-Thompson, B.
Grocott, L.
Hameed, L.
Hamwee, B.
Hanworth, V.
Harris of Haringey, L.
Harris of Richmond, B.
Harrison, L.
Hart of Chilton, L.
Haskel, L.
Haworth, L.
Hayman, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Henig, B.
Hollick, L.
Hollins, B.
Hollis of Heigham, B.
Howarth of Newport, L.
Howe of Idlicote, B.
Howells of St Davids, B.
Howie of Troon, L.
Hughes of Woodside, L.
Humphreys, B.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Hylton, L.
Irvine of Lairg, L.
Janke, B.
Jolly, B.
Jones, L.
Jones of Cheltenham, L.
Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Judd, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kerslake, L.
King of Bow, B.
Kinnock, L.
Kinnock of Holyhead, B.
Kirkhill, L.
Kirkwood of Kirkhope, L.
Knight of Weymouth, L.
Kramer, B.
Laming, L.
Lawrence of Clarendon, B.
Lea of Crondall, L.
Lee of Trafford, L.
Lennie, L.
Lester of Herne Hill, L.
Liddell of Coatdyke, B.
Liddle, L.
Lipsey, L.
Loomba, L.
Low of Dalston, L.
Ludford, B.
McAvoy, L.
Macdonald of Tradeston, L.
McFall of Alcluith, L.
McIntosh of Hudnall, B.
MacKenzie of Culkein, L.
McKenzie of Luton, L.
McNally, L.
Maddock, B.
Mallalieu, B.
Manzoor, B.
Masham of Ilton, B.
Massey of Darwen, B.
Maxton, L.
Meacher, B.
Mendelsohn, L.
Monks, L.
Morgan, L.
Morgan of Huyton, B.
Morris of Handsworth, L.
Morris of Yardley, B.
Newby, L.
Northover, B.
Nye, B.
O'Loan, B.
O'Neill of Clackmannan, L.
Paddick, L.
Palmer of Childs Hill, L.
Parminter, B.
Patel of Bradford, L.
Pendry, L.
Pitkeathley, B.

Plant of Highfield, L.
Prashar, B.
Prescott, L.
Prosser, B.
Purvis of Tweed, L.
Quin, B.
Ramsay of Cartvale, B.
Randerson, B.
Rea, L.
Rees of Ludlow, L.
Reid of Cardowan, L.
Rennard, L.
Richard, L.
Robertson of Port Ellen, L.
Rodgers of Quarry Bank, L.
Rogan, L.
Rooker, L.
Rosser, L.
Rowe-Beddoe, L.
Rowlands, L.
Royall of Blaisdon, B.
St John of Bletso, L.
Scotland of Asthal, B.
Scriven, L.
Sharkey, L.
Sharp of Guildford, B.
Sherlock, B.
Shipley, L.
Shutt of Greetland, L.
Simon, V.
Singh of Wimbledon, L.
Slim, V.
Smith of Basildon, B.
Smith of Newnham, B.
Snape, L.
Soley, L.
Somerset, D.
Stern, B.
Stevenson of Balmacara, L.
Stoddart of Swindon, L.
Stone of Blackheath, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Suttie, B.
Symons of Vernham Dean, B.
Taylor of Blackburn, L.
Taylor of Bolton, B.
Taylor of Goss Moor, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornton, B.
Tomlinson, L.
Tope, L.
Touhig, L.
Tunnicliffe, L. [Teller]
Turnberg, L.
Turner of Camden, B.
Tyler, L.
Tyler of Enfield, B.
Uddin, B.
Verjee, L.
Walker of Gestingthorpe, L.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Walmsley, B.
Walpole, L.
Warner, L.
Warwick of Undercliffe, B.
Watson of Invergowrie, L.
West of Spithead, L.
Wheeler, B.
Whitaker, B.
Whitty, L.
Wilkins, B.
Williams of Baglan, L.
Williams of Crosby, B.
Williams of Elvel, L.
Willis of Knaresborough, L.
Winston, L.
Wood of Anfield, L.
Woolmer of Leeds, L.
Worthington, B.
Wrigglesworth, L.
Young of Hornsey, B.

NOT CONTENTS

Aberdare, L.
Ahmad of Wimbledon, L.
Altmann, B.
Ashton of Hyde, L.
Astor of Hever, L.
Attlee, E.
Baker of Dorking, L.
Balfe, L.
Bates, L.
Bell, L.
Berridge, B.
Bew, L.
Black of Brentwood, L.
Blackwell, L.
Blencathra, L.
Bowness, L.
Brabazon of Tara, L.
Brady, B.
Bridgeman, V.
Bridges of Headley, L.
Brougham and Vaux, L.
Brown of Eaton-under-Heywood, L.
Browning, B.
Buscombe, B.
Byford, B.
Caithness, E.
Callanan, L.
Carrington of Fulham, L.
Cathcart, E.
Chisholm of Owlpen, B.
Colwyn, L.
Cope of Berkeley, L.
Cormack, L.
Courtown, E.
Craig of Radley, L.
Crickhowell, L.
Cumberlege, B.
Dannatt, L.
De Mauley, L.
Dear, L.
Deben, L.
Denham, L.
Dixon-Smith, L.
Dundee, E.
Dunlop, L.
Dykes, L.
Eaton, B.
Eccles, V.
Eccles of Moulton, B.
Elton, L.
Empey, L.
Evans of Bowes Park, B.
Farmer, L.
Faulks, L.
Fellowes, L.
Fellowes of West Stafford, L.
Finkelstein, L.
Flight, L.
Fookes, B.
Forsyth of Drumlean, L.
Fowler, L.
Framlingham, L.
Freeman, L.
Freud, L.
Gardiner of Kimble, L. [Teller]
Geddes, L.
Glenarthur, L.
Gold, L.
Goldie, B.
Goodlad, L.
Goschen, V.
Griffiths of Fforestfach, L.
Hamilton of Epsom, L.
Hannay of Chiswick, L.
Helic, B.
Henley, L.
Heyhoe Flint, B.
Higgins, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Hooper, B.
Hope of Craighead, L.
Horam, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
James of Blackheath, L.
Jay of Ewelme, L.
Jenkin of Kennington, B.
Jopling, L.
Kakkar, L.
Keen of Elie, L.
King of Bridgwater, L.
Knight of Collingtree, B.
Lamont of Lerwick, L.
Lang of Monkton, L.
Lawson of Blaby, L.
Leach of Fairford, L.
Lexden, L.
Lindsay, E.
Lingfield, L.
Listowel, E.
Liverpool, E.
Livingston of Parkhead, L.
Lothian, M.
Lucas, L.
Luce, L.
Lyell, L.
McColl of Dulwich, L.
Mackay of Clashfern, L.
Magan of Castletown, L.
Mancroft, L.
Marlesford, L.
Maude of Horsham, L.
Mawhinney, L.
Mawson, L.
Mobarik, B.
Moore of Lower Marsh, L.
Morris of Bolton, B.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Noakes, B.
Norton of Louth, L.
O'Cathain, B.
O'Neill of Gatley, L.
Oppenheim-Barnes, B.
Patten, L.
Patten of Barnes, L.
Perry of Southwark, B.
Prior of Brampton, L.
Rana, L.
Rawlings, B.
Ribeiro, L.
Ridley, V.
Risby, L.
Rose of Monewden, L.
Ryder of Wensum, L.
Sassoon, L.
Scott of Foscote, L.
Seccombe, B.
Selborne, E.
Selkirk of Douglas, L.
Selsdon, L.
Shackleton of Belgravia, B.
Sharples, B.
Sheikh, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shields, B.
Shrewsbury, E.
Spicer, L.
Stedman-Scott, B.
Stowell of Beeston, B.
Suri, L.
Swinfen, L.
Taylor of Holbeach, L. [Teller]
Trefgarne, L.
Trimble, L.
True, L.
Tugendhat, L.
Ullswater, V.
Wakeham, L.
Warsi, B.
Wheatcroft, B.
Williams of Trafford, B.
Wilson of Tillyorn, L.
Wright of Richmond, L.
Younger of Leckie, V.

4.39 pm

Clause 9: Automatic disqualification from being a trustee

Amendments 8 and 9

Moved by ***Lord Bridges of Headley***

8: Clause 9, page 7, line 10, after "D" insert—

"(a) "

9: Clause 9, page 7, line 11, at end insert ";

(b) for "to which P was privy," substitute "which P knew of and failed to take any reasonable step to oppose"."

Amendments 8 and 9 agreed.

Amendment 10

Moved by ***Lord Bridges of Headley***

10: Clause 9, page 7, line 26, at end insert—

"Case K

P is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003."

Lord Bridges of Headley: My Lords, I rise to move this amendment, which is also in the names of the noble Baroness, Lady Hayter, and the noble Lord, Lord Watson of Invergowrie.

Despite what has just happened, I must start by paying tribute to the noble Baroness, Lady Hayter, for her pursuit of this cause. The very first time I met the noble Baroness, just minutes after my introduction, she highlighted this flaw in the Bill, with great charm but with her characteristic force of conviction. As I have said before, I am in complete agreement with her and other noble Lords in wanting to protect children and vulnerable adults from the risk of abuse in charities.

In Committee, the noble Baroness presented a compelling case for automatic disqualification to extend to sex offenders. I am pleased, therefore, to respond with Amendment 10, which will do just that. I was delighted that the noble Baroness, Lady Hayter, and the noble Lord, Lord Watson of Invergowrie, put their names to this amendment. I think it goes to show the breadth of support for this measure. I just hope that the noble Baroness will not reprimand me for stealing her thunder.

Amendment 10 adds a new case, case K, to the criteria that give rise to automatic disqualification from charity trusteeship and senior management positions. Case K is a person who is subject to the notification requirements in Part 2 of the Sexual Offences Act 2003, often referred to as being on the sex offender register. Such a person is considered to require monitoring in order to manage the risk of sexual harm they may pose to the public. Our policy rationale is that they are unfit to be in a position of trust, controlling funds held and activities carried out for the public benefit, and should be disqualified from being a charity trustee or being in a senior management role within a charity unless and until they are no longer subject to notification requirements or are granted a waiver from the disqualification by the Charity Commission; for instance, the commission might consider it appropriate to grant a waiver to enable someone to take up a position in a charity that works with ex-offenders.

The unfitness results not just from the fact that it would damage public trust and confidence in charities if someone in that position were able to serve as a trustee or in a senior management role but because people in such roles may well have privileged access to children or vulnerable people, even if the charity is not routinely working with such groups; in other words, its trustees and employees would not necessarily be subject to Disclosure and Barring Service checks. The noble Baroness, Lady Hayter, gave a good example in Committee of a charity which provides a community hall that is used by Girl Guides or for children's parties.

As I said in Committee, automatic disqualification of sex offenders does not in any way mean that charities can lower their guard. Charities must still have in place robust policies and procedures to safeguard their beneficiaries, and where charities are undertaking regulated activity they will still need to obtain Disclosure and Barring Service checks. But the amendment will, I am sure, result in greater protection of children and vulnerable adults from risk of abuse in charities. Given the number of historic cases that have come to light across all sectors of society, anything that reduces that risk is to be welcomed. I thank the noble Baroness and the noble Lord for their support, and I commend the amendment to the House.

Baroness Hayter of Kentish Town: My Lords, I have only two things to say: thank you and sorry. The Minister had only just taken off his red gown after being introduced when I got at him about this, and that does need an apology. I also want to thank him for engaging with us on this, for having got exactly the right amendment and for describing it far better than I could. I also think it shows the value of your Lordships' House that, on an issue such as this that does not divide us politically, we have the same aims of protecting young people and we are able to work together to move this forward. My noble friend and I are very happy to support this amendment.

Amendment 10 agreed.

4.45 pm

Clause 10: Power to disqualify from being a trustee

Amendments 11 to 13C

Moved by ***Lord Bridges of Headley***

11: Clause 10, page 11, line 4, leave out "either"

12: Clause 10, page 11, line 5, leave out "or privy to"

13: Clause 10, page 11, line 6, after "mismanagement," insert—

"( ) the person knew of the misconduct or mismanagement and failed to take any reasonable step to oppose it,"

13A: Clause 10, page 11, line 12, leave out "either"

13B: Clause 10, page 11, line 13, leave out "or privy to"

13C: Clause 10, page 11, line 14, after "mismanagement," insert—

"( ) the person knew of the misconduct or mismanagement and failed to take any reasonable step to oppose it,"

Amendments 11 to 13C agreed.

Amendment 14

Moved by ***Lord Bridges of Headley***

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

"Fund-raising

(1) Section 59 of the Charities Act 1992 (prohibition on certain fund-raising without agreement in prescribed form) is amended as follows.

(2) In subsection (6) for "such requirements" substitute "the requirement in subsection (7) and such other requirements (including any requirements supplementing subsections (7) and (8))".

(3) After that subsection insert—

"(7) The requirement in this subsection is that the agreement must specify all of the following—

(a) any voluntary scheme for regulating fund-raising, or any voluntary standard of fund-raising, that the professional fund-raiser or commercial participator undertakes to be bound by for the purposes of the agreement;

(b) how the professional fund-raiser or commercial participator is to protect vulnerable people and other members of the public from behaviour within subsection (8) in the course of, or in connection with, the activities to which the agreement relates;

(c) arrangements enabling the charitable institution to monitor compliance with subsection (1) or (2) by reference to the agreement.

(8) The behaviour mentioned in subsection (7)(b) is—

(a) unreasonable intrusion on a person's privacy;

(b) unreasonably persistent approaches for the purpose of soliciting or otherwise procuring money or other property;

(c) placing undue pressure on a person to give money or other property."

(4) In the Charities Act 2011, after section 162 insert—

"162A Annual reports: fund-raising standards information

(1) If section 144(2) applies to a financial year of a charity, the annual report in respect of that year must include a statement of each of the following for that year—

(a) the approach taken by the charity to activities by the charity or by any person on behalf of the charity for the purpose of fund-raising, and in particular whether a professional fund-raiser or commercial participator carried on any of those activities;

(b) whether the charity or any person acting on behalf of the charity was subject to an undertaking to be bound by any voluntary scheme for regulating fund-raising, or any voluntary standard of fund-raising, in respect of activities on behalf of the charity, and, if so, what scheme or standard;

(c) any failure to comply with a scheme or standard mentioned under paragraph (b);

(d) whether the charity monitored activities carried on by any person on behalf of the charity for the purpose of fund-raising, and, if so, how it did so;

(e) the number of complaints received by the charity or a person acting on its behalf about activities by the charity or by a person on behalf of the charity for the purpose of fund-raising;

(f) what the charity has done to protect vulnerable people and other members of the public from behaviour within subsection (2) in the course of, or in connection with, such activities.

(2) The behaviour within this subsection is—

(a) unreasonable intrusion on a person's privacy;

(b) unreasonably persistent approaches for the purpose of soliciting or otherwise procuring money or other property on behalf of the charity;

(c) placing undue pressure on a person to give money or other property.

(3) In this section—

(a) "commercial participator" and "professional fund-raiser" have the meaning given by section 58 of the Charities Act 1992 (control of fund-raising: interpretation);

(b) "fund-raising" means soliciting or otherwise procuring money or other property for charitable purposes.

(4) Section 58(6) and (7) of the Charities Act 1992 (references to soliciting money etc) apply for the purposes of this section as they apply for the purposes of Part 2 of that Act.""

Lord Bridges of Headley: My Lords, I am again grateful to the noble Baroness for tabling her amendments and for bringing this issue to the attention of the House. I will first speak to Amendment 14 tabled in my name.

When this issue was debated only a few weeks ago, I said that three questions needed to be answered: first, whether the standards fundraisers have set themselves are set high enough; secondly, whether the structures for self-regulation are the right ones; and thirdly, whether fundraisers and the charity trustees who oversee them accept the need for change to ensure that donors are treated with honesty, respect and decency. We now know rather more about all three issues, and on all three, more needs to be done to maintain and strengthen public trust in charities—which is a key underlying aim of the entire Bill.

On the first, the news since that debate has been profoundly depressing. The revelations in the *Daily Mail* did what investigative journalism is supposed to do: shine a light on people who are treating others badly because they think no one is looking. I thank the newspaper for doing that. Of course, the stories in the *Mail* do not typify the majority of fundraisers, who are in the main thoroughly decent people doing a vital job, be it holding jumble sales, doing fun runs or hosting large charity events. However, allegations of inappropriate pressure being placed on those with dementia and of ludicrously self-serving interpretations of the law on data sharing have rightly angered broad swathes of the community, and many in the charity and fundraising sectors too.

I know that the fundraising sector has tried to respond and that the self-regulatory bodies are working on a number of proposals on issues such as cold calling, data sharing and regularity of contact. In part this has been in response to the challenge laid down by my honourable friend in the other place, the Minister for Civil Society, Rob Wilson, who has been working hard on this matter and has put in place some swift measures to bolster public confidence. He and I—and I think the noble Baroness, Lady Hayter—agree that this work needs to continue apace. But the answers the fundraising bodies have so far provided are piecemeal and do not comprise a convincing answer to the second question, which is whether the system as a whole is the right one. Indeed, I think few observers would argue that the system's response under the stress of the last few weeks has made a compelling case that it is.

I therefore very much welcome the fact that Sir Stuart Etherington has accepted the Minister for Civil Society's request to chair a cross-party panel to address just this question. I am delighted, too, that my noble friend Lord Leigh of Hurley, the noble Baroness, Lady Pitkeathley, and the noble Lord, Lord Wallace of Saltaire, have agreed to join that panel. The review will take a root and branch look at what is needed to ensure that we have a system that is fit for purpose and that supports public trust and confidence in charities. Sir Stuart has the licence to be bold and imaginative. His panel has set a brisk pace. It has met once and will report in late September. Its members have our full support.

The response of sector leaders to Sir Stuart's findings will in part form the answer to the third question, of whether fundraisers and the charity trustees who oversee them accept and fully embrace the need for change. It is now quite clear that the leaders of some of our charities need to take much greater responsibility for the fundraising carried out in their name. We cannot have a "don't ask, don't tell" approach in the sector, where a charity's CEO and trustees choose not to

[Lord Bridges of Headley]
attend in any great depth to how their organisation engages the public when fundraising. The CEO's responsibility for fundraising cannot end with simply demanding that the fundraising director brings the money in while he or she focuses exclusively on the charity's mission in the field.

Our amendment seeks to address just this point in two ways. First, it would require third-party fundraising organisations, of the sort that featured so heavily in the recent *Mail* articles, to write their fundraising standards into their contracts with the charities that employ them. That would include how the fundraiser will protect vulnerable people and how the charity will monitor how standards are met. That way, all parties will be clear and upfront about what will be done in the charity's name, and about their respective responsibilities.

Secondly, the amendment would require charities with incomes over £1 million to set out in their annual reports their approach to fundraising, whether they use paid third-party fundraisers and how they protect the wider public and vulnerable people in particular from undue pressure in their fundraising. Again, the point is to require the leadership of a charity to take responsibility for their fundraising practice and set it out for all to see. We know that this is only part of the picture and it is intended to complement a strengthened self-regulatory system, not to replace it. Furthermore, in keeping with our entire approach, these measures seek to be proportionate and targeted to address the issues as we see them today.

I know, too, that the noble Baroness's amendments are intended to ensure a well-regulated system, bringing in the valuable funds that serve beneficiaries while protecting the interests of the public who give that money. Clearly, the adequacy of the existing self-regulatory system—the elements of it and how they combine together—must be looked at afresh but state regulation is far from a panacea. We firmly believe that Sir Stuart's panel should be given the chance to succeed and self-regulation to succeed with it. My concern is that the amendment pre-empts the review and in effect moves straight to statutory regulation, even as it cements one part of the existing self-regulatory landscape in place. I suggest we await Sir Stuart's findings before we invest so heavily in the FRSB. As the noble Baroness said in Committee, the FRSB's self-regulation system has so far "failed to work".

As for the reserve power, that remains at Ministers' disposal should self-regulation be found to be unworkable. However, I do not believe that we are yet at that point—I repeat, yet. Furthermore, statutory agencies such as the Information Commissioner and the Charity Commission are already permitted to intervene where there are serious abuses. I know that the former is investigating the GoGen allegations and has very significant sanctions at his disposal should serious wrongdoing be proved. I therefore continue to hope that the jolt the fundraising and charity sectors received in the last few weeks and the action we are taking will usher in an era of greater awareness and responsibility for fundraising within the sector.

I hope that on reflection the noble Baroness will not press her amendments. I thank the noble Lords, Lord Watson and Lord Wallace, the noble Baroness, Lady Pitkeathley, and my noble friends Lord Hodgson and Lord Leigh for their contributions on this issue. I beg to move.

Baroness Barker: My Lords, I thank the Minister for introducing this new amendment in such detail and making time available to explain its purpose to Members in meetings. I preface my remarks by returning to an observation I made at Second Reading about the alacrity with which some matters have been attended to. This is one of those occasions on which there is a great deal of haste which is perhaps not warranted and may not be helpful in trying to get to the root of the problem.

While the Minister wishes to commend the *Daily Mail* for its attention to this issue, I simply wish that the *Daily Mail* would turn its attention to the activities of many of the financial institutions of this country, not least the banks, in their treatment of people with Alzheimer's and other vulnerable adults. If it were to do that, it would rise in my estimation—not a difficult thing, I have to say. But if it genuinely cares about people who are vulnerable, rather than just wishing to have a go at charities, it will continue its campaign and look at the issue in a much wider way.

That said, everybody in the charity sector understands that there is a problem—and the charitable sector has sought for some considerable time to deal with this issue. It has been a long-standing problem. I remember when I started working with charities 25 years ago, we were not dealing with the internet and there was not so much direct marketing, but there was direct marketing, and still the same complaints happened, although perhaps not to such a degree. I do not know whether noble Lords heard the Information Commissioner, Christopher Graham, on the "Today" programme a couple of weeks ago, addressing this exact issue. He was quite clear; he said that we did not need further legislation—that we have the legislation that we need.

The key issue is about the multiple use of donor lists by charities. We need to make sure that all charities are fully observant of existing data protection laws. We do not need the legislation. That said, the Government are to be commended on what they propose in this amendment. At the very least, it will cause the charitable sector to think long and hard about the regulation and guidance, which is what will really matter to charities' daily activities. We should be in no doubt that charities have the right to continue to try to raise money, and they need to do so. It is not a question of whether they should—it is just how.

The Minister would expect on his first outing that an amendment of this nature would be subject to a number of queries and criticisms in your Lordships' House. I would focus noble Lords' attention on new subsection (8) in Section 59 of the Charities Act 1992, as proposed in the amendment. It talks about,

"unreasonable intrusion on a person's privacy … unreasonably persistent approaches for the purpose of soliciting or otherwise procuring money or other property",

and,

"placing undue pressure on a person to give money or other property".

That is fine—but who decides what the definitions are, and who decides whether the activities of a charity have been unreasonable or have placed "undue pressure" on someone? When it has been decided that a charity has acted inappropriately, who is responsible for administering what sanctions to a charity that is found to be deficient?

A further point that I would like the Minister to address is how having this legislation would help a member of the public to understand what they should do were they to be on the receiving end of "undue pressure", or if they knew of somebody else on the receiving end of such pressure. How would they know what to do?

I draw noble Lords' attention to subsection (1)(e) of new Section 162A of the Charities Act 2011, as proposed in the amendment. It deals with the annual reports on fundraising standards that charities are supposed to bring forward under this legislation. They have to talk about,

"the number of complaints received by the charity or a person acting on its behalf about activities by the charity or by a person on behalf of the charity for the purpose of fundraising".

5 pm

That is somewhat crude. The number of complaints means nothing unless it can be compared to some standard. Is it going to be compared to the number of complaints about other charities or what? It could be that a charity's purpose is unpopular. It might be a drugs and alcohol charity. People may take exception to being contacted about that sort of issue. I would like to see a bit more fleshing out of exactly what we are expected to look at rather than crude numbers.

The Minister spoke about the commission which has been set up under the auspices of the NCVO, directed by Sir Stuart Etherington, and includes a number of Members of your Lordships' House. Those of us who recently heard Sir Stuart speak on the sector at a large dinner will know that he is on a mission with this. The charitable sector knows that it has a problem. The problem has been gone over several times in the past few months by the *Daily Mail* for purposes which we can all imagine. The charitable sector wants to have a system which is as watertight as it can be to make sure that charities which are genuinely carrying out legitimate fundraising in an ethical manner can show that they are doing so and that we can weed out the very few organisations which are not.

Baroness Hayter of Kentish Town: My Lords, before I turn to the wording of this amendment, I say that in Committee the noble Baroness, Lady Barker, had to hear about the horrendous experience that Barclays Bank had just put my uncle though; he has Alzheimer's. In response to her comments, I have today tabled a Question for Short Debate about how banks deal with vulnerable clients, so perhaps we can move together on that.

Unfortunately, other than on that, I take a different view on the amendments the Government have tabled. I thank the Minister for bringing forward these amendments. They are significant, and we warmly welcome them and the work set in hand with the committee he mentioned, whose recommendations we anticipate the second week in September. Looking round at the members, they will keep to that deadline, I am sure.

I, too, pay tribute to the Cooke family, who had to go through the inquest just last week, but who have been willing to share Olive Cooke's experience of being bombarded with requests for charitable donations. I also join the Minister in congratulating the *Daily Mail*—coming from me, it may not like that—on its investigation and campaigning which revealed unacceptable practices, shortfalls in monitoring by the charities themselves and, as the Minister said, the weakness of the current self-regulation model.

It is perhaps odd that we have a regulator which does not regulate one vital bit of charitable activity, which is fundraising. This lies in the hands of a voluntary organisation, the Fundraising Standards Board, which works to a code adopted by the Institute of Fundraising. Three years ago, the noble Lord, Lord Hodgson, gave it five years to get more into line, and it has not yet done so. The Fundraising Standards Board and the Institute of Fundraising have not done their work particularly well. Interestingly, the code does not outlaw nor even limit cold calling, or even require caller line identification. The Fundraising Standards Board, in addition to signing up only two-thirds of those who ought to belong, does not publicise itself, so no one knows to take complaints there, and it does not monitor compliance, or it would not have to have been Mrs Cooke's family or the *Daily Mail* that did that job. Even when it threw out a professional fundraising company, it seems to have taken it back in under another name.

That all lets down the charity sector and the enormous generosity of Britain's charitable donors. I also believe, as noble Lords will understand from our amendment, that it questions whether self-regulation can work in this sector. Hence our Amendment 16, which would require charities and professional fundraisers to belong to the standards board. We recognise that that would have enormous consequences should they be removed from membership for misbehaviour. The NSPCC, one of the charities let down by the professional fundraisers, itself favours compulsory membership of the Fundraising Standards Board as, in its words, the current self-regulation system is too weak. We also think that it is time that the Charity Commission's reserve powers were brought into play. I am reassured by the Minister's words that that can be done fairly quickly if the Minister feels it is necessary. So for the moment we want to put our amendment on hold, as we warmly welcome the Government's own amendments and we await Sir Stuart Etherington's report.

Government Amendment 14 achieves a number of things. First, and I hope the family can take the benefit from this, it can indeed be seen as Olive's law; it will mean that something will be on the statute book as a consequence of her experience. Secondly, it puts into the Bill the essence of a code, describing as unacceptable:

"unreasonable intrusion on a person's privacy … unreasonably persistent approaches for the purpose of soliciting or otherwise procuring money … placing undue pressure on a person to give money".

[Baroness Hayter of Kentish Town]
As the noble Baroness, Lady Barker, intimates, the Charity Commission may well have to flesh that out a bit, but having that in the Bill is excellent. It makes it clear that such behaviour is unacceptable with regard to vulnerable people but also, in the Government's words, to the wider public. We particularly welcome that; it is important. Oxfam's submission to us, for example, concentrates very much on the vulnerable, especially those with Alzheimer's. However, we believe that all unethical methods need to be stamped out, regardless of the target, so we welcome the Government's wording on that.

Thirdly, the Government's amendment will force large charities to state whether they are members of the FRSB. We hope, along with the Government, that that will shame non-members and their trustees because the trustees have to sign off in their annual reports their approach to fundraising and any complaints received. Boards of trustees will no longer be able to be grateful for the income without asking too many questions, as the Minister said. Importantly, the Government have set up what we think is a pretty powerful group—I am looking around at its members in the Chamber today—and we look forward to it reporting back before Third Reading about whether Amendment 14 will indeed do the trick. We welcome the group, as do the NSPCC and Oxfam, which has also suspended its contract with commercial fundraisers, and we look forward to its recommendations.

Should the group suggest that further amendments are needed, we will be happy to work with the Government to facilitate this. We might therefore want to pursue our amendment or some other at Third Reading, depending on what the Government's review group advises and the Government's own response to that. We have yet to be persuaded that membership of the FRSB should not be mandatory, or that the Charity Commission's reserve powers should not be brought into force. However, we are reassured by the Minister's words on this.

For the moment, I thank the Minister, and indeed his colleague in the Commons, who found time to meet us to discuss this, and for coming forward with such a good amendment. We will be very happy to support it when it is put to the vote shortly.

Lord Bridges of Headley: My Lords, I thank the noble Baronesses, Lady Barker and Lady Hayter, for their words. As with many other issues that we have discussed and will discuss, this is clearly one where we have clear agreement on both the changes that are necessary and the change that we want to bring about. I stress that the amendments we are looking at today represent a start of measures that are targeted at where we know the real problems have arisen: in fundraising agencies and where charity trustees have failed to ensure proper oversight of their charity's fundraising practices. As the noble Baroness, Lady Hayter, just said, the review that Sir Stuart is conducting is now under way. If further legislation is needed, we will be able to consider that when the Bill goes to the other place. My honourable friend the Minister for Civil Society, Rob Wilson, has said that he will be happy to discuss the findings and recommendations on a cross-party basis; we will be happy to take that further.

As usual the noble Baroness, Lady Barker, made some forensic points on these clauses. I will attempt to answer them now, but if I fail to address them, I will be happy to pick them up with her after we have finished proceedings today. She asked who decides on the definition of "unreasonable". In the first instance, the charity itself decides in setting the terms of its fundraising agreement, but ultimately the Charity Commission can intervene, using its existing powers, if the charity is not doing enough. That said—and this is an important point—the Charity Commission has already committed to updating its fundraising guidance later this year and will take these new requirements into account when it does so.

The second good question the noble Baroness asked was: what are the sanctions where charities are deficient? Here, it would be for the charity commission to decide where the charity fails to meet its obligations. The third question was: how will a member of the public know what to do if they feel that the charity is not meeting these new requirements? That is an extremely good point, and I can see that Sir Stuart's review is absolutely key. We need to ensure that we focus on this issue from the point of view not just of the charity but of the public as well. Finally, as regards the number of complaints, that is another good point that we need to return to with Sir Stuart and in guidance, and I will make sure that is reflected by the Charity Commission.

To conclude, these amendments, coupled with the review being undertaken by Sir Stuart Etherington, give us a real opportunity to restore public trust and confidence in charity fundraising where, in the last few weeks, it has been found wanting.

Amendment 14 agreed.

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(1)(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 (Lab): My Lords, I will take just five minutes to move this amendment because I set out the reasoning at considerable length in Committee on 1 July, and the case that I made then still stands. I will restrict my remarks to developments since that time, notably at the United Nations. There are two main issues, and I contest the two main premises of the letter dated 13 July from the Minister, the noble Lord, Lord Bridges of Headley, in response to the questions that I posed on those issues then.

However, before I turn to those issues, perhaps the Minister will respond to a separate point that I made in Committee. The commission's normal registration procedures can take a couple of years in what it

considers to be a complicated case. They clearly do not match the requirements of a charity with a limited lifespan—in our case, of a little over one year. If ground-breaking fixed-term charities can in practice be arbitrarily ruled out for such reasons then it crosses the border between being simply an operational matter and a matter of public policy and the Government should address it. I would be grateful if the Minister will consider it before Third Reading.

I will now address the issue of the accountability of the Charity Commission, hence the reason for my proposed amendment to the present Act. My first bone of contention is the disingenuous way in which the commission went about blocking the application of the Hammarskjöld Inquiry Trust. This was purported to be—not exclusively, it said, but indispensably—on the grounds of the claimed lack of interest in the trust's work on the part of the United Nations. This has indeed been the main bone of contention of the trustees as a body since we first made contact with the Charity Commission exactly three years ago. The Minister's letter sidesteps the undisputed fact that the commission's claim to that effect is now clearly seen to be plain wrong. As the Minister's reply does not address that fact, I ask him once again whether he will take this opportunity to accept that that is so. If he wishes to deny it in the face of the pellucidly clear evidence now before us, on what grounds does he do so?

5.15 pm

On the related matter of whether the commission was influenced by the Government or the intelligence services, the Minister's letter simply reports that the,

"Commission records do not indicate",

that it had been "nobbled" in such a way. As Mandy Rice-Davies would undoubtedly have said, "Well, they wouldn't, would they?".

The second issue—one of global significance—is whether the British Government and our intelligence services, among those of other nations, perhaps I may add, including the United States National Security Agency, are or, even now, are not fully co-operating with the further investigations of the United Nations. In a letter to me dated 8 July, the United Nations Deputy Secretary-General encloses a memorandum introducing a report of the panel appointed by the UN General Assembly last autumn to review the evidence brought forward by the Hammarskjöld Commission. The Clerk's office has kindly arranged for a copy of this material to be placed in the Library and noble Lords will therefore be able to judge for themselves.

The UN panel concludes, inter alia, that there is strong evidence that a second plane was involved in some way in causing the crash of the Secretary-General's plane in Ndola in September 1961. If true, that would have been known about by the people in the control tower at Ndola airport, who probably included members of the British and Rhodesian security services. They were certainly at the airport.

The UN Secretary-General is now recommending that this autumn the General Assembly should agree to him pursuing requests for specific information made available by the panel to certain member states and urging all member states to declassify any relevant documents, having regard to the fact that it is now more than 50 years since the event. This is not referred to in the Minister's letter dated 13 July. However, will he comment on it and will Her Majesty's Government now co-operate fully with the United Nations in its further investigations?

Lord Bridges of Headley: My Lords, I understand that the noble Lord, Lord Lea, was obviously frustrated by the approach of the Charity Commission when he tried to register the Dag Hammarskjöld trust, and that his impression of the commission has been informed by and reflects that particular case. I must say that waiting several months for a response to a letter does not seem to be good customer service and I, too, would have been extremely frustrated.

For most charities with standard charitable purposes, the process for registration with the Charity Commission is quick and straightforward. In 2014-15, the commission registered over 4,600 charities. For organisations with purposes that are innovative or do not fall within previously recognised charitable purposes, the process of registration can indeed take longer. The law does not recognise wholly novel charitable purposes, but purposes can still be charitable if they are analogous to or within the spirit of charitable purposes specifically identified in the 2011 Act or if they were charitable purposes recognised by the common law before 1 April 2008. Where people want to register as a charity an organisation which has purposes that may not fall clearly within established categories of charitable purposes, the commission must proceed with caution in assessing whether the organisation really has been established for purposes that are charitable in law.

I turn to the specific issue of the Dag Hammarskjöld trust. I do not know all and every detail of the case and it is right that I should not, as the commission is operationally independent. However, as the noble Lord, Lord Lea, said, I have written to him responding to some of the specific questions he raised in Committee about what the Government knew about the case. I apologise to the noble Lord, but I cannot at this Dispatch Box add to the detail that was in the letter sent to him. I regret that, but I absolutely cannot—it is a very detailed case.

On his amendment—which is really what we are debating—the Charity Commission already reports its performance against principles of best regulatory practice, usually framed in terms of proportionality. It does this in its annual report, in its annual *Tackling Abuse and Mismanagement* report and in stand-alone case reports. I hope your Lordships will forgive me for not repeating the detailed ways in which it does all this as I set it out in Committee at length. This amendment, by highlighting one particular aspect of Section 16, casts doubt on the extent to which the commission should report on other aspects of its general duties. It is, in that respect, undesirable.

Finally, I hope the noble Lord, Lord Lea, will reconsider the offer from the Charity Commission's chairman to meet him and discuss this case. I fear that I have not been able to reassure the noble Lord that his amendment is not necessary—although I hope that I

[Lord Bridges of Headley]
have done so. I assure him that his difficulty in trying to register the Dag Hammarskjöld trust was not representative of the norm.

Lord Lea of Crondall: My Lords, I thank the Minister for that reply. On the first point, he clearly does not feel that there is anything amiss with the accountability of the Charity Commission. I think he is hiding behind the phrase "operational matter". When a matter of this importance is put before the House, and with the detail that I have presented, is it not incumbent on the Cabinet Office or the Minister and his officials to look further into it? In other circumstances or areas, one could call it a miscarriage of justice.

As to the question of co-operation regarding the unfinished business of the United Nations arising from the work of the Hammarskjöld Inquiry Trust, we will now have to await the findings of the Secretary-General as he presses the British and other Governments on their failure, to date, to release all relevant records to the UN. It will then be up to the United Nations, not me, to decide whether to point the finger at anyone.

There is one thing of which I am increasingly certain. Historians will take note of the high likelihood of the existence of a second plane and, similarly, of the high degree of suspicion that there was subsequently a cover-up by certain Governments, not excluding the British Government then and subsequently. In time-honoured words, history will be the judge. I beg leave to withdraw the amendment

Amendment 15 withdrawn.

Amendment 16 not moved.

Amendment 17

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

17: 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: My Lords, the amendment also stands in the name of my noble friend Lord Watson. The House may wonder why we have had to table it, given that it is already law that charities have the right to make representations. In fact, they have the right to make representations to any part of government about policy, laws or their enforcement, provided that it is not their main business, it is to achieve their charitable aims and it is not party political. However, there are many who doubt the Government's acceptance of this right and their willingness to hear from people who normally have no voice—those without power and influence in society.

Let me rehearse the evidence. The Prime Minister, very early on, stated that lobbying was the next big scandal waiting to happen, and he did not mean lobbying by charities but cash for access, paid-for commercial lobbying and big business influencing Parliament or government. We applauded his insight and welcomed the coalition Government's announcement of a statutory register of lobbyists. But what did we get? We got a wimp of a register that consisted of only consultant lobbyists and, as of last week, just 84 registered lobbying businesses. That is because, of course, in-house lobbyists, whether from airports, the defence industry, IT, food and drink, the energy sector or developers, do not have to register. More than that, the Bill that was actually introduced and since enacted covered, of all things, charities—those who speak out on behalf of their beneficiaries who, almost by definition, are the poorest in society, such as the ill, homeless and hungry in the world. It is these charities which must register with the Electoral Commission, whereas in-house, multimillion-pound lobbyists do not have to go on the register. For no reason at all, unions were also included. They must undergo a double audit to ensure that their membership records are accurate, despite there being no evidence that they are not and no complaints from the existing registrar.

If all that did not suggest that the Government wanted to gag the voices of the least powerful in society or those who they disagree, we got last week a whole new tranche of proposals to weaken the voice of workers. The Trade Union Bill is yet another attempt by the Government to stifle democratic scrutiny, protest and challenge. Indeed, it looks very much like another gagging Bill. In fact, it is worse; it even risks criminalising ordinary working people—from midwives to factory workers—if they challenge low pay or health and safety concerns. Not content with seeking to muzzle charities and restrict access to justice, the Bill smacks of trying to silence critics of the Government and their policy. All the while, big business can lobby.

We fear that the Government will do everything to help big business to lobby, ex-pats to vote and maybe fund political parties, but muzzle working people, their unions and political representatives, and beneficiaries of charities who have no one else to speak for them. For those reasons, we feel the need to assert again that charities have to right to speak out on behalf of their beneficiaries where this helps to achieve their charitable objectives.

As the Charities Aid Foundation said, this amendment reiterates existing law that charities are able to take part in political campaigning or activity as long as it is not party political. This is a principle worth reinforcing after the lobbying Act, which caused confusion for a number of charities, which are less clear about the legitimacy of their campaigning activity. The Charities Aid Foundation believes that the amendment is important in ensuring that charities are able to continue to fulfil their campaigning function and seek to achieve positive change that will help their beneficiaries. It states:

"The campaigning activities of charities might … lead to criticism of government or the policies of political parties, but ensuring that charities are able to continue their advocacy role is a critical part of … civil society".

The CAF goes on:

"Many countries across the world look to the UK for guidance about the best way to allow civil society to thrive, and we must ensure the ability of charities to speak up for the voiceless remains a part of the remit of the UK's charities".

I could not have put it better. That is the reason for this amendment. I beg to move.

5.30 pm

Baroness Pitkeathley (Lab): My Lords, I want to speak in favour of the insertion of the proposed new clause, and declare an interest as a former chief executive and now vice-president of a campaigning charity, Carers UK.

Last week, I gave a lecture on 50 years of the carers' movement in which I argued that the fact that carers, their needs and their contribution are now so widely recognised is due almost entirely to the work of campaigning charities such as Carers UK, which have enabled the carer's voice to grow strong and influential in bringing about policy change. Just to support what my noble friend Lady Hayter said about leading the world, I say that the carers' movement is indeed an example to the whole world; it is in contact with emerging carers' movements throughout the world and is a global influence.

I want to ensure that such organisations are confident in the legitimacy of their actions, whether it be campaigning for a change from which all will benefit or opposing a proposed change which is likely to disadvantage that client group. I know that it can be said there is nothing which currently inhibits such action on the part of charities and I believe that the Charity Commission may revise its so-called CC9 guidance to make sure that this is understood. However, like my noble friend, I believe that the passage of the lobbying Act has had the effect—I know that it was not the effect that was necessarily intended—of limiting campaigning by charities. We saw this clearly in the run-up to the general election, where charities did not have the strong voice that we normally expect at such times. It has made charities nervous; it has diminished their confidence. The insertion of the proposed new clause would go some way to remedying this situation and re-establishing that confidence. I emphasise that I want that confidence to be re-established not for the benefit of the charity but for that of the recipients of that charity's services, by influencing policy in the way which is such a proud tradition in our country.

Lord Lea of Crondall: My Lords, in supporting the amendment, perhaps I may revert to a point which came up in Committee. It concerns what exactly we are to believe is the position under the present law.

The noble Lord, Lord Wallace of Saltaire, gave a long disquisition on party political support—which we knew was not charitable—but there are many examples of where the objection "this is political" is used against the registration of charities which in no sense are party political. The charity that I have been the chairman of is an example which your Lordships have heard about possibly to the point of tedium, but it demonstrates the fact that the dividing line at the moment is drawn in a place which the Government say is different from where it actually is drawn. It is drawn somewhere in the murky middle by arbitrary and subjective decision by the Charity Commission, which is dangerous for its credibility.

I have raised the example of an anti-EU charity putting out in a press release a narrative beginning, "In the latest outburst from the gauleiter of the European Commission, Mr Juncker". As I pointed out, "gau" and "leiter" are two quite straightforward German words—"gau" means district and "leiter" means leader—and until 1933 there was nothing wrong with "gauleiter". But ever since 1933, there has been a lot wrong with "gauleiter". And so that is not political. How on earth can the Minister defend the arbitrariness and subjectivity of the commission when it pronounces that it objects to the Hammarskjöld inquiry commission on the grounds of it being "political" and says not a word about other charities which find favour with it?

Lord Judd (Lab): My Lords, I spoke at some length on this issue in Committee and will therefore not try the patience of the House on Report by repeating all that. I simply say that, as somebody who has worked in the charitable field for quite a lot of my life—I have been chief executive of more than one charity; I have been an honorary officer and a trustee, and I am currently a trustee of one charity—there is an underlying issue here which is of profound importance.

Charities with great experience of front-line engagement have come to realise that they are sometimes aiding and abetting the problems which exacerbate the difficulties faced by those whom they are trying to help, because they are removing the unpalatable symptoms of what is wrong and disguising what is causing the problem. They have come to see that through the experience of their own work. There are many trustees and many staff in some of what I think everyone would on balance agree are the better, more experienced charities who have come to realise that they simply cannot go on doing this, because they are treating symptoms and settling for that, and that one of the most important things they can do in the service of those whom they seek to help is to advocate their situation and to seek the changes which will overcome the causes of the problems of those who are the victims, and that it would be dishonest to do anything else.

Personally, I find the way in which the law on charity has operated in recent years to be perfectly acceptable, and charities have responded to that very well by recognising that they have a duty to ensure that what they are advocating really does arise out of the experience of what they are doing. That is not just a matter of legal, moral responsibility; it is also one of effectiveness, because if they can be seen to be speaking out of real experience that is a very strong muscle in their campaigning.

However, we have to face the reality that there are those who have never been comfortable with this situation and there have been noises in recent years that people would like to curb the sector. That in my view would be disastrous and totally unacceptable and unfair to those who are really trying on our behalf, sometimes valiantly, courageously and bravely, to do the things that are necessary. From that standpoint, to have it explicitly stated in the Bill has great merit. I am therefore glad to see the amendment here and I hope that the House will find its way to endorsing it.

Lord Bridges of Headley: My Lords, I have no difficulty at all in accepting the premise of the amendment—and much that the noble Baroness, Lady Hayter, said—which states that charities should be free to campaign where that is an effective means of

[Lord Bridges of Headley]
furthering their charitable aims. Speaking up for their beneficiaries, who may have no voice in the democratic debate, stands long in the tradition of the charitable sector. Yes, it may be uncomfortable for some to hear the hard truths that they are told, but that is democracy at work and freedom of speech in action.

Charities have always campaigned, which is as it should be in a free society, and charity campaigns have brought about much good, opening our eyes to issues others have overlooked, often resulting in beneficial changes to the law. Examples are legion and stretch back over generations, and long may that continue. My objection to the amendment is not therefore that what it says is wrong. Indeed, it is not even seeking to have the right to campaign reflected in law, for it already is enshrined in law, through case law, as the noble Baroness said. My concern is that seeking to compress that case law into an amendment in the Bill is difficult, to say the least, and would be likely to inadvertently shift the boundaries of what is permitted under the law in unanticipated and unhelpful ways.

As well as being fraught with difficulty, such an amendment is unnecessary. The implication of the case law is set out in Charity Commission guidance CC9 and, with very few exceptions, that guidance is well understood and observed. Unlike primary legislation, commission guidance can be updated, with proper consultation, to ensure that it remains congruent with case law and up to speed with developments such as the rise of social media.

The introduction of the Transparency of Lobbying Non-party Campaigning and Trade Union Administration Act, to which a number of noble Lords referred, has recently made the relationship of the law and lobbying a matter of intense debate, and I can understand why. That Act is part of electoral law, and this is clearly not the time to rehearse that debate. However, the noble Baroness, Lady Pitkeathley, was one of many noble Lords who referred to the so-called chilling effect that it might have had at the last election, so I am pleased that my noble friend, Lord Hodgson of Astley Abbotts, has explicitly called for evidence from the voluntary sector and from noble Lords in his ongoing review of the third party campaigning rules that were updated by Part 2 of that Act. A clear view of the evidence about what impact the updated rules have, or have not, made in their first year is exactly what is needed on an issue that has aroused such strong feeling. The Charity Commission would obviously need to take account of my noble friend's findings should it decide to review CC9. If there were any such review, the commission has committed to say so publicly and consult widely and wisely.

On the point made by the noble Lord, Lord Lea, the Charity Commission does indeed take action in cases where charities of all political persuasions are seen to have crossed the line. During the last election, a charity that was making a point that could be construed as being supportive of the Conservative Party was pulled up short. I therefore do not think it strictly true to say that it does not take action.

This Government welcome and support the campaigning role of charities, properly regulated and properly understood, and acknowledge the benefit that that brings to wider society. I hope that on that basis, and given what I have said to reassure the noble Baroness, she will feel able to withdraw her amendment.

Lord Lea of Crondall: The Minister has totally misunderstood the purport of my question, which I will repeat. It is clear that the dividing line about what is political has nothing to do with support for a political party. What the Minister just said is a red herring. Of course, things can be ruled out for direct or indirect support for the Labour Party or the Conservative Party. My point was this. That is not in practice the dividing line drawn by the commission, where party political support is ruled out and other matters are ruled in.

Lord Forsyth of Drumlean (Con): Oh!

Lord Lea of Crondall: I would like, on the second time of asking, with the permission of the noble Lord, Lord Forsyth—from a sedentary position if you please—to have an answer to the question that I posed in Committee that was not answered and I now repeat.

5.45 pm

Lord Bridges of Headley: I am sorry if I displease the noble Lord still further this afternoon, but any concerns about inappropriate language or material on the part of a charity should be referred to the Charity Commission, which is the independent regulator and will assess those points on a case-by-case basis. The Charity Commission can and does investigate these sorts of concerns in accordance with its risk framework, which sets these things out. I am sorry if the noble Lord dislikes that answer, but that is it.

Baroness Hayter of Kentish Town: My Lords, I thank my noble friend Lord Judd, who ran Oxfam, and my noble friend Lady Pitkeathley. If my memory is right, the Cabinet Office made Carers UK charity of the year this year, so I am sure that the Minister will have heard particularly from her on that. The Cabinet Office made a great choice.

I thank the Minister. I very much welcome his endorsement of the premise behind this. He gets what we are about. I welcome what he said about the Government listening carefully to the wise words that we know we will have from the noble Lord, Lord Hodgson. We await his report. Having on record his acknowledgement of the role that advocacy can play on behalf of those without voices is to be welcomed. We look forward to that report—no pressure there, then—from the noble Lord, Lord Hodgson, but for the moment, I beg leave to withdraw the amendment.

Amendment 17 withdrawn.

Counter-ISIL Coalition Strategy

Statement

5.47 pm

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, with the leave of the House, I shall now repeat a Statement made in another place by my right honourable friend the Secretary of State earlier this afternoon on "Counter-ISIL Coalition Strategy". The Statement is as follows.

"Mr Speaker, ISIL poses a direct threat to the UK and to countries around the world. Last month, 30 British citizens were murdered on a beach in a brutal and cowardly attack inspired by ISIL. It is right that the UK is making a significant contribution to the international coalition to defeat ISIL and destroy its bases in Iraq and Syria.

More than 60 countries, both within the region and from outside, are part of that international effort, demonstrating the widespread opposition to and abhorrence of ISIL's barbarous terrorism. There is a well-planned, integrated strategy to defeat ISIL which includes: action to cut off its funding; stopping the flow of foreign fighters; humanitarian assistance to both Iraq and Syria; strategic communications co-chaired by the UK to tackle its poisonous ideology; and the military campaign.

This strategy is overseen by Ministers from all the key nations, including the Prime Minister of Iraq, Haider al-Abadi. Our strategy is therefore comprehensive and broader than simply military action. It deals with the ideology and territory that is ISIL's centre of gravity that it is committed to expanding. However, the military element is essential. The coalition has helped to halt and hold ISIL after its rapid advance across Iraq last summer. Coalition airpower, including sophisticated UK aircraft, flies daily missions to strike ISIL targets and gather intelligence.

The air campaign is helping to turn the tide and it will support ground forces to ultimately defeat ISIL. The Iraqi Prime Minister has been very clear that those forces must be local forces. Western troops operating in a ground combat role would serve only to promote ISIL's ideological narrative and radicalise more people.

Our expertise is being used to help train local forces and to support efforts to generate Sunni forces to retake and hold the ground in Sunni areas. So far, the coalition has trained nearly 11,000 Iraqi personnel, with the UK training over 1,700. Iraqi forces, supported by coalition airpower, have had some successes against ISIL, retaking Tikrit, pushing ISIL out of Baiji and away from the Kurdish region of Iraq, and they have recently begun operations to retake Ramadi. Since August last year, ISIL has lost about a quarter of the territory that it held in Iraq.

Roadside and vehicle-borne bombs are slowing the progress of Iraqi forces. I can announce today to the House that the first additional counter improvised explosive device training team will deploy around mid-August. When complete, that will bring the number of British troops inside Iraq to 275.

Tackling ISIL only in Iraq is illogical when ISIL itself does not respect international borders. Its command and control centre is in northern Syria. It is from there that its weapons and fighters flow into Iraq. It is from there that its global influence spreads and from where the direct threat to the UK comes. In Syria, the UK is contributing up to 85 personnel to the US-led programme to train and equip the New Syrian Forces trained outside of Syria, but which will fight ISIL once reinserted back into Syria. Our aircraft are gathering intelligence over Syria for the coalition and we are also the only country flying manned intelligence, surveillance and reconnaissance aircraft over Syria. Some 30% of the entire surveillance operation is British.

Let me turn now to the issue of embedded personnel. As I reported to the House earlier today, while the UK is not conducting air strikes in Syria, our Armed Forces regularly have embeds in the forces of our close partners. Embedded UK personnel operate as if they were the host nation's personnel under that nation's chain of command, but they remain subject to UK domestic, international and host nation law. Ministerial approval is required for UK embeds to deploy with allied forces on operations. Over the last 12 months, a total of five pilots have been embedded at one time or another with forces conducting strikes over Syria; none is currently involved in air strikes. A further 75 personnel have been embedded with US, Canadian and French forces in a range of operations against ISIL.

ISIL has killed many of our fellow citizens and it is actively plotting to kill more. The Prime Minister today set out our plans to tackle extremism and radicalisation at home. We are also determined to use the forces at our disposal to do more to tackle ISIL at its source. I commend this Statement to the House".

My Lords, that concludes the Statement.

5.52 pm

Lord Rosser (Lab): My Lords, I thank the Minister for repeating the Statement already made in the other place by the Secretary of State updating the position in Iraq and Syria in respect of action against ISIL. The Secretary of State has also issued a Written Statement today on the subject of UK embedded forces in which he confirms that,

"up to 80 UK personnel have been embedded with US, Canadian and French forces",

since the international coalition commenced military operations against ISIL last year. The Secretary of State went on to say:

"A small number of embedded UK pilots"—

I think it was five—

"have carried out airstrikes in Syria against ISIL targets",

although,

"none are currently involved in airstrikes";

and:

"Ministerial approval is required for UK embeds deployed with allied forces on operations".

The House of Commons voted against military action in Syria in 2013 and parliamentary authority has only been given to UK air strikes against ISIL in Iraq. The Prime Minister told the House of Commons on 26 September 2014:

"I have said that we will come back to the House if, for instance, we make the decision that we should take air action with others in Syria".—[*Official Report*, Commons, 26/9/14; col. 1266.]

That undertaking has clearly been broken, unless the Minister is going to tell us that neither the Prime Minister nor the Secretary of State for Defence knew what was going on with UK pilots carrying out air strikes in Syria. Can the Minister tell us, therefore, if the Prime Minister and the Secretary of State for Defence knew? If they did, when did they know, and which Minister gave the required approval, and when, for these UK embeds to be deployed with allied forces on operations? Were they aware that in so doing, they were authorising UK pilots to carry out air strikes in Syria against ISIL targets?

[Lord Rosser]

Did the Prime Minister know that embedded UK pilots had carried out, or had been authorised to carry out, air strikes in Syria against ISIL targets when he made his statement on 26 September last year? If the authorisation for UK pilots to carry out air strikes in Syria against ISIL targets was given during the time of the previous coalition Government, can the Minister say if the then Deputy Prime Minister would have been advised of, or his approval sought for, a small number of embedded UK pilots carrying out air strikes in Syria against ISIL targets?

The involvement of members of our Armed Forces in Syria has come to light only as a result of a Freedom of Information Act request, and the future of that Act is now under threat from this Government. Without that ability to make a Freedom of Information Act request and secure an answer, the involvement of members of our Armed Forces in Syria would not have come to light since it is clear that neither this Government nor perhaps the previous coalition Government had any intention of telling either Parliament or the British people, even though Parliament had voted against military action in Syria and the Prime Minister had pledged to come back to the House if the decision was made that we should take air action with others in Syria.

In his Statement, the Secretary of State said:

"UK personnel have embedded with other nations' air forces since the 1950s";

and in the House of Commons today, the Secretary of State sought to say that the Government had actually been quite open about what had happened because they had responded to a freedom of information request. Can the Minister tell us the last time embedded UK forces have been involved in operations and military action in a country when the House of Commons has voted against our Armed Forces being involved in military action in that country and has not subsequently changed its decision?

On the Secretary of State's claim of openness by the Government because they had responded to a freedom of information request, the reality is that without that request—and most people would have assumed that, in the light of the Prime Minister's undertaking last September, there would be no British military personnel involvement in operations in Syria—the first the nation might have known about this activity would have been if something had gone wrong. Can the Minister now give an undertaking that there will be no further use of embedded forces in Syria without parliamentary consent, in accordance with the Prime Minister's undertaking?

We share the Government's abhorrence of ISIL's cold-blooded terrorism and we remain ready to work with the Government to defeat ISIL and will carefully consider any proposals that they decide to bring forward. In so doing, we would need to be clear about what difference any action would make to our aim of defeating ISIL, about the nature of any action, its objectives and legal basis. But going behind the back of Parliament and keeping it in the dark, as it is clear the Government have done with the forced disclosure that UK pilots have carried out air strikes in Syria against ISIL targets contrary to Parliament's decision, does not help.

Somebody in government has tried to be too clever by half by maintaining, as the Secretary of State for Defence has done in his Written Statement, that the Prime Minister's undertaking excluded UK personnel embedded within other nations' armed forces operating in Syria, on the basis that it applied only to the deployment of UK forces. The Prime Minister certainly did not make that exemption, and neither did Parliament in its decision. That somebody has done a disservice to the nation, to Parliament and to our Armed Forces—which have served, continue to serve, and will always serve us with great bravery and commitment.

Lord Wallace of Saltaire (LD): My Lords, I am most worried about the statement in this Statement:

"There is a well-planned, integrated strategy to defeat ISIL".

That is not what it looks like to many on these Benches and elsewhere. We are in an extremely complex situation in the Middle East in which some of our partners are on our side in some respects and on the other side for other purposes. I was being briefed at lunchtime today about the complexities around the Kurdish forces which are involved in the conflict both in Syria and in Iraq, and the deeply ambivalent attitude of the Turks and of the Iraqi Government to their activities. That is merely one of the many complexities that we face.

The coalition, after all, includes Turkey, Qatar, Saudi Arabia, Jordan, and many others, many of which have reservations about how we see the conflict. For many purposes, Iran is effectively now an additional member of the coalition, and one of the strongest forces opposing ISIS. I wish I could see a well-integrated strategy. I fear that it is not possible to have one, given the complexity of the situation facing us.

We are talking about local forces that are engaging ISIS. Jabhat al-Nusra is one of the forces that engage ISIS but I am not entirely sure that we want to support it or provide it with more assistance. Some of the Shia militias in Iraq are not as easy as we would like, and sadly the Free Syrian Army, which we have been training, is not one of the strongest forces in the land. I was also worried by what the Prime Minister said at the weekend about domestic radicalisation and counterterrorism because we are all clear that there are direct links between domestic radicalisation and the actions of some of our allies and partners in promoting radical and jihadist versions of Islam against moderate Islamic practices.

We recognise that the Government are edging towards asking for British planes to be involved in bombing in Syria. A small number of British planes bombing ISIS in Syria is no more likely to resolve the multiple conflicts across the Middle East than bombing Damascus would have done two years ago. There is no shortage of aircraft in the Gulf states and Turkey that are quite capable of bombing ISIS from the air. It worries me that we are told that 30% of the surveillance activities over Syria are being conducted by British planes. That suggests that not many other planes apart from American ones are flying over Syria.

Sadly, some of the Governments have themselves supported radical Islamic groups and are still ambivalent about attacking Sunni groups, however radical or brutal, such as Jabhat al-Nusra. It is not in Britain's interests to cling to the hard-line Sunni side of a

developing Sunni-Shia conflict. Nor is it in our interests to present ourselves to ISIS as an existential enemy—I note that the Statement downgrades "existential threat" to "direct threat", which is perhaps a little better—when ISIS is a much more direct threat to moderate Muslims and to regimes across the Middle East. We should be working with others to promote a coherent response from the neighbours of Syria and Iraq, which we can support, not repeating the mistake of the 2003 Iraq war when we followed the Americans into bombing and then occupying an Arab country.

Some of Britain's allies in the Middle East have actively funded radical Islamic mosques and movements in the UK and elsewhere. The Prime Minister's commitment to combat radicalisation within Britain would be more persuasive if he spelled out to the Saudi Government, in particular, our condemnation of Saudi money funding radical groups, and that the Saudis must now themselves take responsibility for containing violent jihadism among Sunni Muslims.

The Prime Minister responded positively to a request from our Middle East partners that we should conduct an inquiry into the Muslim Brotherhood. It is now time for the Prime Minister to ask them in return to conduct an inquiry into the funding of radical Islamic groups in our territory.

I have some questions, if I may. Which local forces are responding? Do they include Kurdish forces in Syria and Iraq? Do they include the Shia militias? What is their attitude to Jabhat al-Nusra? How many of our Middle Eastern partners are currently flying air strikes over Syria? I was told the other day that only one was doing so—Jordan. In terms of embedded personnel, how many RAF pilots are embedded in US drone units, which are flying drones, including armed drones, over the Middle East? How many embedded personnel from other states are currently embedded in British forces? I have been told that French pilots are flying in RAF strike fighters, for example. We, of course, know about the Dutch in the UK/Netherlands Amphibious Force. Are there others? Would it not be proper, either now or later, to give us at least a Written Statement telling us what the position is the other way round as well?

Earl Howe: My Lords, I am grateful to both noble Lords for their comments.

The implication, if not the overt proposition, of the remarks made by the noble Lord, Lord Rosser, was that Her Majesty's Government had been guilty of bad faith towards Parliament. I ask him to accept that there has been no bad faith towards Parliament. Indeed, that is the last thing that Ministers want.

I take the House's mind back to the vote that took place in the House of Commons on 29 August 2013. The context of that vote was a proposal to approve UK military action to prevent and deter the use of chemical weapons by the Assad regime. The Motion before the House was not about, and significantly did not cover or forbid, anything else. It explicitly did not recognise the rise of ISIS, which had not by then occurred. What has ensued from those votes?

At no time have British pilots or British aircraft been involved in strikes against the Assad regime under the British flag. The will of Parliament has, therefore, not been flouted in that sense. Indeed, the United States has not been involved in air strikes against the Assad regime. In accordance with a decision of the House of Commons on 26 September 2014 we have been involved in coalition operations against ISIL in Iraq, and we have supported our allies in their operations against ISIL in Syria—notably in surveillance operations. There have not, on the other hand, been any UK airstrikes over Syria. What we are talking about now are US airstrikes against ISIL in Syria, which have included some embedded UK pilots over the last few months.

Embedded personnel are not acting under a UK chain of command. That is why Ministers did not think it incumbent on them to report to Parliament about the potential use of those embeds. I was asked when formal authority was given. I understand that it was given in early October last year by the Secretary of State for Defence and the Prime Minister. Operations conducted by the United States did not in our judgment fall within the scope of the Government's commitment to return to Parliament if the UK were ever to propose to take military action in Syria.

I naturally regret it if the noble Lord feels that he would have taken a different view. However, it has been long-standing practice by Governments of all colours not routinely to publicise embeds, as they are not our forces or indeed our operations. Those operations are a matter for the forces concerned. The view of Ministers was and remains that there was no need to change that position as these pilots were operating as members of the host nations' military, so the House should be clear that this is not Britain conducting airstrikes in Syria. However, of course, we confirm the position, if asked. When my department received a request we were happy to set out the position.

I can say, too, that there is a clear legal basis for coalition operations in Syria, which governs any activity that takes place in that country. Any activity by UK personnel embedded within US or Canadian forces will be conducted in accordance with the UK's interpretation of international law, and of UK law and the appropriate rules of engagement.

With regard to the future, the House will be aware that we do not regularly update either House of Parliament on this routine area of defence activity. As I said, we respond to parliamentary inquiries when those are put to us. UK forces are regularly embedded in the forces of other nations. They have been for many years, and we have a long-standing exchange programme with allies, meaning that there will always be a small number of UK military personnel operating under the command of foreign nations. It would be quite impractical to have some kind of unwieldy, running commentary on military operations conducted by other nations.

I turn to the remarks of the noble Lord, Lord Wallace, many of which I welcomed and agreed with. ISIL cannot be defeated on the battlefield alone. We continue to work to support the kind of inclusive political settlements that would help to deal with the causes of ISIL's rise. In Syria, this means that we are working to support the moderate opposition and to push for a political settlement.

[Earl Howe]

The noble Lord said that, in his perception, there was no visible sign of a strategy. However, I bring his attention to the fact that there is a very concerted political mechanism overseeing the campaign against ISIL, of which the military component is only one part. That strategy involves a number of key nations. There have already been two significant meetings, at Lancaster House and in Paris, to draw up and take stock of the strategy. It has five strands, as the Statement indicated: counterinformation, the flow of fighters, the humanitarian dimension, countering the financial flows that ISIL receives, and military operations. We are supporting the Iraqi Government in their commitment to inclusive governance and reconciliation between communities, particularly as they re-establish security and governance in areas liberated from ISIL's control. We are also pressing Prime Minister Abadi to progress his national guard law to strengthen the Iraqi security services' accountability.

The noble Lord asked me what the value-added of a UK component in offensive operations in Syria would be, were we ever to come to Parliament to seek permission for that. He asked me a number of detailed questions. If he will allow me, I will reply in writing to the extent that I have the information, but the United Kingdom can and does offer some unique capabilities that would undoubtedly be seen as extremely helpful if we were to join offensive operations over Syria, not least a capability for precision bombing.

I also ask the House to reflect on the overall context of what we are talking about. ISIL is a ruthless organisation. It has murdered several of our innocent citizens in Tunisia and in other parts of the world very brutally. It is right that we support our United States allies in what they are doing to counter ISIL. As the Statement made clear, ISIL's centre of operations is in northern Syria. While we are not proposing ever to flout the will of Parliament in terms of conducting offensive operations against Syria ourselves, nevertheless we will continue to play our part in what has become a very effective coalition.

6.13 pm

Lord King of Bridgwater (Con): Does my noble friend recognise that the House thinks the Government are quite right to bring forward, before the House rises, this Statement on their strategy to counter ISIL? It is against a situation that every single Member of this House recognises is extraordinarily grave, in terms of both security and the possible humanitarian catastrophe that might affect some of the countries we are dealing with. Against that background, I find it absolutely mind-blowing that the sole contribution from the Opposition Front Bench was to argue against the system of embedding, which anybody involved in defence knows has been long-established for many years by different countries. We take in officers and other ranks from other countries; we likewise enjoy the benefit of them. They are under other people's command. It is run as effectively as possible.

The noble Lord, Lord Wallace, made a much more measured contribution on the question of the objectives. In addition to the military objectives and the diplomatic objectives—Russia, Iran and others have a contribution to make in this area—is resources and funding. Anyone who has had to deal with terrorism knows that very often, at the back of it, money has a lot to do with it. The greatest effort that can be made, in addition to the military and security effort, is to try to switch off the resources that are undoubtedly available to ISIL in its various activities.

Earl Howe: My Lords, I can say only that the House would be wise to listen to my noble friend. He has immense experience in this area. I fully agree with his comments.

Lord West of Spithead (Lab): My Lords, I am delighted that we now have a well-planned and integrated strategy, because until now we did not seem to have one at all. I thought the Prime Minister's speech today about the UK aspect of that was very good. We are beginning to tackle this, but my goodness me, we need to get our act together on all the strands that the noble Earl talked about.

My question relates specifically to Syria. Clearly, the Americans are running the air tasking order for that region, which is highly complex. As the noble Earl said, we are using a lot of ISTAR assets over Syria, so the Americans must at the very least be dealing with Assad and his integrated air defence system, talking to him prior to these operations going on. I would be interested to know how much we have been involved in talking to Assad and his people about this. Clearly he has given permission for this to happen, aside from saying that the Iraqis have. Looking ahead, it makes no military sense only to attack targets in Iraq and not in Syria, as has been said. What sorts of deals will we be doing with Assad? In the final analysis, even if we clear Iraq of ISIL fighters—which we will—we will not have beaten ISIL because it has a haven and base in Syria. We will end up having to do something in Syria that is unbelievably complex and difficult. I am not at all clear how we can move forward in that arena.

Earl Howe: My Lords, again, I agree with much of what the noble Lord, Lord West, said. I am not aware of any discussions that have been going on with the Assad regime on the part of UK Ministers. If there is anything I can tell him on that front in writing I will, although he will understand that much of this territory has to remain confidential. Indeed, we do not comment on the detail of specific operations, as he knows. Nevertheless, the overarching point that he makes is fair. We certainly do not want anything we do to assist the Assad regime. I do not believe that we have been guilty of that. However, it is important to counter ISIL wherever it appears and to push it back from the territory that it has gained. After that, we need to address the Assad regime and how, on an international basis, we set about displacing it.

Lord Wright of Richmond (CB): My Lords, at the risk of repeating some of the points already made, does the Minister accept that several members of the international coalition, such as Turkey and Saudi Arabia, attach a higher priority to the removal of the Syrian regime, as part of the Sunni/Shia or Arab/Iranian dispute, than they do to the containment of ISIL?

The Statement makes clear that any strategy is overseen by Ministers from key nations, including the Prime Minister of Iraq. What about Syria? What steps is the coalition taking to co-ordinate its action with the Syrian armed forces, which after all are taking the main brunt of ISIL's military expansion in Syria? Finally, would the Minister tell us what contact, if any, we or our European partners have with the Government in Damascus?

Earl Howe: The noble Lord's question is very similar to that asked by the noble Lord, Lord West. The short answer is that I do not know. If there is an answer I can give to the noble Lord about that, I will be happy to do so. However, these matters are very delicate. As he said, the political forces at play—if I can put it that way—in that part of the world are extremely complex. He rightly points to the priorities of some countries in the region being different from those of the United Kingdom, and I agree. I think the same could be said for Turkey, which perhaps puts greater emphasis on countering the Kurds in the southern part of Turkey than we do. Nevertheless, we are working with our Turkish friends and they are extremely supportive of the work we are doing. I am advised that there are no direct discussions with President Assad or his regime. However, if there is any further detail I can give the noble Lord, I will, as I say, follow up in writing.

Baroness Falkner of Margravine (LD): My Lords, I have great respect for the noble Earl, Lord Howe, so it is sad to see his semantic convulsions to avoid the impression that UK forces are flying in bombing missions over Syria. If one of those five pilots were shot down during a bombing raid, how would he explain in plain English to the country that this was not a military operation by UK forces over Syria? On the broader point, is he aware of the comments over the weekend of the noble and gallant Lord, Lord Richards, former Chief of the General Staff, that an ideology such as ISIL's cannot be defeated militarily other than through boots on the ground and a full-on war, even if one were to go that far? Therefore, will he tell the House what happens when ISIL is displaced to other countries such as Afghanistan and Pakistan? Are we going to reinvade those countries? What strategy do the Government think they are achieving through the military part of this campaign?

Earl Howe: My Lords, I did see the comments of the noble and gallant Lord, Lord Richards. I simply point out that, as for the proposition that the United Kingdom, or, for that matter, any of the coalition allies, should put boots on the ground in Iraq, or, indeed, Syria, that course of action would not be conducive to a satisfactory end game or resolution. We are in Iraq at the invitation of the Iraqi Government. They have said in terms that they do not wish to see western ground troops in their country for the very good reason that the more we, as western nations, are seen to occupy Iraq, the more likely it is that local people and, indeed, individuals in this country will be radicalised, so that cannot be a way forward there. Let us be in no doubt, though, that the air strikes have achieved very significant results. I am sure all noble Lords agree that no air campaign could hope to win the war. However, the contribution that the air campaign has made is beyond question. It has stalled ISIL in its tracks, has enabled ground forces in Iraq to recapture large slices of territory previously occupied by ISIL, and has been effective in keeping ISIL at bay. It is not the whole story. That is why, along with our allies, we are engaged in training Iraqi forces and their officers. This is very welcome to the Iraqi Government. It is necessary, I believe, and this activity will continue.

I hope that the noble Baroness will allow me to avoid her first question about what might happen if a British pilot were captured, as contingency plans are in place for the retrieval of pilots by the coalition if need be. However, I do not wish to go into the detail of what those plans are.

Lord Howell of Guildford (Con): I very much welcome the way in which my noble friend presented this very clear Statement on coalition strategy to the House. It casts new light on an issue about which there has been doubt in the past, and we all understand more clearly what is being done. It is of course complete nonsense to say that Parliament voted against attacking ISIS two years ago. ISIS did not even exist then and the vote two years ago was about a completely different issue. I cannot understand why that sort of "silly season" approach has been used by the Opposition.

My noble friend is also completely right to point out that ISIS makes a thing of ignoring international boundaries and national frontiers. It operates across countries and denies the existence of nations. As I think the Statement implied, it is absolutely clear that, in destroying ISIS, and this barbaric, evil movement, which is a challenge to all civilised nations, we have to operate on the same basis and in more than one country. That is absolutely clear. I am very glad to hear that for the future that is clearly the way the Government are thinking. I believe it is also important to recognise that this is not just a US-led western approach. The entire organised, civilised world is threatened and we need the maximum co-ordination but not from merely the regional powers; it needs to be eastern, Asian, western and southern powers as well—all are involved in bringing together this coalition, and strengthening it should be our prime task from now. Does he agree with that?

Earl Howe: My Lords, I do agree and I am grateful to my noble friend for his comments. He is quite right: ISIL does not respect international boundaries. My Secretary of State has said publicly that he thinks it is logically incoherent that the United Kingdom is unable to engage in offensive operations over the border into Syria, whereas it is able to do so in Iraq. Nevertheless, we have been absolutely clear that we will return to Parliament for a separate decision if we propose to take military action against ISIL in Syria. Having said that, as the Prime Minister has made clear, if there were a critical British national interest at stake, or a need to act to prevent a humanitarian catastrophe, we would act immediately in those circumstances and explain to Parliament afterwards.

Lord Dannatt (CB): My Lords, I have no particular brief to offer an explanation of what my noble and gallant friend Lord Richards said recently. However, if we take seriously the fact that ISIL must be defeated,

[Lord Dannatt]
the broad strategy of the coalition must be pursued with all vigour. I am sure that the noble Earl agrees with that. We need to do that to make sure that we do not, in extremis, ultimately have to put British soldiers and British units on the ground. Therefore, we must do everything short of doing that. Does the noble Earl agree that, although it is tremendous that there is now a coalition of 60 nations fighting ISIL, those myriad 60 countries can lead to confusion among those we are trying to help? A country such as the United Kingdom has great expertise in providing training teams, equipment and know-how to those fighting on the ground. Therefore, will the noble Earl bring to bear all the influence he can within the Ministry of Defence to ensure that we deploy our maximum efforts to send British training teams, so that our expertise is maximised and the confusion which a number of the recipient countries are experiencing is reduced?

Earl Howe: I agree with the thrust of the noble Lord's points and questions. He is absolutely right that, to the extent that we are able to do so, we should use our strongest endeavours to contribute to the anti-ISIL effort. We will contribute around 85 military personnel to US-led training of the moderate Syrian opposition, training thousands of screened members of the opposition over the next three years in, for example, the use of small arms, infantry tactics and medical skills. More than 6,000 Syrians have volunteered for the train-and-equip programme and are in various stages of registration, pre-screening and vetting. It is imperative that we attract, recruit and retain the right candidates. We screen potential recruits thoroughly.

Our focus will initially be on helping the new Syrian forces defend communities against ISIL and eventually lead offences against its brutal attacks. Training will take place in Turkey and other countries in the region. I have already referred to the training we are undertaking in Iraq, which, as I have said, is welcomed by the Iraqi Government and is proving effective.

Lord Ashdown of Norton-sub-Hamdon (LD): My Lords, I am sure I heard the Minister say that were British aircraft to be used over Syria to bomb ISIL, they would bring—I think his phrase was—unique capabilities. Will he explain, within his ability to do so, what those unique capabilities would be that were not already fully supplied in good measure by the United States, apart from anyone else? Were the Government to bring to the House a proposition to use British aircraft over Syria, and were we to believe that that was anything other than token bombing for political purposes and to cheer ourselves up, we would need to be convinced that the very small amount of high explosive that the British could add to the huge weight of high explosive already in theatre, which can in fact not be used because it cannot acquire the targets, would make any material difference whatever. Surely our skills and ability would be better served by following the line proposed by the noble Lords, Lord King and Lord Howell, to see if we can build the wide coalition—building on the Tehran deal, bringing in Iran and bringing in Russia—that will be necessary to make sense of military action, which, without that, seems to have very little.

Earl Howe: I agree on the need for a wide coalition. As has been said, there are already 60 nations involved in the current coalition. I also agree that it is important that we bring along with us as many other nations as we can.

As regards the proposition that United Kingdom forces under a UK flag should conduct offensive operations in Syria, as I said, that would be subject to a separate vote in Parliament. But it is right for me to make it clear that the Government would not wish to come to Parliament with a half-baked proposal. We would want to garner as widespread support as possible across the political spectrum, including from the Opposition, and that entails demonstrating that the UK could make not only a positive contribution to the coalition effort but one that would in a real sense be unique or nearly unique.

I mentioned precision bombing as one of the capabilities that we have that other nations do not, apart from the United States. We are certainly in a prime position to offer state-of-the-art surveillance capabilities to any operation, and we are second to none in the quality of the training that we supply to foreign countries.

Lord Naseby (Con): Is my noble friend aware—

Lord Hylton (CB): My Lords—

Noble Lords: Cross Benches.

Lord Ashton of Hyde (Con): My Lords, there have been equal numbers on both sides so if we are very quick, we can have the Conservative and then the Cross Benches.

Lord Naseby: Is my noble friend aware that I was an embedded RAF officer responsible to the Canadian Government in the 1950s and that there is nothing unusual about that? Will he please clarify the point about airspace raised by the noble Lord, Lord West? Is he saying that there is an air exclusion zone across the 30% of the ground area of Syria that is controlled by ISIL? Is he further saying that the surveillance drones are surveilling only that 30%?

Earl Howe: There is not an air exclusion zone because, as has been made clear, we are conducting surveillance operations on behalf of the coalition and we have always been open about that. What I hope I have been clear about is that we have not gone that stage further and commissioned or commanded British forces to engage in offensive operations over that territory.

Charities (Protection and Social Investment) Bill [HL]

Report (Continued)

6.34 pm

Amendment 18

Moved by ***Baroness Deech***

18: 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.""

Baroness Deech (CB): My Lords, this amendment also stands in the name of my noble friend Lord Bew. There is a little link with the discussion we have just had. The noble Lord, Lord King, mentioned the need to cut off the sources of funding that go to terrorists. This amendment is not just about terrorism—far from it, although it would have the side-effect that he has just mentioned if a charity were involved in such activities. It enables the victims of mistreatment by a charity to recover damages from the assets of the charity, not just from the trustees themselves. It by no means removes any responsibility or liability from the trustees personally: that remains. But sometimes when there is a victim—for example, of sexual abuse taking place at a charitable school which is not incorporated—the victim may need and deserve more damages than the personal trustee has at his disposal. It is only right, therefore, to go against the assets of the charity. The amendment would end the disparity between incorporated and unincorporated charities.

Charities, as we have heard frequently today, are not just about helping the poor, underprivileged and disabled. They are moving into the realms of big business. There are many areas now covered by charities, some of which operate without being incorporated: indeed, there is no requirement for them to do so. They include student unions, communes, Scouts, clubs and after-school activities. It is possible for there to be damage. We have heard a great deal about charities that harass the public when they are collecting funds. At the moment, only innocent trustees can be indemnified where there is a claim against them, but they remain liable. The amendment would in no way destroy the personal commitment that trustees feel towards the charity they are supporting.

Injured civilians currently have too little recourse against unincorporated charities that do them harm, some of which may be connected with terrorism. The remedies under the existing law are not adequate where the trustees of an unincorporated charity do not have sufficient personal assets and were themselves involved in the wrongdoing or were reckless or negligent and so are not entitled to be indemnified by the charity. While those creating or running a charity may be free to choose the legal structure, the victims are not, and this amendment is ultimately about protecting victims.

The position of a wholly innocent trustee would be ameliorated by the amendment. Instead of the victim having to claim against the trustee and the trustee having to claim against the charity under an indemnity, the victim would be able to claim against the charity directly and the charity will not claim a contribution from a wholly innocent trustee. This is a benefit, not a disadvantage, of the amendment. The amendment would apply where a trustee of an unincorporated charity is liable in tort by reason of his conduct in his capacity as a trustee of a charity, or a person employed by a trustee or trustees is liable by reason of his conduct in the course of that employment. It is just like a company which is liable when a director commits a tort in his capacity as a director of the company or an employee of the company commits a tort in the course of his employment by the company. This applies whether or not the act is ultra vires. This is elementary law.

We are calling for this law to be made more helpful to victims, without in any way disturbing the responsibility that trustees, rightly, bear. In the past, victims of sexual abuse by Scout masters have successfully claimed damages from the Scout Association, because it happens to be incorporated by royal charter. The victims can claim damages from the organisation itself, but many local Scout associations are unincorporated, and there are dozens of them. Victims of sexual abuse, if it were to happen in the course of the activities of these associations, may well find it difficult, or impossible, to recover substantial compensation. It is not right that the availability of a remedy for the victim of such abuse should depend on whether the particular Scout association happened to be incorporated.

A religious organisation may be established as an unincorporated charity. Former adherents may claim that it has been run as a cult and seek compensation for being imprisoned and deprived of their property by duress or fraud. The organisation may have substantial assets, since adherents are encouraged to donate generously, but the trustees may have no personal assets—so the claims by the victims are valid but completely worthless, because the trustees have nothing. They cannot demand that the trustees be indemnified out of the assets held on charitable trust since the trustees are themselves involved in the wrongdoing, in breach of trust.

In sum, this amendment will help victims and will bring to an end a difference between the incorporated and the unincorporated charity that has no justification. I beg to move.

Lord Bew (CB): My Lords, this amendment is in my name as well as that of my noble friend Lady Deech. Since we moved this amendment in Committee on 1 July, the issue has in some ways become sharper because of widespread reporting in the press of the harassment of donors by those working for charities. The issue of the circumstances that might arise where a victim is unable to seek compensation from a charity has become sharper than it was even a very short time ago.

[LORD BEW]

That said, I wish to reassure the noble Baroness, Lady Barker, and others that we are well aware that the charitable sector is fundamentally a source of great good in our society, and we are very concerned that anything that we propose today does not in any way reduce the legitimate freedom of activity of our charities. It is very important to keep this in mind and to try to get the balance right. The essential difficulty here, to which my noble friend Lady Deech referred, is the difference in status between incorporated and unincorporated charities—those in the latter category are now in the great majority. She gave the example of the Scout Association, which is a good one, where issues of sexual exploitation were able to be raised against the national Scout Association because it was an incorporated charity. However, it is a much more difficult and complex matter to do that against local bodies.

It seems to me very difficult to justify this anomaly. The comparator is with company law, and my noble friend Lady Deech convincingly made the case that the comparator is not really operating in the way that one would expect in the case of unincorporated charities. We are arguing for the rectification of an anomaly, as my noble friend Lady Deech said, in the interests above all of victims.

The Minister has been very kind to us and we have had helpful discussions about this matter. I was listening to the discussion of an earlier amendment, when the noble Lord, Lord Hodgson of Astley Abbotts, suggested that this amendment would not be welcomed by the Charity Commission. It would be helpful if we could have some sense of the Charity Commission's view about the practicalities of this amendment, if that is at all possible—but I support the amendment at this point.

6.45 pm

Baroness Barker (LD): My Lords, I made my views about this amendment known in Committee, and they have not changed. I listened very carefully to what the noble Baroness, Lady Deech, said, and she said one thing that made me believe that this amendment is wrong. She said:

"It is just like a company".

Well, no, it is not. Charities are distinctly different in law, which is why there are different charitable formats. The noble Baroness said that the majority of charities would be incorporated, but that is not so: approximately 50% of the charities in this country are very small and most of them are not even registered with the Charity Commission. The unincorporated association format is there specifically to enable people who wish to come together for charitable purposes to do so to a standard of operating which is regulated by the Charity Commission in most cases. But they are not held to exactly the same standards as an incorporated association.

The noble Baroness and I often come at things from completely opposite sides, and I disagree with her on this. One reason why the unincorporated association is a valuable framework that is worth retaining for charities is that in the sorts of cases that she raised, it is trustees who have done wrong who are personally liable for what has happened, but the purpose and the assets of the charity remain valid. The effect of this would be to obliterate a whole level of charitable activity; the noble Baroness will, in effect, rip the heart out of a lot of community good up and down the land.

One thing I am not sure about, and the one thing that the noble Baroness did not tell us about in her introduction, is the scale of the problem she is seeking to address. If there is evidence that this is a widespread problem, she has a case, but it needs to be made in a different way; there needs to be a thoroughgoing investigation, which would settle for all time whether or not unincorporated associations, in their present form, should continue or not. I would like to see that done in a thorough and considered way and not on the basis of this debate and this amendment.

Lord Deben (Con): My Lords, the noble Baroness has made a very important point. It is conceivable that we should discuss whether these two forms of charity—the incorporated and the unincorporated—might no longer be entirely fitting for the circumstances of the day. We could discuss wholesale reform, but it seems to me that approaching that in a particular and narrow way is not the right way to do it. Law is not best made that way, not least because if you do it in that piecemeal manner, you can end up with something that is much worse than what you started off with. The law of unintended consequences is very powerful in these circumstances.

The second thing I would say to your Lordships is that Britain has a remarkable reputation around the world for charity, as we have often said in debates. But we have to remember that this is not something that has come about recently; it has happened over a very long period of time. It has resulted in, I have to say, a rather untidy system—there is no doubt about that. There are various different ways of looking at this, and sometimes people want to tidy it up. Perhaps one of the system's strengths is the fact that there are so many different sorts of charities and so many different groups of people doing things in a slightly different way. With the Charity Commission, we have tried to set some reasonable standards and to ensure that there are very clear reference points.

We have tried hard to do that in a way that corrals people as little as possible. New charities often arise because people feel strongly about something that they have a personal relationship with: something happens, somebody they know has been hurt, they are concerned and they say, "I must do something about that". Personally, I am a huge supporter of that. When one is canvassing, it always seems the worst thing when you bang on a door and someone says, "Somebody ought to do something about that". My response is always, "Why don't you do something about it? It is no good talking about somebody else". Charities often arise because people say, "I want to do something about it". That is a really important part of it.

My worry here is therefore, secondly, that we are not just approaching a complex business from a particular, narrow direction but also that we are adding yet again to the complications that face people when they want to turn a spontaneous reaction into a more permanent form. Of course, that leads to duplication of charities and I know that there is a real problem there. However,

it is a good, healthy and encourageable part of humanity that people want to do something themselves about a matter they feel strongly about. I fear that if we went down this route without thinking very hard about it, we would—as the noble Baroness, Lady Barker, rightly said—put into the small charities some real concerns.

Thirdly, I would have to be much more convinced about the propriety of putting at risk the funds of a charity given for a particular purpose because of the activities of a particular trustee—which would be the result of the amendment. I can imagine amendments that would not produce that response. I can imagine changing the law in a way that might help to solve the problem that the noble Baroness, Lady Deech, put before the House. However, this amendment does not do that and could put a whole lot of other things into serious default.

The noble Baroness, Lady Barker, is right that to bring forward so complex an amendment in a debate of this kind without having some idea of the size of the problem, or the nature of the different parts of it, is not the way to deal with it. If you do not know how big the problem is, you do not know how dangerous it is to make the change. If it is a huge problem, you may want to risk the change, but if the problem is much more limited, you will probably want to say to yourself, "This is better left to a more mature and serious consideration, and there should be a much bigger one about the legal distinctions between incorporation and unincorporation".

Lord Gold (Con): I support this amendment. My noble friend Lord Deben spoke of an implicit goodness on the part of those people who set up a charity and want to do something good. I understand that entirely but we are faced here with a different problem, unfortunately, of individuals who may wish to hide behind what seems to be a charity for wholly inappropriate purposes. While they are personally liable for things that may go wrong, those people might vanish into the distance and not be there to compensate those who have suffered badly as a result of charitable money being misused. Unfortunately, at the moment it is difficult to bring an action against an unincorporated association. If a trustee acts outside his powers, it is by no means easy to bring such an action. This amendment would make it easier for those who have suffered, where charitable money has been used for wrongful purposes, to look to the charity. It would make it less easy for those who misused that money to be able to hide in the way that perhaps at the moment they can.

The Parliamentary Secretary, Cabinet Office (Lord Bridges of Headley) (Con): My Lords, I thank the noble Baroness, Lady Deech, and the noble Lord, Lord Bew, for their thoughtful explanations of this amendment and for sparing the time to discuss this issue with me privately. I also thank the noble Baroness, Lady Barker, and my noble friends Lord Deben and Lord Gold, for their contributions. When we discussed this in Committee I made several points that noble Lords will be glad to know I will not repeat in great detail now as this can be quite a complex matter—as noble Lords will have gathered. I will stick to the principal points.

If an individual or entity commences litigation against an unincorporated charity, usually all the trustees of that charity would be named as parties. That is because an unincorporated charity has no separate legal identity—the point that others made. This would include proceedings for tortious liability against a charity trustee in his or her capacity as a trustee of that charity, or an employee in the course of his or her employment. If damages were awarded against the trustees, the trustees ordinarily would be entitled—if they acted properly and reasonably—to indemnify themselves from the assets of the unincorporated charity under the charity's governing document. However, they could be jointly and severally liable for any shortfall where the charity's assets are insufficient to meet the level of damages awarded.

In that respect, a person who sues an unincorporated charity can be in a stronger position than a person who sues an incorporated charity, where the directors' liability can be limited, as they 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. Also, the unincorporated charity is in the same position as other unincorporated associations—for example, many trade associations. A trade association could make a flawed recommendation to its members that resulted in tortious liability.

It is important to restate that liability should not automatically attach to the charitable association's assets, as the amendment seems to propose. In all cases, it should be for the court to establish where liability should lie, based on the facts of the case and the charity's governing document. There may be other unintended consequences resulting from the amendment which we would also want to avoid.

In our view, damages may be met from the assets of the charity, whether it is incorporated or not, under the law as it stands. However, I recognise that a number of people have raised concerns over how the law operates in this area. As I said, I met the noble Lord, Lord Bew, the noble Baroness, Lady Deech, and my noble friend Lord Gold to discuss the nature of these problems. In response to their thoughtful contributions today, while I cannot give any commitments about amendments to the Bill, I will and certainly do commit to look at this issue in more detail over the summer, and in particular to reflect on whether there is a lacuna in the law as it stands that puts victims of unincorporated charities at a significant disadvantage. I will obviously keep the noble Baroness, Lady Deech, the noble Lord, Lord Bew, and my noble friend Lord Gold informed as to my deliberations. I am happy to keep others who spoke on this amendment informed, too. I fully understand that this is a complex area. We do not wish to rush into it.

I understand that the Charity Commission shares a number of the concerns raised and it would be happy to write to the noble Lord, Lord Bew, in more detail on this point as our deliberations progress. I am sure that the Charity Commission would be happy to meet

[Lord Bridges of Headley]
with the noble Baroness, Lady Deech, and other noble Lords should they so wish. With all that said and in mind, I hope that the noble Baroness will not press her amendment.

Baroness Deech: I am grateful to the Minister for his conversations with us and for the very valuable suggestion of bringing in the Charity Commission to get evidence, which is very hard to collect in this field. However, I would like to correct a misunderstanding that seemed to flow around the House. This amendment would not incorporate charities, nor do I recollect saying that most charities were incorporated.

It does no such thing to the charity structure, but would simply enable the victims to access the assets of the charity where the trustee himself or herself does not have enough. In that sense, it would simplify the running of the charity and its structure. As the Minister said, assets will be used in any case, so there is no question of somehow continuing the preservation of a charity's assets when wrong has been done to a victim. However, given that we need to consult the Charity Commission on that, I beg leave to withdraw the amendment for now.

Amendment 18 withdrawn.

Amendment 19

Moved by ***Lord Wallace of Saltaire***

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

"Independent schools' facilities: public benefit

In section 4 of the Charities Act 2011 (the public benefit requirement), after subsection (4) insert—

"(5) Independent schools which are charities must engage actively with local communities and state schools with a view to sharing resources and facilities.

(6) The Charity Commission must publish guidance setting out the minimum that independent schools which are charities must do to comply with the duty in subsection (5).""

7 pm

Lord Wallace of Saltaire (LD): My Lords, we return to a simplified version of amendments which the noble Lord, Lord Moynihan, and I moved in Committee. Between the two stages there have been a number of discussions with the Minister, for which I thank him, and with the Independent Schools Council along with others. I must apologise to some of those with whom I was attempting to negotiate for much of Thursday and Friday morning, in that I happened to choose one of the few places in Oxfordshire where you cannot get mobile phone reception.

The context is clear: the rise in quality in resources and facilities at most—though of course not all—independent schools, which arises from their ability to raise fees and fundraise, along with endowments that many of them have, is in contrast with the decline in the resources and facilities of state schools, including their playing fields, music and drama facilities and specialised coaching and teaching of specialised subjects, which is unlikely to be reversed under this Government, since they are committed to shrinking government spending further, including on education. The second part of the context is the charitable purposes of independent schools, which are often rooted in their founding purposes in education for local communities. I am well aware that the Charity Tribunal in 2011 said that purposes can change, and indeed have changed—although they have not entirely been discarded. We discussed this earlier, with the question of housing associations. A housing association that changes itself into something entirely different would have its charitable status questioned. I remind noble Lords that the ruling of the Charity Commission says that schools can choose how they demonstrate public benefit, not that they can disregard public benefit.

The third part of the context is the increased awareness within the educational world of the importance of resilience and self-confidence as wider elements in education, although, unfortunately—and the Independent Schools Council made this point to me—Ofsted no longer pays any attention in assessing state schools to the wider elements of education that encourage resilience and self-confidence. There is a consensus on how important these things are to individual development. Best practice in the independent schools sector recognises this, and there are a number of excellent examples of partnership between independent schools and the local communities—and their schools—in which they are embedded. There are some examples of less good practice, however, which is why the amendment talks about engaging "actively". One of the weakest points, in the statement agreed between the Independent Schools Council and the Charity Commission, is to say that there will be a new website through which state schools will have a facility to request involvement in partnership activities. We want independent schools to go out to find, explore, pursue and develop partnerships with their local communities and state schools.

The strongest point of the ISC and Charity Commission is the commitment to a research report, 12 months from the introduction of these changes, which will review data from the annual reports of charitable schools as well as the aggregated data that the ISC collects through its census. At present, the details of how that research project is developed will be agreed between the Charity Commission and the ISC.

We are all conscious of the problems of defining public benefit. The NCVO advice on this amendment repeats that too strict a definition of public benefit gets one into enormous problems—and I am looking at the noble Lord, Lord Hodgson, who has said this to me, and many others, many times. But the Charity Commission must monitor that public benefit of some sort is provided. If the Minister is to say that the Charity Commission is not capable of doing that at present, many of us would say that the Charity Commission have been severely constrained in recent years. Faced with a Government who are cutting public expenditure, this very important third sector may need more effective regulation as we have to depend on it more and more.

We hope that we can avoid going down the road to a further statutory definition of public benefit. What the noble Lord, Lord Moynihan, and I wanted to achieve through this process was a strong nudge to the independent schools sector to move in the right direction. It will help us not to divide in this House if the Minister can give us a number of strong

reassurances—first, to make it clear to independent schools that they are expected to pursue and develop partnerships, not just to wait and see whether anyone applies. They should see this as part of the social responsibility that all charities should shoulder. Secondly, we should engage with the ISC and the Charity Commission on the terms of the research project to be conducted over the next 12 months and not leave the definition entirely to them. Thirdly, it is important to report to Parliament on the outcome of this research and arrange for it to be debated either through an Oral Statement or otherwise in government time.

I hope that that gives the Minister sufficient space to take us forward, not necessarily to any form of mandatory obligation but certainly to say that we have moved independent schools towards the active partnership with their local communities and schools that we all want.

Lord Moynihan (Con): My Lords, I shall speak to the amendment on the important question of the relationship between independent schools' charitable status and public benefit and the need for all schools, particularly those with charitable status, to work together with state schools and neighbourhood communities in their vicinity. I intend to concentrate my remarks on the dual use of sports facilities and coaching expertise, although the principles behind my support for progress towards closer educational partnerships extend to all the charitable objectives set out by Parliament in the Charities Act.

In moving a probing amendment in Committee, my intention was to consider the merits and disadvantages in moving from the flexibility of the current system to a more prescriptive approach, reflected in the amendment that we are considering today, which requires all independent schools to engage with local communities, particularly regarding the dual use of sports and arts facilities. A considerable benefit of Committee for me was the opportunity that it provided to delve deeper into proposed legislation and learn significant lessons from the in-depth experience found in this House and outside.

Following Committee, like the noble Lord, Lord Wallace, I have taken the opportunity to meet the Charity Commission, the Independent Schools Council and the Minister to consider how we can make further progress to promote engagement with all independent schools in receipt of charitable status that have the facilities and coaching expertise to engage with local communities and state schools to mutual advantage. I am particularly grateful to my noble friend the Minister, who has upheld his open-door policy to any Member of your Lordships' House on this Bill.

I spoke in Committee about good practice and cited Tonbridge School as a leading case study of good practice in this country. Under the leadership of Tim Haynes, the head, the school has engaged with 27 primary schools in its vicinity. The reaction from children, parents and the local community can best be described as fulsome praise. His initiative has gone further than engagement through sport, with the subjects of music, drama, dance, chess, art, design, IT, creative writing, science, history, maths, modern languages and classical studies all featuring as part of that engagement. Above all, all independent schools, such as Tonbridge School, in showcasing their facilities, should look to work also with governing bodies of sport, local clubs and those responsible in the primary schools for the school sport premium. That comes with £8,000 for schools with 17 or more pupils, plus an additional £5 per pupil, which could be very useful to fund insurance, transport and related costs incurred as a result of these initiatives.

To be successful, this must be a two-way process. Over the past few days, the Charity Commission has confirmed that it will relaunch and publicise the examples for schools of how to provide benefit for people who cannot afford their fees in its existing guidance, *Public Benefit: Running a Charity,* by sharing sports facilities. In a significant step forward, it will give new examples relating to sharing sports facilities, arts and music in the guidance *Public Benefit: Reporting* and in the example trustees' annual report for "Anytown School". A significant improvement in good practice should be achieved.

The problem I have with mandatory requirements is the one-size-fits-all approach. For example, many prep schools have to work to capacity to survive financially, even with charitable status. Some do not own their own sports facilities, others share and some are in need of significant upgrading. What is needed is for each school not only to follow best practice but, as the noble Lord, Lord Wallace, stated, for the Charity Commission to publicise it through its channels so that each school can tailor its public benefit accordingly and the House can debate the outcome.

The Charity Commission responded positively to the suggestion of a research report, in which I have more faith than the noble Lord, Lord Wallace. According to its guidelines, that report has to be published 12 months from the introduction of these changes. That research should provide us with a comprehensive picture of the extent of partnerships and enable this House to consider whether legislative steps are necessary, for example, when the next education Bill comes before us during this Parliament.

While there are challenges for independent schools with charitable status, the broader question we should also be debating applies not only to all independent schools but to the state sector, whether well-endowed with sports facilities or not. One of the greatest challenges we face in designing a long overdue and effective sports policy is the oft-quoted statistic about the percentage of our Olympic medallists from the independent sector. That reflects the need to do all we can, far more than at the moment, to identify talented youngsters in all our schools and provide ladders of opportunity for them to climb from primary school to podium.

In response to pressure from all sides of the House on this Bill, the Independent Schools Council has agreed to act by building a new website, Schools Together. The site is currently under development and should be ready to receive information from schools in the autumn term. It was not even on the agenda before Committee. I hope the site will be launched as soon as possible in the autumn. It must be two-way. The site absolutely needs to summarise what is on offer at all independent schools with charitable status and to include a facility for state schools to get involved in

[LORD MOYNIHAN]
partnership activities. From the conversations I have had, I believe that independent schools will reach out to their community in this way by providing information and contact details of their partnership co-ordinators. State schools will be asked to request involvement in partnership activities. Since this is clearly the intent of all who have contributed to this debate at various stages, there should be no reason why all schools do not engage constructively. Once again, if the combined new commitments of the Charity Commission and the Independent Schools Council do not bear fruit in the way the House and the Minister have indicated, we should be able to produce legislative change through a wider education Bill.

I believe that these initiatives represent more than a nudge in the right direction. They are very significant steps forward and would not have happened had there not been the level of interest expressed in your Lordships' House from all parties. They are tailor-made for the differences between schools and they avoid the cost and administration that a one-size-fits-all legislative approach would deliver. I believe that what I have sought to address constitutes a very strong example of how cross-party support for the interests of sport and recreation, including the arts and curricular subjects, for all children coupled with the promulgation of best practice can be and has been achieved. That is a rare outcome of negotiation between Committee and Report. I fully appreciate the strength of opinion expressed and I share it, but I believe that the changes we have been offered are far reaching and deserve support. I also believe they are for real. There is genuine consensus on this issue among all interested parties. I believe the approach offered will prove to all concerned that the proposed package will achieve even more with the good will of all involved than a one-size-fits-all amendment would deliver. For these reasons, I hope the amendment will not be pressed to a vote and that we can build on these important initiatives and regularly hold all those involved to account when it comes to the outcome of the research project and the website in a year's time.

7.15 pm

Lord Watson of Invergowrie (Lab): My Lords, nobody can dispute—

Lord Lucas (Con): My Lords, I am loath to interrupt the noble Lord, except I think he is bringing matters to a conclusion. I want to express my congratulations to the previous Government on putting some steel into the Charity Commission in the process of recalling to independent schools what their charitable status means and what it takes to live up to the—in many cases—very clear opinions of their original benefactors. That process gathered considerable momentum, and many protests, under the previous Government, and I am delighted to see that it is continuing under this Government with cross-party support. It is enormously important that we find a way of reducing the exclusivity and divisions in our current system and that we find ways of reuniting it. On the side of this debate—I know it is not central to it—I very much hope that this Government will take seriously the proposals developed for the reintegration of independent schools and the state system. Some key schools, such as Westminster and St Paul's, have expressed a willingness to engage. If we can get to a system where the independent schools have a role looking after foreigners and the thick sons of the rich, then we will have achieved a lot for this country.

Lord Hodgson of Astley Abbotts (Con): My Lords, we had a long debate on this and I do not intend to detain the House long. This amendment is, at first sight, exceptionally attractive. Who can object to close engagement? The issue before us tonight is whether this is best achieved by the relative inflexibility of statute or the more flexible approach that can be achieved by guidance. My concern about this and the proceedings during our debate in Committee is that this is a Pandora's box which, once opened, runs in all sorts of directions.

The issue of public benefit came centre stage because of the changes quite reasonably introduced by the previous Labour Government. The noble Lord, Lord Bassam of Brighton, sat through many hours as the Minister in charge. The decision on the way the public benefit test should be set was agreed as being the least worst option, being via the independent Charity Commission, and making sure that the Charity Commission was free from political interference was written into the Bill. Once you move away from that decision, you need to be very careful about where you end up. The debates we had in Committee on 6 July started with an amendment from my noble friend Lord Moynihan about sport. He was followed by the noble Lord, Lord Wallace of Saltaire, on music and arts. At the end of the debate the noble Baroness, Lady Jones, winding up for the Opposition, said:

"Amendments 23A and 23B provide a start by identifying at least three areas".

She also said:

"Furthermore, we believe that the Local Government Act 1988 should be amended so that private schools' business rate relief becomes conditional on passing that new standard".—[*Official Report*, 6/7/15; col. GC27.]

So we moved quite a long way in the course of one single debate. There is a perfectly respectable argument that nearly 10 years after the noble Lord, Lord Bassam, and I discussed this in the Moses Room there should be a review of what constitutes public benefit. However, as I have explained, this is a big topic with many implications and unforeseen and indeed unforeseeable consequences. In my view, it needs to be looked at thoroughly in the round, not tacked on to a Bill that is concerned with improving the regulation of the charity sector and enhancing the development of the social investment movement. As the noble Lord, Lord Wallace, referred to in his remarks, that is a view with which the NCVO agrees.

My review of the sector revealed gaps in the Charity Commission regulatory powers that the Bill will remedy. It is that on which we should be focusing, not trying to find other issues that may cause difficulties and unforeseen consequences. I very much hope that the mover of the amendment will not put it to a Division tonight.

Lord Watson of Invergowrie: My Lords, various noble Lords have mentioned in the debate today that there are good examples of private schools sharing their facilities with state schools and other community organisations.

Viscount Younger of Leckie (Con): My Lords, I believe that there is one further contribution before—

Noble Lords: Front Bench!

Viscount Younger of Leckie: On Report, it is allowed.

Viscount Bridgeman (Con): My Lords, I have a small point to make. I declare an interest as chairman of a foundation school, Reed's School, founded 200 years ago for the orphans of city clerks. It became a member of the Headmasters' and Headmistresses' Conference 60 years ago, maintains the foundation and has a considerable outreach, particularly to schools in east London, in parallel, in many ways, with Tonbridge School.

The school is a member of the HMC but, significantly, also of the Society of Heads, the conference of smaller schools, many of which would probably be in the 7% that is accepted as falling behind in the standards of public benefit. Many of these schools—my noble friend Lord Moynihan has made a passing reference to this—are struggling to keep their heads above water, and they simply do not have the resources to undergo the public benefit that is required.

This has been a very hot topic between the Charity Commission and all the governing associations, the various heads and governors, for 10 years now. In Committee I voiced my opposition to the word "minimum"; I felt that that was an unnecessarily prescriptive word on a matter that depends so largely on mutual recognition between the two sectors. I suggest that Clause 1 is already in the Bill, as the Minister said in Committee, and the bar for the second new subsection will have to be so low as to have to embrace the schools that are struggling. We are then into the one-size-fits-all category, which has been mentioned by a number of noble Lords. I suggest that the way forward is this continual dialogue between the Charity Commission and these various bodies. Let us not forget that peer pressure within these bodies will likely play a large part.

Baroness Heyhoe Flint (Con): My Lords, I speak in support of the principles of this amendment. I urge the Minister to spend more time in the summer considering the excellent concessions that my noble friend Lord Moynihan and the noble Lord, Lord Wallace, have managed to achieve. In the past, as has been documented, a high proportion of our medal winners and test series winners—is this perhaps a moment when we should hold a minute's silence for the England men's cricket team?—and of the successes and indeed the membership of those teams has come from the public school sector. We should consider the amendments seriously; we can give the opportunities to those at grass-roots level who never get the chance to play on decent facilities. We can build from the grass roots more successful national teams, in which we take such pride.

It is not so much about winning medals and various series, but it should be a matter of good governance for independent schools that are charities. You could almost change the meaning of CSR from corporate social responsibility to charitable social responsibility. We should give those who have never had the chance to play sport on quality facilities a chance to move forward and reap the accolades that many of those from public schools have achieved. I am not in favour of statutory legislation to ensure that this happens but hope that independent schools can find it in their hearts to share their facilities with the community, and that the Government will accept the guidance of the Charity Commission to give all youngsters a sporting chance, not just those who have the backing of deep pockets and privilege.

Lord Lexden (Con): My Lords, I begin by declaring, or rather repeating, my interests as a former general secretary of the Independent Schools Council and the current president of the Independent Schools Association, one of the constituent bodies of the council. When I spoke in Committee, I sought to emphasise above all the diversity and variety of independent schools. Diverse and varied though they may be, there are some things that ISC schools as a whole have in common: they are fully committed to working with their communities and state schools. The determination to contribute to and share in the life of their local communities and state schools arises naturally from the charitable ethos and purposes of ISC schools. That point was firmly underlined in the manifesto that the ISC published earlier this year as its contribution to the education debate as the election approached. The manifesto stated that,

"the mission of all schools, whether state or independent, is to educate children to achieve their full potential. Any barriers real or perceived between the two sectors are counterproductive".

The manifesto went on to give a clear pledge:

"Partnerships between the independent and maintained sectors are an established part of the educational landscape … We propose that … Best practice and current activity is collated and shared to encourage greater participation".

To that end, the ISC is now involved in detailed discussions with the Charity Commission and, as we have heard, is preparing a large website entitled Schools Together, to be launched later this year, which will set out in greater detail all that is being done now and encourage the rapid expansion of further partnership activity in all possible areas.

The first part of the amendment states:

"Independent schools which are charities must engage actively with local communities and state schools with a view to sharing resources and facilities".

This pushes at an open door. The issue before us is how the goal, in which we are all united, should best be achieved. Because independent schools vary so greatly in size, resources and facilities, what they can do to carry forward sharing and partnership will inevitably vary too. Think, for example, of the many small schools, particularly those in rural areas or on confined urban sites, one of which I visited a few days ago in order to present the annual prizes. The school has some 200 pupils. It has no playing fields but opens its gym to the local community. It has established a number of means-tested bursaries and has just raised £8,000 for the NSPCC.

I stress the lack of uniformity within the independent sector. Where uniformity does not exist, surely flexibility is imperative. It is for that reason that I believe it would be inappropriate to require the Charity Commission to publish guidance setting out the minimum that

[LORD LEXDEN]
independent schools that are charities must do, as the second part of the amendment proposes. To be fair and equitable, the Charity Commission would have to lay down a minimum for each of the ISC's 1,267 member schools, taking the varying circumstances of each one into account. That is clearly impractical. There is also a point of principle at issue here. All charities are required to provide public benefit. Would it be right to single out independent schools alone for binding guidance on minimum standards?

7.30 pm

There is a better way, which was outlined by my noble friend Lord Moynihan and the noble Lord, Lord Wallace of Saltaire. The Independent Schools Council is firmly committed to that better way. The preparation of new guidance by the Charity Commission is likely to include illustrative examples of sports, arts and music partnerships to encourage more independent schools to engage in such partnerships, and there is more information to be gathered and shared with the Charity Commission. A research report has been agreed in principle.

There is also scope for the ISC website Working Together—to which I and other noble Lords have referred—to give additional impetus to collaborative projects by including this facility through which state schools themselves could make direct applications for involvement in partnership activities. I attach great importance to this initiative, which deserves all-party backing and support, perhaps by means of endorsements by every party leader which could appear prominently on this website.

No one has more experience in this vital area, where so much good work is already being done and so much more can be achieved, than my colleague Deborah Leek-Bailey, chair of the Independent/State School Partnership Forum, which is backed and actively supported by the Department for Education. She said recently:

"I applaud any action by government which encourages independent schools to extend their provision to pupils within their local communities but it is important to remember that charities are independent and their trustees need to be able to make decisions in the best interests of the charity, taking into account their individual circumstances. It is vital that we do more to raise standards in the teaching of sport, music, languages, the arts, in state schools but I believe that far more can be achieved by highlighting the benefits of engagement and so spreading them very widely indeed".

Is it not through such an approach, backed and reinforced by new non-statutory guidance from the Charity Commission and other measures, that steady progress can be made for the benefit of all three partners—local communities, state schools and independent schools themselves—in this vital area? They all need to be willing partners. Compulsion is inappropriate both in principle and in practice.

Lord Watson of Invergowrie: My Lords, I have the greatest respect for the noble Lord, Lord Moynihan, especially on sport-related matters, so it was a little disappointing to hear him repeat the suggestion made in Committee by the noble Lord, Lord Lexden, which he stated again this evening: that the amendment seeks a one-size fits all solution. That is absolutely not the case. Precisely because of the sort of reasons the noble Lord, Lord Lexden, just outlined, schools vary greatly in size; therefore, what they can be reasonably expected to do in terms of community engagement will also vary. If a large private school has state-of-the-art sports facilities, it may reasonably be expected to invite pupils from state schools to use them—not just the pitches and courts, but coaching from the staff. In all probability a smaller school would have much less extensive facilities, so it might be appropriate for that school to send one or more coaches out to local state schools to engage directly with them. The same would be true of the assistance with learning issues raised by the noble Lord, Lord Wallace of Saltaire, be it Mandarin or music tuition using instruments perhaps not available in local state schools. To be most effective, the approach would necessarily vary, but it is entirely unacceptable for any school to say, "We cannot do anything because we're simply too small or too remote".

The noble Lord, Lord Wallace, referred to the "agreement" reached between the Charity Commission and the ISC. Unknown to anyone else, secret meetings have been taking place while the Bill has been progressing through your Lordships' House; indeed, only yesterday we became privy—if I may use that contentious term in the context of the Bill—to the outcome. This private agreement was finalised without any discussions with representatives of state schools or local government education authorities; nor were some noble Lords whose names appear on the amendment consulted or even informed, which would have been courteous, if nothing else. Is it not bizarre, to put it no more strongly, to allow the umbrella body for private schools to help write the rules by which it will be judged? Perhaps the Minister can answer that point.

The agreement could result in some limited progress, but it means private schools being allowed to retain an entirely voluntary approach. The ISC says it hopes that the agreement demonstrates that the body is taking steps towards further encouraging engagement between independent schools, state schools and local communities. I suppose it does, but the key word is "encouraging". Up to now, encouraging has brought us only to the point where the noble Lords, Lord Moynihan and Lord Wallace of Saltaire, felt compelled to spell out in their contributions in Committee why much more needed to be done and why they believed that statutory backing was needed to make it happen.

Further, the website that various noble Lords referred to this evening, Schools Together, which will go online later this year, will merely "request" that member schools provide contact details of the co-ordinators of partnership work at their schools, finishing with the telling statement, "such information to be provided voluntarily". So there are get-outs at each end, and it seems that the ISC clearly has no intention of forcing its members to do anything they do not want to do. It is difficult to imagine a weaker form of wording, as the noble Lord, Lord Wallace of Saltaire, said himself.

We also learn that the Charity Commission is to commission a research report 12 months from the introduction of the agreement. Crucially, it seems that only the commission and the ISC will have detailed

discussions around the terms of this research project in advance. Again, there will be no input from the state schools this is meant to assist. Will the Minister insist that state schools and local authorities be involved in the discussions relating to this research report? I very much hope that he will acknowledge the importance of that happening.

In Committee, the Minister said:

"Most of the Bill is about giving the Charity Commission the tools it needs to do its job".—[*Official Report*, 6/7/15; col. GC17.]

The talks we have heard about between the Charity Commission and the ISC apparently suggest that both organisations were intent on avoiding compulsion in any form. If, as has been suggested, one of the reasons why the Charity Commission did not want that to happen was that it does not feel it has the necessary resources to enforce it, I suggest that that is not a reason of any substance. We were told the same about compulsory registration with the Fundraising Standards Board, and it is just not good enough. If that is the case, the Government are preventing the Bill bringing about meaningful change in these two areas, contrary to what the Minister said, because they will not give the Charity Commission the tools—that is, the resources, which I suppose are largely financial—to do its job effectively.

Currently the onus is on state schools to apply for support, and the agreement would maintain that position. If, as the noble Lord, Lord Wallace of Saltaire, said, this amendment is carried, private schools will have to be proactive and seek out nearby state schools and say, "How can we help you share our facilities and our expertise?". It would put the responsibility on charities, which gain from charitable status, to go out and abide by the terms of that status by sharing their resources. How can that be seen as objectionable? Private schools would have to report on their success with such outreach initiatives, enabling the Charity Commission to check that they were observing the terms of public benefit effectively. Currently, as has been said, schools mark their own homework on their charitable work, which the figures show is not sufficient. Surely that is not acceptable.

It is important to have a strong regulator to ensure that standards in public trust and confidence are maintained, and enforcing the public benefit requirement is surely a key part of this. The amendment does that, and I welcome the fact that these important issues have been debated by noble Lords this evening.

Lord Bridges of Headley: My Lords, I start by saying that I remain strongly in sympathy with the aims of the noble Lords whose names are down on this amendment. Before I address the amendment, I will make a general observation. Charitable status confers on charities a number of benefits, and that is right. Charities deserve our support in fulfilling their purposes. However, those benefits come with responsibilities, which trustees must ensure their charity fulfils. A core purpose of the Charity Commission, helped by this Bill, is to ensure that every charity fulfils those responsibilities and obligations. How they do so is up to them, but do so they must. I repeat: every charity must fulfil them, no matter what they do. It is important that law and regulations be applied and enforced without favour or prejudice to any one sector of the charitable world. There must be no light touch or heavy hand towards schools with charitable status as opposed to religious groups, or towards animal charities as opposed to environmental charities. They all—I repeat, all—must abide by the law and fulfil their obligations.

With that in mind, I turn to the issue raised by the amendment. To fulfil their charitable purpose, many schools have forged partnerships with state schools, enabling the latter to share private schools' facilities. This has brought huge benefits, as a number of your Lordships have mentioned. It has widened access to first-class sports facilities, for example, and extended the use of music and drama facilities which might otherwise be unavailable to local state schools. Such partnerships are to be strongly encouraged. I agree with noble Lords that, while there are many terrific examples—and these should be applauded—we could certainly see a lot more of them. A strong nudge to those who have not yet given genuine consideration to the potential for such partnerships to further their charitable aims would surely be widely welcomed.

Where I differ with the amendment is not, therefore, in the aim but in the approach, for it proposes not a nudge but a legislative requirement which would severely limit the charitable purposes that charities which are independent schools can pursue, and I cannot agree that that is the best way forward. There are some important issues of principle here. First, the amendment would single out charitable schools in legislation. As has been mentioned, no other type of charity is treated in this way. Secondly, it would single out only one way in which schools could demonstrate public benefit. Again, no other charity is treated in this way in legislation.

In practice, charitable independent schools can demonstrate their benefit, and satisfy the "public benefit requirement" for the purposes of the Charities Act 2011, in a wide range of ways, including through bursaries—one-third of ISC school pupils receive help with fees—outreach teaching or sponsorship of an academy. Other options include sharing their curriculum or putting on summer schools for state pupils and so on. An important principle of charity law is in operation here. The law places the decision on which approach, or combination of approaches, the charity should take in the hands of the charity's trustees. That is how it should be, and it should not be for government or the regulator to interfere. Setting particular duties or minimum standards around one particular form of public benefit by one particular type of charity would set a dangerous precedent. I am sure there are those who might like to see particular duties placed upon religious charities, for example, and others who might take a different approach to NGOs from the one they would take to domestic charities, and so on.

Given what I said at the very start, I think it is clear that this is very dangerous territory to get into. Furthermore, it is contrary to the spirit of charity law, which has been tested in the Upper Tribunal. Public benefit must be real and not tokenistic, but it is not for the Charity Commission to dictate to schools, or to any other type of charity, the type or amount of provision they make. That should be a matter for the

[Lord Bridges of Headley]
trustees of the charity concerned, taking into account the circumstances of their charity.

Alongside that are issues of practicality. Some schools' circumstances may mean that it is not appropriate for them to share facilities. Some may not have sports or arts facilities or expertise that they can share, or local state schools may simply not need their drama facilities. Overriding the discretion and judgment of trustees, who are acting in the interests of the community as a whole, as to what is the most practical option in their area seems an odd thing to do if genuine local partnership is what we are aiming at.

As well as impinging on the discretion of trustees, making this a matter of law and regulation impinges on the discretion of the regulator, the Charity Commission. Of course, where the commission doubts that an independent school really is serving the public benefit, it can already step in, but it should be allowed to make that judgment in the round and not be required to give special attention to any one particular means of fulfilling a school's charitable mission. In some cases, I fear that a statutory approach could be positively counterproductive.

As I have said, I am greatly in favour of encouraging more partnerships for the purposes of sharing facilities, but I am not keen to champion that ahead of, for instance, academic partnerships. Singling out one form of public benefit for special treatment in law rather implies a hierarchy in which this particular approach is elevated above others. I am all in favour of nudging schools towards the sharing of facilities, but inadvertently nudging them away from other means of helping the education of others could be counterproductive.

There is another unintended outcome which would, I fear, be very likely if we were to move to legislation, and that is the loss of good will among the very community we are hoping to influence. I have been quite struck by the significant good will from the independent schools sector in relation to partnerships with state schools of this sort. The ISC has made it clear to me that it is in fact very keen to do more to promote best practice in sharing facilities and expertise—for example, in sports, music and the arts. This enthusiasm has, I am delighted to say, been translated into action through a very welcome dialogue with the Charity Commission, which recognises the spirit of and intention behind the amendment. As has been mentioned, this dialogue has resulted in a package of measures, agreed by the two organisations, which will provide just the "nudge" that I think we are all looking for

7.45 pm

The package contains three sorts of measures, of which the first is guidance. The Charity Commission will relaunch its existing guidance entitled *Public Benefit: Running a Charity*, publicising for schools examples of how to provide benefit for people who cannot afford their fees. This includes examples of sharing sporting facilities. It will also give new examples relating to the sharing of sports, arts and music facilities in its wider *Public Benefit: Reporting* guidance and in its example of a good trustees' annual report for schools. The Charity Commission will commit to ensuring that the guidance links to more examples of what constitutes good practice for independent schools to satisfy the public benefit test, which will include encouraging schools to pursue and develop partnerships. I am pleased that the ISC will publicise the relaunched guidance among all its members. In keeping with what I have said, any additions made to the guidance will be examples of good practice and will not introduce any new mandatory requirements.

The second part of the package is research. There are many claims about the extent of the sharing of facilities between schools, and we should base further debate more solidly on a better understanding of what is actually the case. As has been said, the Charity Commission will therefore commission a research report 12 months from the introduction of the revised guidance that I have spoken of. This is likely to be built upon data from the annual reports from charitable schools, as well as aggregated data that the ISC collects through its census. The terms will be worked up by the commission and the ISC together, and I am sure that the commission would be happy to meet the noble Lord, Lord Wallace, my noble friend Lord Moynihan and the noble Baroness, Lady Hayter, or the noble Lord, Lord Watson, to discuss this. The commission will publish the research and a copy will be placed in the House's Library, and I would be happy to make a commitment to the noble Lord, Lord Moynihan, about a debate on its findings.

Finally, the ISC is in the early stages of developing a web resource which enables local schools to request involvement in partnership activities. The ISC will request that member schools, on a voluntary basis, provide contact details of the co-ordinators of partnership work at their schools.

This is a substantial package, and it is a voluntary one between the ISC and the independent regulator. I think it is clear that this is to be applauded and encouraged. Over the summer the Charity Commission would be happy to discuss these measures with the noble Lords who have put their names to the amendment. I think it is also clear that moving to legislation would undermine such good will and co-operation as has been seen over the last few weeks. The Charity Commission and the ISC have said that they will continue to engage with interested Peers as their work progresses in the months ahead.

I finish with my overriding point. I share the noble Lord's aims and sentiments. Where we differ—but I hope not enormously—is on the means. The package of measures I have just outlined sits well with the overall approach of the Bill. The measures are targeted, proportionate and balanced. They seek to underscore trustees' obligations and responsibilities, and, crucially, to foster partnership. I hope that on that basis the noble Lord feels able to withdraw his amendment.

Lord Wallace of Saltaire: My Lords, this has been an important debate and a number of noble Lords, as well as the Minister, have said important things about what we need. I recognise that a number of noble Lords on the Conservative Benches have close links with the independent schools community. I trust that everything that has been said will be taken back and pursued further. I particularly welcome the point made by the noble Lord, Lord Moynihan, that we expect a

positive response to all that has been said. If necessary when the research report comes out, if good progress and significant movement has not been achieved, we will clearly have to move further again.

We all recognise that charitable status is a privilege and that public benefit has to be part of the response to that privilege. We all also recognise that public benefit is very difficult to define and that there are many other areas, including religious groups, where public benefit can sometimes be extremely contentious. That is an issue to which we may well return during the course of this Parliament.

The research project is key, and I welcome the Minister's response that we will be able to debate that report when it returns and see how thorough it has been and what it shows. On that basis, I am willing to withdraw my amendment. I am a liberal, not a socialist: I prefer co-operation and partnership to compulsion and the imposition of penalties. I would not vote for Jeremy Corbyn as my party leader. I want to see a strong and diverse charitable sector, including many schools founded as charities serving different purposes. However, it is also clear that schools that have been founded as charities have to pursue charitable purposes and demonstrate public benefit. That is what we have been calling for. On that basis, and on the basis that this discussion will continue with many of us on all sides of the House actively engaged, I am willing to withdraw the amendment.

Some Lords objected to the request for leave to withdraw the amendment, so it was not granted.

Division on Amendment 19.

7.52 pm

Division on Amendment 19

Contents 105; Not-Contents 156.

Amendment 19 disagreed.

Division No. 2

CONTENTS

Adams of Craigielea, B.
Anderson of Swansea, L.
Bakewell, B.
Bassam of Brighton, L. [Teller]
Beecham, L.
Berkeley, L.
Billingham, B.
Blood, B.
Bradley, L.
Brookman, L.
Campbell-Savours, L.
Cashman, L.
Clancarty, E.
Clark of Windermere, L.
Collins of Highbury, L.
Corston, B.
Crawley, B.
Davies of Oldham, L.
Desai, L.
Donaghy, B.
Drake, B.
Dubs, L.
Elystan-Morgan, L.
Faulkner of Worcester, L.
Foulkes of Cumnock, L.
Gale, B.
Golding, B.
Gordon of Strathblane, L.
Gould of Potternewton, B.
Hanworth, V.
Harris of Haringey, L.
Haworth, L.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Henig, B.
Howells of St Davids, B.
Hoyle, L.
Hughes of Stretford, B.
Hughes of Woodside, L.
Hunt of Kings Heath, L.
Jones, L.
Jones of Whitchurch, B.
Judd, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kennedy of The Shaws, B.
Kinnock, L.
Kinnock of Holyhead, B.
Kirkhill, L.
Lawrence of Clarendon, B.
Layard, L.
Lea of Crondall, L.
Lennie, L.
Liddell of Coatdyke, B.
Liddle, L.
McAvoy, L.
McFall of Alcluith, L.
McIntosh of Hudnall, B.
MacKenzie of Culkein, L.
McKenzie of Luton, L.
Mallalieu, B.
Masham of Ilton, B.
Massey of Darwen, B.
Maxton, L.
Mendelsohn, L.
Monks, L.
Morris of Aberavon, L.
Morris of Handsworth, L.
Morris of Yardley, B.
Nye, B.
O'Neill of Clackmannan, L.
Patel of Bradford, L.
Pitkeathley, B.
Plant of Highfield, L.
Prescott, L.
Prosser, B.
Quin, B.
Rogan, L.
Rosser, L.
Royall of Blaisdon, B.
Sawyer, L.
Simon, V.
Smith of Basildon, B.
Smith of Gilmorehill, B.
Snape, L.
Soley, L.
Somerset, D.
Stone of Blackheath, L.
Symons of Vernham Dean, B.
Taylor of Bolton, B.
Teverson, L.
Thornton, B.
Touhig, L.
Tunnicliffe, L. [Teller]
Uddin, B.
Walpole, L.
Warwick of Undercliffe, B.
Watson of Invergowrie, L.
Whitty, L.
Wilkins, B.
Wills, L.
Wood of Anfield, L.
Worthington, B.
Young of Norwood Green, L.
Young of Old Scone, B.

NOT CONTENTS

Aberdare, L.
Addington, L.
Ahmad of Wimbledon, L.
Altmann, B.
Arran, E.
Ashton of Hyde, L.
Astor of Hever, L.
Balfe, L.
Bates, L.
Berridge, B.
Bilimoria, L.
Black of Brentwood, L.
Blencathra, L.
Bottomley of Nettlestone, B.
Brabazon of Tara, L.
Brady, B.
Bridgeman, V.
Bridges of Headley, L.
Brookeborough, V.
Brougham and Vaux, L.
Browne of Belmont, L.
Browning, B.
Buscombe, B.
Byford, B.
Caithness, E.
Callanan, L.
Cameron of Dillington, L.
Carrington of Fulham, L.
Cathcart, E.
Chisholm of Owlpen, B.
Colwyn, L.
Cope of Berkeley, L.
Cormack, L.
Courtown, E.
Crathorne, L.
Crickhowell, L.
Cromwell, L.
Cumberlege, B.
De Mauley, L.
Deben, L.
Dixon-Smith, L.
Dunlop, L.
Eaton, B.
Eccles, V.
Eccles of Moulton, B.
Elton, L.
Empey, L.
Evans of Bowes Park, B.
Faulks, L.
Finlay of Llandaff, B.
Fookes, B.
Forsyth of Drumlean, L.
Fowler, L.
Framlingham, L.
Freeman, L.
Freud, L.
Gardiner of Kimble, L. [Teller]
Gardner of Parkes, B.
Geddes, L.
Glenarthur, L.
Gold, L.
Goldie, B.
Goodlad, L.
Goschen, V.
Grade of Yarmouth, L.
Greenway, L.
Hamilton of Epsom, L.
Harding of Winscombe, B.
Helic, B.
Henley, L.
Heyhoe Flint, B.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howard of Rising, L.
Howe, E.
Hunt of Wirral, L.
Hylton, L.
Inglewood, L.
James of Blackheath, L.
Janvrin, L.
Jenkin of Kennington, B.
Jopling, L.
Kakkar, L.

Keen of Elie, L.
Kilclooney, L.
King of Bridgwater, L.
Knight of Collingtree, B.
Lamont of Lerwick, L.
Lang of Monkton, L.
Lawson of Blaby, L.
Lexden, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Livingston of Parkhead, L.
Lucas, L.
Lyell, L.
McColl of Dulwich, L.
Macfarlane of Bearsden, L.
Mackay of Clashfern, L.
Magan of Castletown, L.
Maginnis of Drumglass, L.
Mancroft, L.
Marlesford, L.
Maude of Horsham, L.
Mobarik, B.
Moore of Lower Marsh, L.
Morris of Bolton, B.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
O'Neill of Gatley, L.
Perry of Southwark, B.
Popat, L.
Prior of Brampton, L.
Rana, L.
Ribeiro, L.
Ridley, V.
Risby, L.
Sassoon, L.
Seccombe, B.
Selborne, E.
Selkirk of Douglas, L.
Selsdon, L.
Shackleton of Belgravia, B.
Sharples, B.
Sheikh, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shields, B.
Shrewsbury, E.
Spicer, L.
Stedman-Scott, B.
Stowell of Beeston, B.
Suri, L.
Taylor of Holbeach, L. [Teller]
Taylor of Warwick, L.
Trefgarne, L.
Trimble, L.
True, L.
Tugendhat, L.
Ullswater, V.
Wakeham, L.
Warsi, B.
Wheatcroft, B.
Williams of Trafford, B.
Younger of Leckie, V.

8.02 pm

Clause 13: Power to make social investments

Amendment 20

Moved by ***Baroness Barker***

20: Clause 13, page 16, line 19, leave out "both" and insert "primarily"

Baroness Barker: My Lords, we move on to the issue of social investment, one which we spent considerable time deliberating in Grand Committee. During those discussions, the Minister repeatedly used the phrase, "dancing on the head of a pin". I am not much of a dancer, and I return to this not to rehearse the arguments that we had then but for what I think is a really important reason. As we said in Grand Committee, this is the first time that social investment has ever been defined in law. The extent to which trustees are acting properly if they make an investment on which they will not receive a financial return is a question on which, as we heard in Grand Committee, there are a number of different points of view. I simply want us once again to go around the question of the difference between financially motivated investment which happens to be in line with the charity's social purpose and consciously, explicitly socially motivated investment. The reason for doing so is risk. There is a strong possibility, at least for the first few years of any such investment, that there will be, at best, no return and there may even be losses. It is crucial that we protect in law the trustees who are making such investments.

The noble Lord, Lord Hodgson, and I made the point in Grand Committee that the definition of social investment in the Bill does not reflect the definition given by the Law Commission. The Law Commission's definition of social investment includes "avoiding financial liability at a future date". It was, therefore, somewhat difficult for the noble Lord and I to learn during Grand Committee that the Law Commission had helped with the Bill's drafting. The Law Commission's definition does not require there to be a positive financial return. That is what it said in its initial report on social investment. However, the Bill includes financial return in the definition. At new Section 292A(5), it defines financial return as,

"if its outcome is better for the charity in financial terms than expending the whole of the funds or other property in question".

The amendments in this group would add "equal to". The amendments would allow trustees to make an investment on which there would be simply a social return. There may be a financial return—as opposed to a definite loss, which would be what a grant would amount to—but there may not be. We on these Benches think it important to make that distinction.

The definition in the Bill fails to differentiate between financially motivated investment and consciously, explicitly social investment. That is why we have tabled the amendments, which are slightly different from those which were tabled in Grand Committee. They would require trustees to be open in their investment policy about the fact that they were making social investments, not seeking to make a financial gain but directly trying to achieve a social purpose. As long as they did that and were not harming the capital assets of the charity by completely depleting them, we think that broad definition of social investment would get us to a point where trustees, who are very risk averse under existing law, could begin to develop the whole social investment market. That is what this Government, like the previous Government, have said that they wish to do, but which has so far been constrained by law. That is the reason behind Amendment 20 and all the other amendments in the group. I beg to move.

Lord Hodgson of Astley Abbotts: My Lords, I shall be exceptionally brief. I hope that my noble friend will be able to reassure us when we come to the next group that government amendments largely cover the points that the noble Baroness has made in her amendments, all of which are very worth while. We may be able to probe a bit further to ensure that we are getting where we think we are on that group, rather than at this point, but her amendments are interesting.

Lord Watson of Invergowrie: My Lords, given that this is the first time that social investment has been defined in statute, perhaps it was not surprising that considerable time was spent in Committee in pursuit of its meaning. I am not certain that we nailed it down effectively. Indeed, some, including Social Enterprise UK, continue to argue that the Bill fails to differentiate between financially motivated investment which also happens to be in line with the charity's social purpose and consciously or explicitly socially motivated investment.

All investment has some kind of social impact and much financial investment produces positive social returns. In Committee, the Minister avoided giving a

clear answer as to how social investment is to be differentiated from financially motivated investment; rather, he pointed to the Charity Commission and the courts making such judgments. Only time will tell whether that proves to be the case. For that reason, it is to be welcomed that the Bill will be reviewed after a period of three rather than five years. In the mean time, the amendments in this group offer some clarity in the Bill's provisions on social investment and we are content to offer them our support.

Lord Bridges of Headley: I thank the noble Baroness, Lady Barker, for tabling Amendments 20 to 24. Taking time to consider the definition of social investment used in the Bill has been a valuable exercise and I have no doubt that we are all much the wiser for it.

I will deal with the amendments in turn, but I should make it clear that the Law Commission recommended these powers, the Law Commission drafted these clauses, and the Law Commission has been consulted on the amendments. So I am not sure that I totally agree that the Bill does not accurately reflect the Law Commission's recommendations.

Amendments 20 and 21 would change the definition of social investment such that directly furthering the charity's purposes must be the primary consideration over achieving financial return. The range of social investments covered by the Bill would be restricted only to those where directly furthering the charity's purposes is the primary aim. It would thus exclude those investments where achieving a financial return is the primary aim, as well as introduce a definitional issue around how to determine which of the two purposes is primary.

This is contrary to the intention of the Bill, which deliberately aims for a wide definition of social investment where neither the furtherance of the charity's purposes nor the financial return should be required to take precedence. Some social investments place emphasis on charitable purpose, some on financial return; in other cases, the trustees will be motivated by financial return and furtherance of purposes in equal measure. None of these cases should be excluded from the statutory definition of social investment and from the scope of the new power; all investments right along the spectrum should be included. 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, it is important that the definition of social investment remains suitably inclusive.

As to Amendments 22 and 23, let me state for the sake of clarity that the definition of social investment used in the Bill covers anything short of a total loss of funds. It includes both a neutral and a negative return, short of such total loss. In this way, repayment of any part of the capital invested would be a "financial return" within the definition. The amendments seek to include cases where the expected financial return may be equal to, rather than greater than, a total loss of the investment. This would move us firmly into grant-making territory and mean that grants and other spending, where there is no expected financial return, would fall under the category of social investment. I do not think that this would be a desirable change to the Bill.

The third and final amendment in this group would delete new Section 292A(6), which is a necessary counterpart to the definition of an act of charity used in new Section 292A(4)(b). These parts of the clause are, I recognise, a little cumbersome, but they are necessary to deal with the so-called Rosemary Simmons problem, a case which was raised during the Law Commission consultation. It makes clear that giving a guarantee can count as a social investment despite the fact that money is only put at risk and not actually paid over. As such, it is a necessary inclusion to cover the full breadth of potential social investments. Deleting this subsection would leave the Bill deficient.

The noble Baroness will be aware that the Government have put proper time and effort into getting a definition of social investment that is fit for purpose. As she said, we have been dancing on the head of a pin for some time. I will address this at greater length when I cover government Amendments 25 and 29, referred to by my noble friend Lord Hodgson. I hope on this basis that the noble Baroness will be content not to press her amendments.

8.15 pm

Baroness Barker: I thank the Minister for that answer. I think that we are edging closer to a common position. If my amendments have helped to achieve that, that is worth while. I particularly welcomed the Minister's statements about my Amendment 22. At this stage, I will curtail this discussion and be delighted to take part in the discussion on the next group of amendments. I beg leave to withdraw the amendment.

Amendment 20 withdrawn.

Amendments 21 to 24 not moved.

Amendment 25

Moved by ***Lord Bridges of Headley***

25: Clause 13, page 16, line 36, at end insert—

"( ) The fact that a relevant act may also have results other than those mentioned in subsection (2)(a) and (b) does not prevent the carrying out of that act being regarded as the making of a social investment."

Lord Bridges of Headley: My Lords, it is to government amendments to Clause 13, relating to the definition of social investment, that I now turn. It is the dancing on the head of a pin that I promised to undertake, which was mentioned by the noble Baroness, Lady Barker, and follows our fruitful debate in Committee and my meeting with my noble friend Lord Hodgson and the noble Baroness.

Noble Lords will recall that I described the power of social investment as being deliberately drafted to be as wide as possible while retaining the distinctiveness of the "social" element, so that the power covers a spectrum from transactions that are mostly intended to further charitable purposes but involve some return of capital, to those that are primarily financial but have a small mission benefit.

[Lord Bridges of Headley]

There are two poles at the extremes of the spectrum. At one end there are social investments that look much like grants, with very little expected return of capital. At the other end, there are social investments that look very similar to traditional financial investments but have a small role in furthering charitable purpose—and one which is deliberately sought. Social investments must combine some aspect of each pole, but the nature of the combination is entirely flexible.

I also took the opportunity to make it clear that the Bill does intend to include mixed motive investment within the definition of social investment. That said, I have remained open to your Lordships' suggestions that the Bill could be clearer on this point. This is of particular importance given the intent of this legislation to be expressly permissive and to encourage the uptake of social investment by charities. Thus I reiterate that in relation to the power of social investment: first; there is no minimum degree of mission benefit before the social investment power is engaged; secondly, it is the combination of the mission benefit and the financial return which may cause trustees to consider a social investment to be in the interests of a charity; and, thirdly, a charity's purposes need not be advanced on an exclusive basis—there may be other unrelated outcomes that are features of the transaction as a whole but are not part of the charitable mission of the specific charity investor and are not part of their reason for investing.

For the record and for completeness, the Law Commission recommendation paper which forms the basis of Clause 13 states that,

"we consider that the definition should make clear that insofar as a social investment is justified by its expected mission benefit: (1) only the charity's objects are relevant; other benefits which do not fall within the charity's purposes are irrelevant (even if they may be charitable purposes for another charity); (2) for a charity with multiple purposes, a social investment need not further each one of those purposes; and (3) the charity's social investment must be expected to cause the mission benefit that is relied on to justify the social investment. However, insofar as a social investment is justified by its expected financial return, it need not be used exclusively and directly to further the charity's purposes".

It may be worth me unpacking this further by way of an example. A charity might have the care of horses as its charitable purpose. It may wish to invest in a horse and donkey social enterprise, which provides joint facilities for both. The social enterprise may also expect to make a financial return, perhaps from charging visitors. It is entirely right that, having weighed the benefits to horses along with the expected risk-adjusted financial return, the horse charity is able to invest in the horse and donkey social enterprise. So long as the trustees have satisfied themselves that the combination of expected financial return and mission benefit in relation to horses is appropriate, this is covered under the social investment power. For the avoidance of doubt, this would also be the case for a horse and zebra charity investing in the horse and donkey social enterprise.

To put this in a more generic formulation, the social investment power will enable charities with wide charitable objects to invest in a wide range of social enterprises on an unrestricted basis, and by way of equity or debt or a combination of the two, or indeed through any other suitable financial instrument. With this in mind, and following discussions with the Law Commission and others, we have decided to amend the definition used by the Bill in a way that will make this even clearer, and to put it beyond any doubt in relation to matters of interpretation that could be raised some years hence. This explains Amendments 25 and 29.

I hope that this meets with the approval of the noble Lords who raised concerns in this area. I recognise that it may not go as far as some may like, but it is as far as we feel able to go without raising the spectre of private benefit. The Bill does not change the law on private benefit, which was deliberately excluded from the scope of the Law Commission review. However, for the record, the Law Commission recommendation paper states that,

"there was broad agreement that the law relating to private benefit does not generally prevent charities from making social investments … It does not seem to us that it is an obstacle, if properly understood, to social investment done with the aim of furthering a charity's purposes".

I trust that my laying out of the definition and the thinking behind it in some detail has served to make the case clear.

I thank the noble Lord, Lord Cromwell, for Amendments 30 and 31. It is, of course, important for charity trustees to be prudent and to think about the long-term management of their charity's assets, whether they are making a social investment or engaged in any other activity. This month, the Charity Commission published its revised guidance, *The Essential Trustee, (CC3)*, which says, for example, that trustees must,

"make balanced and adequately informed decisions, thinking about the long term as well as the short term",

and that they,

"must act responsibly, reasonably and honestly. This is sometimes called the duty of prudence. Prudence is about exercising sound judgement".

Trustees are therefore already subject to duties that cover the points made by the noble Lord's amendment.

The purpose of Section 292C is to set out certain duties that apply specifically to social investment, not to codify the entirety of trustees' duties when making social investments. In addition to these duties, trustees will of course also be subject to the duties imposed by the general law, including the law of prudence. The specific duties in 292C also modify the duties imposed by the Trustee Act so that they are tailored to social investment. Just as the Trustee Act does not include an express duty to consider prudence and the long-term management of a charity's assets, nor should the social investment duties.

The Law Commission's recommendation was that the trustees should be satisfied that a social investment is in the charity's interests, having regard to the two limbs of the definition in Section 292A: namely, furthering purposes and the financial aim. The wording of the government amendment deliberately refers back to those two limbs of the definition; it does not need to do more than that.

Finally, the long-term management of a charity's assets will not always be a relevant consideration when making a social investment. It would be relevant if a charity is using its investment assets to make a social

investment, but this will not always be the case. A charity might use its disposable income to make a social investment. For example, if a charity's endowment produces an income of £10,000 to be spent this year, the charity might decide to use £2,000 of that to make a social investment that is expected to further the charity's purposes and might result in a payment of, say, £500. That might not be a prudent long-term management of that £2,000 as an asset, but it is an excellent use of the charity's funds and the possibility of getting £500 back is better than simply giving £2,000 away. I fear that the wording of the noble Lord's amendment might suggest, even if it is not intended to, that such a social investment is not permitted, and I hope that he will be content not to press it. I beg to move.

Lord Cromwell (CB): My Lords, I shall speak to Amendments 30 and 31, which are amendments to government Amendment 29. In doing so, I remind the House of my involvement in the charity sector and in financial investing. I am grateful to the Minister for government Amendment 29, which I support. I sense that I may be swimming against the tide here, but I hope that he will feel able to reconsider his approach to the text by adding what we have suggested in the amendments tabled in my name and that of my noble and learned friend Lord Hope of Craighead.

The Minister's amendment highlights the need for trustees to consider a social investment in respect of two factors: the charity's purposes and the financial return. I am sure he is right in that. No financial return is not, in my definition at least, an investment. The missing element in our view is to consider how a social investment fits into the pattern of overall investments and the long-term plan for the charity's assets as a whole, not just considering the investment in isolation, which I think Amendment 29 seems to imply.

Some might say that prudence and long-term planning are motherhood and apple pie because they are self-evident. However, the Bill is breaking new ground. It invites trustees to engage with a new type and class of investment. These are welcome additions to the investment universe, but they are different from and less regulated than mainstream financial investments. Furthermore, these investments are likely to be presented in different ways, separately, and by different people. I hope that the Minister will agree that, first, the wording we suggest does not place any barriers in the way of social investing, or certainly none that a worthwhile social investment could reasonably object to. Secondly, they provide a context to such investments, and given that this is a new area of investing, a reasonable sense check that trustees should observe when making or considering them.

Lord Hope of Craighead (CB): My Lords, I am in the unusual position of having heard the Minister's reply before we move our amendments, so I know what he is saying. Perhaps I may say in support of the amendment tabled by the noble Lord, Lord Cromwell, to which I have also put my name, that what we are trying to do is refine the exercise which the Minister is himself engaged upon. For myself, I very much welcome government Amendment 29.

The starting point for this is to look back to new Section 292C(2)(c), where the charity trustees are asked to,

"satisfy themselves that it is in the interests of the charity to make the social investment".

It was because that in itself seemed rather bald that we suggested in Committee that the phraseology should be expanded upon to give further guidance to the charity trustees. The noble Lord has very properly expanded on that, but our point is that it does not go quite far enough. It tells the trustees that they should have regard to the benefit that they expect the social investment to achieve for the charity, stating,

"(by directly furthering the charity's purposes and achieving a financial return)".

That is a specific and immediate task; namely, looking at the information and the task before the charity trustees at the moment. The problem may be that if a step is taken today, it may undermine or at least put at risk the assets of the charity in the longer term. It is to try to balance these two things out—the way things seem today as against how they might seem in two or three years' time—that we are making this additional suggestion.

The Minister has said that he is not persuaded, but I wonder whether he would be kind enough to at least think again about whether he might give some little step in our direction to balance out these two things. Long-term management of the assets is obviously essential to the charity if it is to remain alive, and it is to balance out the immediate task with the long-term future that we suggest the wording should be expanded further.

8.30 pm

Lord Hodgson of Astley Abbotts: I rise briefly to thank my noble friend for the trouble that he has taken over this. The sector said to me: "These are the three things we'd like him to say", and I am glad to say that he has nailed all three issues, so I thank him very much for that. It greatly reassures us and clarifies the situation, which was somewhat obscure when we left the Moses Room a couple of weeks ago.

One hesitates to take on a legal brain like that of the noble and learned Lord, Lord Hope of Craighead, or indeed, the noble Lord, Lord Cromwell, but new Section 292C(2)(c), where the trustees,

"satisfy themselves that it is in the interests of the charity to make the social investment",

is good enough. If you go beyond that, you will put in an additional inhibition about making a social investment.

The trustees have a duty. They have responsibilities and obligations, and there will be legal consequences if they fail to follow them. I hope that the Minister will continue to resist that further inhibition, which does not add much and has the chilling effect of lawyers saying, "Either way you need to have particular regard, if you're going to make social investments". I think that that is a mistake as we are trying to slowly and carefully see the emergence of this new movement. I thank my noble friend for his three reassurances.

Lord Watson of Invergowrie: My Lords, on the first day of this month in Committee, I said:

"It is important for the Bill to be as clear as possible and I hope the Minister … will give an undertaking to bring forward his own re-wording to improve this section on Report. We have a

[LORD WATSON OF INVERGOWRIE]
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".—[*Official Report,* 1/7/15; col. GC 191.]

The section was on the meaning of social investment, so it is pleasing that the Minister has heeded my words and has indeed strengthened the Bill both in terms of the government amendments in this group and in the group that follows. I thank him for that.

We also believe that the two amendments in the names of the noble and learned Lord, Lord Hope of Craighead, and the noble Lord, Lord Cromwell, would enhance this clause, but the Minister has already set out his stall on these matters, so there is not much more that I can say on that.

Lord Bridges of Headley: My Lords, first, I apologise for getting carried away with excitement so that I gave my answer before the noble Lord had even posed the question. It is a novel way, especially for the noble and learned Lord, Lord Hope, who knows far more about most of these matters than me.

I entirely agree with what the noble Lord, Lord Watson, and my noble friend said about the need for simplicity and clarity in these matters. I also think we all agree that this is a new area of the law and we need to proceed carefully, cautiously and make sure that what we are doing meets the needs of the sector and that we do not land up in a world with unintended consequences.

In response to the noble Lord, Lord Hodgson, who asked whether I would consider what he had to say on the amendment, I am perfectly happy to reflect further but I am sorry to say that I can absolutely make no commitment on this matter. I point out, as the noble Lord, Lord Watson, said, that the next review of the Charities Act will be not in five years but before that. That decision has been made for the specific reason that this one area of the law, like many others, merits further consideration at that point. I am sure that well before that we will want to consider all those points on how the law is settling down and bedding in. I very much hope that the noble and learned Lord, Lord Hope, and the noble Lord, Lord Cromwell, will be part of that discussion and those deliberations. I am sorry I cannot meet what they want right now but I certainly assure them that we will be beating a path to their door, even if they are not coming to ours, to ask for their views.

Amendment 25 agreed.

Amendment 26

Moved by ***Lord Bridges of Headley***

26: Clause 13, page 16, line 37, after "that" insert "carrying out"

Amendment 26 agreed.

Amendment 27

Moved by ***Lord Bridges of Headley***

27: Clause 13, page 17, leave out lines 17 to 21 and insert—

"(4) This section and section 292C do not apply in relation to—

(a) charities established by, or whose purposes and functions are set out in, legislation;

(b) charities established by Royal Charter;

but they apply in relation to all other charities, whether established before or after this section comes into force.

(5) In subsection (4) "legislation" means—

(a) an Act of Parliament or an Act or Measure of the National Assembly for Wales; or

(b) subordinate legislation (within the meaning of the Interpretation Act 1978) made under such an Act or Measure."

Lord Bridges of Headley: Moved formally.

Baroness Barker: My Lords, the House might find it useful to hear from the noble Lord, Lord Bridges, on the Government's Amendments 26, 27 and 28, which were not grouped with the previous group starting with Amendment 25. I would find that helpful.

Lord Hodgson of Astley Abbotts: My Lords, these amendments are about the royal charter charities, so they are very different. We had so far been dealing with social investments and the definition of that. This group is about the special position of royal charter charities. I am not sure that it will detain us very long, but nevertheless it is a different topic and they have been separated by the Bill team into two different groups.

Lord Bridges of Headley: My Lords, if I am right, I will address Amendments 26 and 28, which relate to very minor improvements to language, adding an active grammatical formulation and a specific rather than generic identifier respectively. I trust that they will not require further explanation.

The amendment to new Section 292B(4) improves the wording of the specification around the exclusion of charities established by legislation or by royal charter. They have been excluded from the social investment power because of the differences in governance structure. The amendments here simply offer an improved form of wording to reflect this.

The addition of new Section 292B(5) is needed to explain better the territorial extent of the subsection on charities established by legislation, as set out in new Section 292B(4). It clarifies that the exclusion relates specifically to charities established by, or whose functions are set out in, legislation or secondary legislation authorised by Acts of Parliament or measures of the Welsh Assembly. I expect that these measures will not trouble noble Lords unduly, being of a rather technical nature without policy implications.

Baroness Barker: My Lords, it was very helpful of the noble Lord to give us that explanation of Amendments 26 and 28, which, as he said, were minor and technical, but they set out the geographical differences of certain charities. That was very helpful. I invite the noble Lord to address Amendment 27, which deals with charities established by royal charter. Noble Lords would find that helpful.

Lord Bridges of Headley: My Lords, forgive me. I thought that I had addressed that in what I have just said but, clearly, I have not. As far as I understand it, I thought that the amendment as set out relates to what

I have just addressed as regards the wording of the specification around the exclusion of charities established by legislation or by royal charter. I thought that I had just explained that to the noble Baroness, but I hope she will forgive me if she wishes to be clearer about the purpose of her amendment. My apologies, I am not entirely clear why we are in this situation.

Baroness Barker: My Lords, the noble Lord has made it clear to the House that certain charities established by royal charter are exempt from the provisions of social enterprise. I, for one, am content to leave the matter at this stage.

Amendment 27 agreed.

Amendment 28

Moved by ***Lord Bridges of Headley***

28: Clause 13, page 17, line 24, leave out "this Part" and insert "section 292B"

Amendment 28 agreed.

Amendment 29

Moved by ***Lord Bridges of Headley***

29: Clause 13, page 17, line 33, at end insert ", having regard to the benefit they expect it to achieve for the charity (by directly furthering the charity's purposes and achieving a financial return)"

Amendments 30 and 31 (to Amendment 29) not moved.

Amendment 29 agreed.

Amendment 32

Moved by ***Lord Hodgson of Astley Abbotts***

32: Clause 13, page 18, line 3, at end insert—

"292D Marketing of social investments

(1) Any financial promotion which is communicated by a charity shall not be subject to the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005.

(2) The Treasury may by regulations set out rules for the communication of financial promotions by charities.

(3) In making any such regulations, the Treasury shall have regard to—

(a) the desirability of creating rules which are proportionate to the nature, scale and capacity of different charities and which are easy to understand and follow;

(b) the desirability of creating rules which support the growth, development and financing of charities and which are enabling and facilitative;

(c) the desirability of facilitating, where appropriate, direct investment on the part of consumers into charities, including charities which operate locally to the consumer;

(d) the desirability of consistency of approach in the regulatory treatment of communications made by different forms of charities;

(e) the differing expectations that consumers may have in relation to different kinds of investment or other transaction and, in particular, the fact that many when investing in charities do so for a variety of non-financial reasons; and

(f) the desirability, where appropriate, of the Financial Conduct Authority exercising its functions in a way that recognises differences in the nature of, and objectives of, charities as compared to other organisations which are subject to the requirements of the Financial Services and Markets Act 2000."

Lord Hodgson of Astley Abbotts: My Lords, the horses are heading for the stables so I will be brief. I have retabled this amendment, which seeks to update the financial promotion rules to allow the emergence of a class of social investor comprising people who wish to support a particular cause dear to their hearts, or perhaps near to their home, but would like to invest—that is, they might/could get their money back as opposed to giving it irrevocably. My noble friend—and, indeed, the House—has heard me say too often that I consider it counterintuitive that I can give money to a scheme but cannot invest in exactly the same scheme.

Most social investments are quite small in size, suitable for private investment but not suitable for the full panoply of an offer to the public, and are not cost effective. Currently, the financial promotion rules make no distinction to cover the emerging social investment market.

I absolutely accept—I turn to the noble Lord, Lord Cromwell, at this point—the need for the new rules to be carefully drafted. Social investment, as we all agree, is a new and emerging activity. It must not overpromise and individuals need to understand the risks. However, the issue remains—as the noble Baroness, Lady Barker, said at col. 9 of Grand Committee *Hansard* of 6 July—a "hot potato" being passed between the Treasury and the Cabinet Office.

Those of us who have followed this issue for some time have experienced extreme frustration. Each time a statutory bus comes past, the conductor tells us, "This is not the right one for you, guv, wait for the next one". We are still waiting at the bus stop. In replying to the debate in Committee, my noble friend said:

"In addition to looking at suggestions, including in this amendment and what has been said in the debate, the Treasury will explore whether there are other non-legislative ways of mitigating burdens or costs to social investment offerings. … as I said, I am meeting my right honourable friend the Economic Secretary to the Treasury to discuss them".—[*Official Report*, 6/7/15; col. GC 13.]

I accept that this Bill is focused on improving charity regulation and on social investment, but it is not the right place for an amendment to the financial promotion rules. However, in the light of his comments on 6 July, can my noble friend tell us when our bus might arrive?

8.45 pm

Lord Bridges of Headley: My Lords, first, I apologise to the noble Baroness, Lady Barker, and others for my slight confusion over the previous amendment. I seem now to be a bus or a bus conductor—I am not sure which—but I hope to bring a smile to my noble friend Lord Hodgson's lips.

As my noble friend says, the amendment aims to insert a new section into the Charities Act to exempt charities from the FCA's financial promotion rules and to give the Treasury a power to create a new regulatory regime for charities marketing financial

[Lord Bridges of Headley]
promotions, taking this out of the hands of the FCA. This amendment was tabled by noble Lords in Committee. I repeat what I said then: I understand that the effect of the financial promotion regime is an important issue for charities and social enterprises looking to raise funds from the public in this particular way. I also understand that my noble friend's amendment is prompted by concerns around the appropriateness of these rules for charities that want to raise investment funds from members of the public, just as they might ask for donations.

The amendment suggests that the Treasury should become the regulator, and may be probing in that respect—indeed, I am sure it is. However, I believe that the model of independent expert regulation by the FCA is the right one. That said, it is of course in all our interests that any regulation is proportionate, consistent and clear. As my noble friend knows well, the Government are supportive of social investment and very keen to ensure that regulation is proportionate for the charities and social enterprises involved and, crucially, for the consumers who want to invest in these products. Indeed, very valuable changes were made to the remit of the FCA in 2012 to give it duties to have regard to the desirability of sustainable economic growth and to the differing needs of different types of organisations it regulates, including those of charities and social enterprises. None the less, I am aware of the ongoing concerns about regulatory approaches to retail social investment, and the Government are committed to doing anything they can to remove any unnecessary burdens, while of course not eroding consumer protection or the integrity of the financial system.

As my noble friend said, following Committee, I met my honourable friends the Economic Secretary to the Treasury and the Minister for Civil Society to discuss the issues around financial promotions and social investments that were raised by my noble friend Lord Hodgson in Grand Committee and supported by a number of other noble Lords. We agreed that the model of independent expert regulation by the FCA is the right one and that consumer protection must be paramount. It is therefore important to ensure that the current regime supports social investment rather than looking to shift responsibility to the Treasury. We also agreed that the Treasury and the Cabinet Office will write jointly to the FCA to consider regulatory approaches to how members of the public make social investments, with a specific focus on the financial promotion rules.

As I mentioned in Committee, the Government and the FCA have been working with the sector to consider evidence about the effectiveness of the regime, and this work will continue. The important issues raised in these debates will of course be considered as part of these discussions with industry and the FCA. I believe we are making progress and, as I said, my honourable friend the Economic Secretary to the Treasury will be writing to my noble friend, as well as the other noble Lords who raised this important issue, to update them on progress. In the light of this, I hope my noble friend will think that a bus may have at last arrived and will understand that work is ongoing in this area. On that basis, I invite him to withdraw his amendment.

Lord Hodgson of Astley Abbotts: I am grateful to my noble friend. I cannot say fairer than that, particularly at 8.48 pm. I thank him very much indeed and beg leave to withdraw the amendment. I look forward to hearing from my noble friend in due course.

Amendment 32 withdrawn.

Amendment 33

Moved by ***Lord Hodgson of Astley Abbotts***

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

"Appeals and applications to Charity Appeal Tribunal

(1) The Charities Act 2011 is amended as follows.

(2) For section 319 (appeals: general) substitute—

"319 Appeals: general

(1) Except in the case of a reviewable matter (see section 322) an appeal may be brought to the Tribunal against any decision, order or direction made by the Commission or any decision on the part of the Commission not to make any decision, order or direction.

(2) Such an appeal may be brought by the following—

(a) the Attorney General;

(b) the charity trustees of the charity subject to the relevant decision, order or direction;

(c) (if a body corporate) the charity subject to the relevant decision, order or direction;

(d) any other person who is the subject of the relevant decision, order or direction or who is significantly interested in and affected by the relevant decision, order or direction.

(3) The Commission is to be the respondent to such an appeal.

(4) In determining such an appeal the Tribunal—

(a) must consider afresh the legal decision, order, direction or decision not to act (as the case may be), and

(b) may take into account evidence which is not available to the Commission.

(5) The Tribunal may—

(a) dismiss the appeal; or

(b) if it allows the appeal, exercise any of the following powers—

(i) to quash (in whole or in part) the decision, order, direction and (if appropriate) remit the matter to the Commission;

(ii) to substitute for the decision, order or direction any other decision, order or direction which could have been made or given by the Commission;

(iii) to add to the decision, order or direction anything which could have been contained in a decision, order or direction of the Commission;

(iv) to give such direction to the Commission as it considers appropriate; and

(v) where appropriate, to make any decision, order or direction which the Commission could have made."

(3) For section 321(2) substitute—

"(2) Such an application may be brought by—

(a) the Attorney General;

(b) the charity trustees of the charity subject to the relevant reviewable matter;

(c) (if a body corporate) the charity subject to the relevant reviewable matter;

(d) any other person who is the subject of the relevant reviewable matter or who is significantly interested in and affected by the relevant reviewable matter."

(4) For section 323 (remission of matters to Commission) substitute—

"323 Remission of matters to Commission

The reference in section 319(5)(i) to "remit a matter to the Commission" means the power to remit the matter—

(a) generally, or

(b) for determination in accordance with a finding made or direction given by the Tribunal."

(5) Omit section 324 (power to amend provisions relating to appeals and applications to Tribunal).

(6) Omit Schedule 6 (appeals and applications to Tribunal)."

Lord Hodgson of Astley Abbotts: My Lords, I am going for a third major prize now. I have retabled this amendment, which proposes a wholesale redrafting of Schedule 6 to the 2011 Act.

As I said before, this may sound a rather technical matter but, as I explained in Committee, it has a very important purpose: to improve access to justice for charities, especially smaller ones. The last Labour Government set up the Charity Tribunal in the 2006 Act, which was a very good development. Prior to that, only the High Court could provide a means of redress for small charities, which was expensive and slow. Charities, especially smaller charities, had no option but to submit to the directions and decisions of the Charity Commission. However, what was a good idea and gave with one hand took away with another. Schedule 6 is 10 pages long and complex in that it says what can be appealed against, who can bring the appeal and what the remedy is. It is difficult for charities and many charities' lawyers to understand. The evidence to my review was that the sector found it complex and difficult to follow. My amendment is designed to sweep these complexities away.

In response to the amendment in Committee, my noble friend said:

"I am not sure that everyone shares my noble friend Lord Hodgson's viewpoint on the difficulty of interpreting Schedule 6 to the Charities Act 2011. There are some who are attracted to the structure of Schedule 6 and find it easy to navigate. It allows one to look up a particular provision and quickly see who can appeal and what decisions are available to the tribunal. It is not something that has been raised with the Government as causing particular difficulty, other than by my noble friend".—[*Official Report*, 6/7/15; col. GC 17.]

That stung me into action, and I decided that I was going to find out all about it. I have done some more research and discovered three things. First, there is a widely supported view that Schedule 6 is too complex and difficult to navigate. That supports my case for reform. Secondly, my amendment is too widely drafted as regards standing—that is, who may make an appeal. By way of example, many of the appeals that have been lodged to date in the tribunal in relation to schemes have been brought not by the charity trustees who had sought the proposed scheme themselves but by third parties objecting to the scheme, such as local residents objecting to a scheme in relation to parkland or parents at a school objecting to a scheme for the school. There have also been some politically motivated complaints. As a result, I have to accept the weakness of my amendment as drafted. Finally, and most importantly, my research revealed that my noble friend already has some powers to improve the operation of Schedule 6 without resort to primary legislation. Under Section 324 of the 2011 Act, entitled, "Power to amend provisions relating to appeals and applications to Tribunal", my noble friend can act to improve the way the schedule operates.

If I accept that my amendment cannot do the business as presently drafted, all I am asking my noble friend to do tonight is to accept that there is a consensus among charity lawyers that Schedule 6 is absurdly complicated and not consistent in its principles and application and to say that he will initiate a review of the operation of Schedule 6 with the objectives of obtaining: first, a clear, generally applicable definition of a decision, including a non-decision; secondly, a clear principle of locus standi, which could and should include limitations based on remoteness from the decision's effect; thirdly, recognition that the tribunal was intended to provide a straightforward basis of objective appeal against a regulator making decisions of direct impact, which justifies something beyond the judicial review principle; and fourthly, a logical staging through the Charity Commission's internal review process to the tribunal as a next level. He can then use his Section 324 powers to introduce whatever interim improvements are possible until the next bus comes along to enable statutory improvements to be made.

It is easy to pass this off as a very technical matter, but access to justice is a very important principle and this undertaking to have a review would lead to improvements to that access for the charity sector. I beg to move.

Lord Bridges of Headley: My Lords, my noble friend Lord Hodgson has fought the corner of rationalising Charity Tribunal appeal rights for many years. Every time he gets knocked down, he gets straight back up and continues to fight from the blue corner. I applaud his persistence.

In principle, the Government have maintained a consistent position that they are not averse to rationalising the rights of appeal and review to the Charity Tribunal set out in Schedule 6, as my noble friend pointed out, but—it is an important "but"—we would not want to create new appeal rights where none currently exists that would add to the tribunal's caseload. Neither would we want to expose the Charity Commission to challenge where it decides not to take action and where an appeal right does not currently exist. Creating rights of appeal where the Charity Commission decides not to take action could well result in an unmanageable workload of cases for the Charity Commission, diverting its resources. It would also effectively enable the tribunal to direct the use of the commission's powers and resources. As I said before, we consider that the balance is about right under Schedule 6 as it stands in terms of what decisions can be appealed.

In terms of who can appeal, my noble friend Lord Hodgson made some fair points about legal standing to bring an appeal. For many appeal rights, the legal standing in relation to the Charity Tribunal is widely drawn, encompassing,

"any other person who is or may be affected by the decision".

That is very wide compared to most other jurisdictions. However, it recognises that charities exist for the public benefit and that the regulator's decisions about a charity can have a significant impact on people who

[Lord Bridges of Headley]
would not normally be able to bring an appeal. I accept my noble friend's point that some people find Schedule 6 clunky and difficult to use, but I am not sure how it could be condensed into a simple provision without inadvertently making the sorts of changes that we want to avoid.

The Government have agreed with many of my noble friend Lord Hodgson's recommendations over the years. We find that he is usually right. I am sorry to say that this is a rare case where we will have to part company and agree to disagree on some of his points. I hope my noble friend will not be too disappointed to learn that I will not commit to any amendments on this subject. I am happy to reflect on the points that he raised—they were detailed points and I will not simply wave them away right now—and will listen if he thinks we can make improvements to Schedule 6 through the power to do so in secondary legislation. Again, I should be clear that I make no promises. As I already said, we do not want to introduce new appeal rights. I thank my noble friend for all he continues to contribute to this debate. While I cannot agree to his amendment, I very much hope that we can continue to have conversations about this matter.

Lord Hodgson of Astley Abbotts: I am grateful to my noble friend for his extensive response and kind remarks. I understand that my amendment is faulty. I have no wish to press it to a Division. That would be entirely wrong as it does not work. I just hope that at some point we can look at how Schedule 6 works and see whether there are ways that it can be made clearer, and if that can be done by secondary legislation. It would be wonderful if we could do that. If we have to come back to consider it another day then so be it. For tonight, I seek leave to withdraw the amendment.

Amendment 33 withdrawn.

Clause 14: Reviews of the operation of this Act

Amendment 34

Moved by ***Baroness Barker***

34: Clause 14, page 18, line 19, after "donations," insert—

"( ) the relationship between grant-making and social investment,"

Baroness Barker: My Lords, we come to the last group of amendments on the list of groupings, although the noble Baroness, Lady Hayter of Kentish Town, may be somewhat upset if we do not cover Amendments 36 and 37 on the Marshalled List.

Clause 14 deals with reviews of the operation of this Bill. I think the review clause was drafted before the new clauses on social investment were added to the Bill. The original substance of the review was about the main purposes of the original Bill—that is, in Clause 14(1),

"public confidence in charities … the level of charitable donations, and … people's willingness to volunteer".

That is entirely right. But there is nothing in the substance of this review about the matters of social investment which we have been discussing.

My Amendment 34 simply asks that in the review of the Act the relationship between grant-making and social investment be reviewed, because if the new powers to make social investment work as the Government envisage they will, my assumption is that there should be an effect on grant-making, which should be reduced. To put it another way, the total amount of income to the charitable sector should change. The composition of the income should change, too, not least in the balance between the amount of grant-making and the amount of investment.

9 pm

It is important that if this House and another place pass legislation, we should look at its effects. Rather in the spirit of the noble Lord, Lord Hodgson, I say that if a bus comes along then you should jump on it in case it is a while before another one comes. I want to add this purpose, which is now reflected in the Bill, into the review. I beg to move.

Lord Watson of Invergowrie: My Lords, I am in the surprising and mildly embarrassing position of having to say to the Minister that I am glad that he did not take me at my word when we dealt with reviews in Committee. I have studied the *Hansard* and, under what was then Amendment 29, I sought the first review to be completed within three years. However, I am quoted—so I believe that I would have said it—as saying that,

"it would be in charities' best interests to initiate the review after three years".—[*Official Report*, 6/7/15; col. GC 36.]

The Minister has now come along with an amendment that says that the first review must begin "within 3 years". I certainly welcome that. I was looking for a completion in three years, but I took on board the Minister's comments in Committee when he said that the system would have to get up and running and the commissioner would need to take people on and put them in the proper positions, with all the various arrangements that have to be put in place, such as internal guidance. On that basis, he has made a very reasonable offer. In terms of what I actually intended, he has come halfway towards meeting me. Where I come from, that is called a score draw—and, on this occasion, I am prepared to settle for that.

I would be supportive of the amendment in the name of the noble Baroness, Lady Barker, because it adds an important issue that we should take into consideration, after all that was said about social investment earlier.

Lord Bridges of Headley: My Lords, I am grateful to the noble Baroness, Lady Barker, for explaining the rationale behind her amendment and to the noble Lord, Lord Watson, for what he just said.

Clause 14 currently makes provision for the operation of the Act to be reviewed by the Minister at least every five years, in line with government policy. We agreed a requirement for the review to include specific consideration of certain matters based on requirements in the statutory review provision of the Charities Act 2006, but that should not be considered as limiting the scope of any review of this legislation.

As noble Lords know, this Bill makes only a modest contribution to the growth of the social investment market, by clarifying charity trustees' social investment powers and duties. At the moment, charitable foundations hold some £80 billion in assets, of which less than £100 million is invested as social investment. While we certainly hope that more charities will consider the total impact that social investment can deliver, I expect that it will be an incremental growth rather than a sudden swing of the pendulum.

That said, I do not believe that a statutory review requirement to consider a specific aspect of social investment and its interaction with grant-making would achieve much that is not already being done more frequently by many parties, not just the Government, and with much broader scope. I am reluctant to say so, but I do not accept the rationale for Amendment 34.

As the noble Lord, Lord Watson, said, I have sympathy, as I demonstrated in Committee, with several of his arguments for bringing forward the first review from five years to three. I do so not least because of the measures being introduced on social investment, because of the point the noble Baroness, Lady Hayter, made about the disqualification power, and because of the issue of fundraising more generally and ensuring that we continue to maintain the public's trust and confidence in charities as a whole.

As the noble Lord said, my concern was that if we said the review would have to report within three years, that would be seen as too soon, particularly when one factors in the time it would take to prepare guidance and commence provisions, and for the review itself. That is why I have come back with government Amendment 35 which requires the first review to begin within three years and to report within four years. This strikes me as a sensible compromise which I hope noble Lords will support.

Baroness Barker: My Lords, I am disappointed that the significant change to the substance and purpose of the Bill made by the insertion of the new clauses on social investment will not form part of the review of the Act. I do not have a problem with the timing of the review; I welcome the fact that it will be sooner than it would otherwise have been.

I do not understand the Government's reluctance to subject the new proposals on social investment to the scrutiny which will be applied to the rest of the Bill. Like others in this House, I am keen that we take every opportunity to try to increase social investment. Over the past 20 years, social investment has been very slow, despite the support of successive Governments. Therefore, it is a shame that we pass over an opportunity to look at how this first attempt to put a definition into legislation is working and its impact on the funding of the sector. Reluctantly, I beg leave to withdraw the amendment.

Amendment 34 withdrawn.

Amendments 35 and 36

Moved by ***Lord Bridges of Headley***

35: Clause 14, page 18, line 23, leave out from "apart" to end of line 24 and insert—

"( ) The first review must begin within 3 years after this Act is passed, and the report of that review must be published within 4 years after this Act is passed."

36: line 1, after "Amend" insert "the Charities Act 1992 and"

Amendments 35 and 36 agreed.

The Deputy Speaker (Baroness Stedman-Scott) (Con): My Lords, there is a printing error in Amendment 37. It should refer to "provision", not "provisions". I am advised that this does not affect the substance of the amendment.

In the Title

Amendment 37 not moved.

House adjourned at 9.08 pm.

Volume 764
No. 35

Monday
20 July 2015

CONTENTS

Monday 20 July 2015