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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
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House of Lords

Wednesday, 14 October 2015.

3 pm

Prayers—read by the Lord Bishop of London.

Northern Powerhouse: Lancashire

Question

3.07 pm

Asked by ***Lord Greaves***

To ask Her Majesty's Government in what ways the Northern Powerhouse will benefit local authorities and their citizens in the county of Lancashire.

Lord Greaves (LD): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I remind the House of my registered local government interest.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford) (Con): My Lords, the northern powerhouse is part of the Government's long-term economic plan to enable the north to maximise its economic potential. Alongside wider economic growth, Lancashire will benefit from improved transport connections, an enhanced skills base, support for international trade, cultural investment and the opportunity to ask government for more devolved powers. Local projects of economic importance are currently being supported through the Lancashire growth deal and Preston and South Ribble city deal.

Lord Greaves: My Lords, Lancashire is a large, varied, attractive county stretching from the coast to the Pennine hills, where I live. It is full of countryside and attractive towns and cities. It is being deprived and stripped of resources—first the councils, then the lack of government investment and now the police. Do the Government understand that, if the northern powerhouse is going to succeed and not just be a slogan, it is going to have to cover the whole of the north of England and not just the big cities that grab everything for themselves? At the moment, we are simply being stuffed.

Baroness Williams of Trafford: My Lords, I cannot agree with the noble Lord's statement. In 2014, the Lancashire Enterprise Partnership agreed one of the largest growth deals, which brought £233.9 million into Lancashire for bespoke deals. It also agreed the Preston and Lancashire city deal, which was the first Wave 2 city deal, amounting to £300 million of investment and development for infrastructure. I also do not agree with the premise that the cities are ahead of the counties, given the announcement on Cornwall in recent weeks.

Lord Alton of Liverpool (CB): My Lords, the Minister has mentioned the transport links from Lancashire to other parts of the north-west of England. Could she say more about that, bearing in mind that many of the roads in Lancashire feeding on to the M6 motorway are frequently gridlocked because of the absence of good public transport links from Lancashire, especially railway links—the noble Lord, Lord Greaves, has raised this issue previously—which need attending to? What can she tell the House about that?

Baroness Williams of Trafford: I am very pleased to be able to tell the noble Lord about the Blackburn to Bolton rail corridor, which will make a huge difference, the Burnley to Pendle growth corridor and the work done on the M65, which is a particular congestion point off the M6. Maintenance on the Burnley Centenary Way viaduct is under way, and there is the East Lancs cycle network for those who are interested in cycling. There is also the restart to the electrification of the trans-Pennine rail network and the Todmorden curve, for which I campaigned many years ago and am glad to see is now up and running.

Lord Kennedy of Southwark (Lab): My Lords, I declare an interest as a locally elected councillor. Why are the Government so wedded to a piecemeal, one-at-a-time approach instead of putting together a coherent strategy for devolution of power across England that takes account of all communities, including rural areas and small towns, as recommended by Mr Graham Brady of the 1922 Committee in the other place?

Baroness Williams of Trafford: My Lords, the Bill that is currently going through the other place and has just gone through this House is a framework Bill which allows bespoke devolution deals to take place in areas according to local need and their plans for growth. To prescribe would be the wrong way forward for government. I do not agree with the noble Lord's point about the piecemeal nature of this approach. The north-west, the north-east and Yorkshire are doing very well economically—in fact, Yorkshire has created more jobs than the whole of France.

Lord Lawson of Blaby (Con): My Lords, is it not clear that what would offer the best possible prospects for the economy of the north-west and Lancashire in particular is developing the immense natural gas resources of the Bowland Shale? Is it not deplorable that the Labour-led Lancashire County Council has prevented this from happening so far?

Baroness Williams of Trafford: My noble friend makes an excellent point. This is a one-off opportunity for the areas of Lancashire to maximise their assets and to be self-sufficient in how they derive energy, so I could not agree more with my noble friend.

The Lord Bishop of St Albans: My Lords, as has been mentioned, the chairman of the 1922 Committee spoke in a *Daily Telegraph* article today about the need in any devolvement to ensure that safeguards are in place to protect what he called the "rural fringes".

[The Lord Bishop of St Albans]
What plans do Her Majesty's Government have to do just that and to ensure that decision-making across that whole area is not based on predominantly urban-focused priorities?

Baroness Williams of Trafford: I thank the right reverend Prelate and totally concur with his views about rural as well as urban being served by devolution and the northern powerhouse. Of course, there is the Cornwall deal, which is almost predominantly rural. However, I would not like noble Lords to forget about Greater Manchester—I am looking at the noble Lord, Lord Goddard, who has significant rural areas where he comes from—and Rochdale and Oldham. There are significant rural areas in Greater Manchester and that deal has now been done to their satisfaction

Lord Shipley (LD): My Lords, is the Government's rail investment priority in the north of England HS2, HS3 between Manchester and Leeds or the electrification of the trans-Pennine route; or do they intend to do all these at the same time?

Baroness Williams of Trafford: My Lords, I do not think it would be logistically possible to do them all at the same time, given the passage of the hybrid Bills through the House of Commons. However, the Government, and certainly the localities the noble Lord speaks about, would say that they are all important and complement each other, and that local, regional and national transport—in terms of HS2—all add to their economic strength. To take a very local example, the investment in the Metrolink from Wythenshawe to Manchester Airport has opened up a whole new jobs market in an area of high employment need.

Lord Berkeley (Lab): My Lords, the Government are trying to demonstrate that the northern powerhouse balances the City of London in investment and so on. When is it going to get enough new and longer trains to reduce the dramatic congestion during the rush hour in many cities such as Manchester and Leeds, and to reduce journey times between these cities?

Baroness Williams of Trafford: The new, unpaused trans-Pennine electrification will hopefully do just that. I know that the noble Lord and I share a particular interest in this issue, and he will be very pleased to hear that the Pacer trains are going.

Northern Ireland: Defamation Law

Question

3.15 pm

Asked by ***Lord Lexden***

To ask Her Majesty's Government what discussions they have held with the Northern Ireland Executive about the reform of defamation law in Northern Ireland.

Viscount Younger of Leckie (Con): My Lords, there was contact both before and shortly after the Defamation Act 2013 was passed to establish whether the Northern Ireland Executive wished to extend its provisions there and to commend its benefits. In the event, the Executive have not as yet chosen to extend this legislation to Northern Ireland. As the matter is devolved, this is a decision for the Executive.

Lord Lexden (Con): The 2013 Act significantly improves the legal rights of the people of England and Wales. Were not the Northern Ireland Executive seriously at fault in failing to give a single reason for their refusal to implement the legislation in Northern Ireland, which means that for the first time in history it has a different libel law from that which exists in England and Wales? Were the Executive also not at fault in closing down the independent Northern Ireland Law Commission while it was in the middle of a consultation exercise on this very subject? If the Executive persist with their inexplicable opposition to reform, will the Government take action to bring the benefits of this new legislation to the people of Ulster?

Viscount Younger of Leckie: I appreciate my noble friend's concern and frustration about the law in Northern Ireland becoming out of step with that in England and Wales. However, as I explained earlier, the law on defamation is a devolved issue and so it is a matter for the Northern Ireland Executive. However, the Executive asked the Northern Ireland Law Commission to conduct a review of defamation law in Northern Ireland, and following the closure of the commission, which my noble friend mentioned, I understand that the acting First Minister has recently confirmed that Dr Andrew Scott has been asked to complete its review.

Lord Alderdice (LD): My Lords, one of the strange, paradoxical but not unusual things about this was that it was a Unionist DFP Minister, Sammy Wilson, who refused to allow harmonisation with the rest of the United Kingdom. Is it not a little disappointing that when something such as this happens, the Government simply sit back and wait until the Administration come to their senses? Is it not possible for the Government to engage with all the political parties in the Executive and press them to understand the importance of this matter, rather than simply sit back until people hopefully wake up, perhaps too late?

Viscount Younger of Leckie: I am very aware that the noble Lord, Lord McNally, who may or may not be in his place, was instrumental in pressing the benefits of the Defamation Act on the Northern Ireland Executive. The noble Lord, Lord Alderdice, will be more than aware of the Sewel convention and to that extent, Parliament remains sovereign. However, the UK Government will not normally pass primary legislation relating to areas in which a devolved legislature has legislative competence except with the agreement of that devolved legislature in the form of an LCM.

Lord Tebbit (Con): Is it not strange that we are pressed in this Parliament to grant devolution to other parts of the kingdom, and when those other parts of

the kingdom take a view about their law which is different to that held by members of this Parliament, we become all indignant about it? Surely that is what devolution is about. People may take odd decisions. So what? That is the consequence of devolution.

Viscount Younger of Leckie: I agree with my noble friend. He is correct that it is a consequence of devolution. However, there is a little more to it than that in that the civil law on defamation is a devolved matter for Northern Ireland. It remains the case that it is a matter for the Executive and we will see what happens with the Andrew Scott review.

Lord Pannick (CB): My Lords, the Minister says that this is a matter for the Northern Ireland Executive. Does he not recognise that publishers tend to produce one edition for England, Wales and Northern Ireland? Publishers tend to adopt a lowest common denominator approach for practical reasons, and therefore the antiquated defamation laws of Northern Ireland are having a very adverse effect on freedom of speech in England and Wales. What are the Government doing about that?

Viscount Younger of Leckie: I have already explained that but I understand the point that the noble Lord makes. We believe that the Defamation Act 2013 has its benefits in giving greater legal clarity and free speech protection to the extent that the bar is set higher. A higher hurdle is set by the law. Again, it is up to the Northern Ireland Executive to decide whether or not to take this forward.

Lord McAvoy (Lab): My Lords, to my delight and slight surprise I totally agree with the noble Lord, Lord Tebbit. Occasionally devolution will present issues and problems but the principle of devolution must be preserved. Will the Minister please confirm again that the present Westminster Government have no intention of legislating for Northern Ireland on this issue?

Viscount Younger of Leckie: That is indeed the case.

Lord Bew (CB): My Lords, does the Minister understand that the question of the libel law is connected to the form of government in Northern Ireland? Since 2007 we have had a five-party coalition with no opposition. Where there is no opposition the freedom of the media is even more important. That is something that Her Majesty's Government might discuss as a principle because devolution and the Sewel convention rules should be an issue of debate with the Government of Northern Ireland. We have had a spectacular number of scandals in recent years—most recently the NAMA scandal—and it is hard to believe that this is unrelated to the level of press freedom.

Viscount Younger of Leckie: I understand the point that the noble Lord makes. It relates perhaps to issues such as serious harm, truth and honest opinion, but I can respond only by saying that we hope that Dr Andrew Scott's review will cause the Executive to rethink and maybe some change may come about from that.

Lord Lester of Herne Hill (LD): My Lords, is there not a serious risk that the present ludicrous position might violate the European human rights convention guarantee of free speech and equality, which is written into the Northern Ireland Act and which the Secretary of State ought to ensure is complied with? Is it not the case, therefore, that the Government have it within their power, if they so wish, to impose equal protection of a fundamental right across the Irish Sea in Northern Ireland?

Viscount Younger of Leckie: I am aware that the noble Lord put in an awful lot of work to the Defamation Act, but I have referred already to the Sewel convention. It is up to the Northern Ireland Executive to decide whether the rules remain within the ECHR.

Education: Initial Teacher Training

Question

Tabled by ***Lord Storey***

To ask Her Majesty's Government what assessment they have made of the relative merits of different ways of delivering initial training of teachers.

3.23 pm

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords—

Noble Lords: Oh!

Lord Storey (LD): My Lords, I beg leave to answer—no, to ask—the Question standing in my name on the Order Paper.

Lord Nash: Perhaps I could ask the noble Lord to be quicker on his feet in future, or perhaps I should be less eager.

My Lords, since 2010 we have reformed ITT to put greater control in the hands of the best schools. It is too early to conduct a thorough comparison of different routes. The first full cohort of School Direct trainees have only just completed their first year of training. However, the department regularly assesses demand, completion and employment rates, and how well different routes attract trainees and the quality of those trainees. The latest data show that candidates on school-led ITT routes have higher completion and employment rates than those on HEI-led ITT.

Lord Storey: The Minister will be aware that, while teachers are probably of the highest quality that they have ever been, 17% fewer students have gone into teaching over the last five years. He will also be aware of the huge increase in the birth rate that is coming down the track, which will probably mean something in the order of 900,000 more pupils, who will obviously require extra teachers. As for university higher education, how can universities plan long term and strategically if future funding is not always guaranteed?

Lord Nash: The noble Lord raises a very good point. Our current thinking is that the allocation of places on a year-by-year basis is the most accurate method and ensures that our future teachers train in only the highest-quality settings. The current system allows us to factor in market fluctuations and ensures that participation in ITT is dependent on Ofsted grade and proven ability to fill places. However, we keep these processes under constant review.

Baroness Donaghy (Lab): My Lords, the Minister indicated that it was too early to make an assessment about the quality of initial teacher training—yet in his concluding remarks he indicated a preference for School Direct rather than higher education initial teacher training, which implies to me that the Government have already made up their mind on this. Would he give us an assurance, first that there will be an independent assessment of the new way of initial teacher training and how it compares with the traditional system, and secondly that he can guarantee future teacher supply across the United Kingdom?

Lord Nash: It is important to point out that this is not quite the dramatic change that some people think. After all, at least 60% of the one-year postgraduate ITT course—which the vast majority of trainees go on through HEI—is already in-school. This year, nearly half the trainees will be going through a school-led system, and this Government trust schools and heads to be in charge of teacher improvement.

Baroness Perry of Southwark (Con): Will my noble friend agree that probably the most important gift that teachers bring to their pupils is their knowledge of the subject they teach? Can he assure us that the new way of training teachers—through the school route—will still ensure that they have a strong mastery of and enthusiasm for the subject they teach?

Lord Nash: I agree entirely. Subject knowledge is one of the most important things that teachers must have. The Carter review, while saying that the overall effectiveness of ITT was pretty good, pointed out that this was one of the weak areas. Our reforms to the curriculum, by attracting more highly qualified teachers into the system, will result in our next generation of teachers having greater subject knowledge. We are already seeing this in A-levels, where over the last five years the number of students has increased by 13% in maths, 16% in physics and 17% in chemistry.

Baroness Wall of New Barnet (Lab): My Lords, I am sure that the noble Lord is aware of the concern that many employers have about many teachers' lack of knowledge—not lack of interest—about how they can support industry and local employers to talk about apprenticeships and encourage their youngsters to apply for them. Will he assure the House that regardless of which scheme or method of training goes forward, there will be an element that requires teachers to relate to local employers, making sure apprenticeships become part of young people's options?

Lord Nash: We will encourage schools to take on apprenticeships, yes.

Baroness Warsi (Con): Will my noble friend indicate how initial teacher training has been amended to reflect the new Prevent duty that teachers now have? Who is delivering that training—universities or the approved Workshop to Raise Awareness of Prevent co-ordinators, as listed by the Home Office? If it is those providers listed by Prevent, could he write to the House and put a letter in the Library with a list of those accredited providers?

Lord Nash: My noble friend raises an extremely important point. We will look at this in the new ITT framework, which is under consideration. It is currently conducted by Prevent co-ordinators, but I shall certainly write to her further on this.

Baroness Pinnock (LD): My Lords, with a YouGov poll showing that 50% of current teachers are considering leaving the profession within the next two years, when we are 8,000 teacher training places short of what we need and with rising school numbers, would the Minister not agree that, however good the quality of teacher training, the fact is we will not have enough trained teachers in our classrooms? What is he going to do about it?

Lord Nash: If I may say so, this is slightly a case of creating a crisis out of a challenge. We actually have more teachers than ever before. We have a higher quality of teachers than ever before. We are improving behaviour management and workload to reduce the risk of teachers leaving the system. Many more teachers are returning to the workforce and the vacancy rate has remained at around 1% or below over the last 15 years. Indeed, frankly, over the last 15 years it has on several occasions, including under the last Government, been higher than it is at the moment.

Renewable Energy: Solar

Question

3.31 pm

Asked by ***Lord Young of Norwood Green***

To ask Her Majesty's Government what assessment they have made of the recent collapse of Mark Group, a solar energy company, in the light of their decision to reduce the subsidy on domestic rooftop solar installations.

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, we are currently consulting on revisions to the feed-in tariff for solar. The consultation ends next week on 23 October. I encourage anybody with evidence to submit into that consultation. Of course, any job losses resulting from the Mark Group going into administration are regrettable, as indeed are all job losses. I strongly sympathise with those affected.

Lord Young of Norwood Green (Lab): I thank the Minister for his reply and declare an interest. This year I finally persuaded my local primary school, where I am a governor, to utilise a large area of flat roof to install solar panels; with the current feed-in tariff, the payback time for investment is about seven years—with, of course, a significant saving in the electric bill. Does the Minister appreciate that the proposed massive reduction in the feed-in tariff will cause many organisations and residential home owners not to install solar panels, with resulting job losses and company closures in an industry that is vital to our renewable energy programme? Why did he not consider a phased reduction of the feed-in tariff, as the industry suggested, which would have given solar companies time to adjust?

Lord Bourne of Aberystwyth: My Lords, I repeat that the consultation is still very much open. It is true that social housing and community projects—the noble Lord referred to a school—look to feed-in tariffs as a reliable source of revenue. That is why the review specifically seeks views on this. I encourage the noble Lord to feed in to that review and to others.

Lord Howell of Guildford (Con): My Lords, is it not worth explaining that there has to be a limit to the amount that the taxpayer and the consumer is prepared to put in to subsidise these important renewable industries? Would it not be the best advice to future investors and firms in this area to seek to develop their technologies without subsidy, as is happening in other parts of the world?

Lord Bourne of Aberystwyth: My Lords, keeping bills down for hard-working families obviously is a vital part of the Government's policy—and it very much remains so. It is true that the costs of solar and of other renewables are falling significantly. Solar is on the fastest trajectory downwards. We are very keen to reduce the cost of solar panels by, for example, supporting lifting the ban on minimum price restrictions on the import of solar panels from China into the EU, as we are doing.

Lord Stoneham of Droxford (LD): Is the reversal of the incentives for long-term investment in the renewable energy sector not in complete contradiction of the warning given by the Governor of the Bank of England that climate change is a threat to our financial resilience and long-term prosperity?

Lord Bourne of Aberystwyth: My Lords, extremely important at the moment are the climate change negotiations that are taking place, or will take place, in Paris at the end of the year, as I am sure all noble Lords will agree. The most significant thing that is raised internationally is the generosity of the contribution from the United Kingdom of £5.8 billion towards resilience and mitigation. That is what the discussion is about: taking international action. That remains extremely important.

Lord Bach (Lab): My Lords, is the Minister aware that the Government's boast earlier about today's employment figures will be treated with at best ridicule and at worst the contempt that it deserves in the city of Leicester and the county of Leicestershire, where 900 hard-working workers are set to lose their jobs? This seems to be a direct result of government policy. Is the Minister not a little bit ashamed at what the Government's policies, or policy aims, have already come to? What are the Government going to do to help?

Lord Bourne of Aberystwyth: My Lords, perhaps I may first correct the noble Lord. Most of the jobs that are lost are those of installers who are not based in Leicestershire—I know the city of Leicester very well. However, it is important to note that the Government are very alive to this fact. I am surprised that the noble Lord—in all the circumstances of the success of the market economy, though contradicted by the present leadership of the Labour Party—does not welcome the delivery of some of the best employment and unemployment figures, with unemployment coming down and employment going up. I would have thought that the noble Lord would welcome that; it is very significant.

Viscount Ridley (Con): My Lords, will my noble friend confirm that the efficiency of solar panels in this country, which is a rather cloudy country, is somewhere below 10% of nameplate capacity? Most of that happens in summer and in the day time, and seems not to happen often in the winter evenings.

Lord Bourne of Aberystwyth: My Lords, sadly it is a feature of life that we do not get as much sun as some countries. The good news on solar panels is that of course they can deliver significant advantages in Africa—which my right honourable friend Justine Greening is looking at through international development funds—and are delivering significant advantages in China and India as well.

Baroness Worthington (Lab): My Lords, is the broader point not about investor confidence? Perhaps the Minister could tell us in which of the zero-carbon technologies the Government want to see investment and which of those will deliver UK jobs rather than ones potentially in France or China?

Lord Bourne of Aberystwyth: My Lords, it is refreshing to see the noble Baroness talking about British jobs and investor certainty in view of the difficulties that she must be having with her leadership in another place. I know very well that she supports new nuclear. Her leader does not.

Noble Lords: Answer the question!

Lord Bourne of Aberystwyth: If I have a chance I will answer it. The noble Baroness does support new nuclear; her leader does not. That is significant for investor confidence. It is also significant in terms of

[Lord Bourne of Aberystwyth]
delivering what we need to deliver for an international agreement in Paris. It will be interesting to hear where the Labour Party is on that rather important issue.

Lord Marlesford (Con): My Lords—

Lord Wallace of Saltaire (LD): My Lords, it rains a lot in Britain, and we have a great deal of potential water power here, which can help us—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, I am so sorry; because of the dispute, and time is up, we will have to move on.

Bank of England and Financial Services Bill [HL]

First Reading

3.38 pm

A Bill to make provision about the Bank of England; to make provision about the regulation of financial services; to make provision about the issue of bank notes; and for connected purposes.

The Bill was introduced by Lord O'Neill of Gatley, read a first time and ordered to be printed.

Childcare Bill [HL]

Report

3.39 pm

Relevant documents: 2nd, 5th and 8th Reports from the Delegated Powers Committee

Amendment 1

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

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

"Funding review

(1) Sections 1 to 3 shall not come into force until the Secretary of State has—

(a) established an independent review of the free childcare entitlement funding system, including a large-scale analysis of the cost of delivering funded places; and

(b) put in place a comprehensive and sustainable funding solution, which takes into account the complete findings of the review under paragraph (a), and which addresses the funding of existing childcare and the additional requirements on childcare providers arising from this Act.

(2) The review to be established under subsection (1)(a) shall consult local authorities, childcare providers, employers, parents and others with an interest.

(3) Where the Secretary of State's funding solution under subsection (1)(b) does not follow the recommendations of the review under subsection (1)(a), the Secretary of State must publish a report outlining the reasoning.

(4) Any report published under subsection (3) must be laid before each House of Parliament."

Baroness Jones of Whitchurch (Lab): My Lords, we have repeatedly said that we support the concept of extending free childcare. It was a manifesto pledge and I do not need to repeat the arguments because in principle we share the Government's ambitions on this issue, as do most of your Lordships in the Chamber today. But we want a policy that will not just grab the headlines; we want a policy that will work. Sadly, this is where we and the Government part company.

The truth is that the progress of the Bill has been an exercise in how not to make legislation. The Government have incurred the wrath of both the Constitution Committee and the Delegated Powers Committee. To recap, the Constitution Committee criticised the Bill in the following terms:

"Legislation of this type increases the power of the Executive at the expense of Parliament. The Childcare Bill is an example of a continuing trend of constitutional concern to which we draw the attention of the House".

Meanwhile, the Delegated Powers Committee described it as a "skeleton" Bill, saying:

"The remarkable imbalance between the provision that appears in the Bill itself and what is to be left to regulations, and the scarcity of explanation in the memorandum, has led us to question whether members will be in a position to contribute meaningfully to debates at Committee Stage and Report Stage".

Despite the Government agreeing to go away and consider these concerns, the latest report of the committee, issued yesterday, is scathing. It says that the committee is,

"surprised and disappointed that many of our recommendations have not been acted upon. It appears to us that the amendments add very little … to the face of the Bill".

This lack of detail was raised by us and others in Committee. In order to make progress, the Government made a number of commitments about further information that would be available on Report, at the heart of which was a promise to conduct, and report on the findings of, a funding review which would explain how the additional free childcare hours would be funded. This information is fundamental to the success or otherwise of the Bill.

In response to our amendments on this issue in Committee, the noble Lord, Lord Nash, acknowledged our concerns. He said that,

"we are conducting a thorough review. The review will report in the autumn and will inform our decisions on the level of funding that providers require to deliver quality childcare, and as I said, we will report on these findings by Report".—[*Official Report*, 1/7/15; col. 2161.]

This could not be clearer, but, sadly, this is not what has happened. We will hear today from the Minister that the Government have reported in advance on part of the review—the part based on a call for evidence of people's experiences in the childcare sector. Of course these responses are not to be dismissed, although, by the Government's own admission, it was not a scientific survey—but that is not the point. The point is that there are real questions about how these new places are to be funded and what will happen if they are not fully funded. This was to form a central part of the funding review and, sadly, this is what we have been denied so far.

There were also real concerns from the sector that the way the funding review is being carried out has raised a number of queries. I have received numerous messages of support for our amendments in the light

of that. For example, I have received a detailed critique from the CEO of a nursery chain in Stafford setting out his concerns about the way the survey and the follow-up round tables were conducted by Deloitte. He said that the survey questions were far too imprecise and open to subjective interpretation, rather than an attempt to gather detailed unit cost information. He further reported that at a well-attended and well-informed round table in Coventry, there was considerable concern that the evidence already gathered by respected bodies such as Ceeda and the PLA was simply being ignored. But we are never going to have the opportunity to scrutinise this evidence. In fact, we are now being told that the final funding review will not be published until the Chancellor has conducted the spending review on 25 November—well after the Bill will have left the House.

At its core, this is not about the Government's disregard of Parliament, important though that is. It is important because we do not believe that the offer being made for free childcare in this Bill is viable without a considerable injection of money. Quite frankly, we do not believe that the Chancellor will be persuaded to find the necessary additional funds to make the scheme work. Why is this important? The current nursery providers gave evidence to the Select Committee on Affordable Childcare that the current scheme is being run at a loss, with complicated systems of cross-subsidy. Put simply, if you increase the free hours, you reduce the opportunities for cross-subsidy, and the whole scheme collapses.

The Pre-school Learning Alliance, which speaks for many in the private nursery sector, has estimated that the cost will be at least 20% more than the Government's original estimate of £350 million. It stresses the need for a sustainable mechanism to ensure that funding rates cover delivery costs in the long term, and that is what we are seeking. Meanwhile, a recent IPPR report says that the Government have grossly underestimated the cost of this scheme, which they calculate to be £1.6 billion in 2017-18: £1 billion more than the Government's estimate. The National Association of Head Teachers found that almost 80% of the nurseries based in schools are cross-subsidising the places from the rest of the school budget, as they are running at a loss, and that two-thirds thought that they would have to reduce the number of children they could accommodate if the new entitlement went ahead.

3.45 pm

When we met yesterday, I got the impression from the Minister that he was sceptical about this evidence, but I assure him that it is robust and that there is considerable strength of feeling on this matter. Unless this is resolved, there is a real prospect that the offer in the Bill could help fewer, rather than more, children and that the parents who need the free places most will be the ones to whom access will be denied, because they cannot top up the nursery income through the non-subsidised places. These concerns go to the heart of the Bill. We want the scheme to work and be sustainable. This is why we are proposing these amendments, which will require the Government to complete a large-scale analysis of the costs and produce a detailed funding solution which can then be considered by both Houses before the Bill is enacted.

I stress that this would not delay the Bill's implementation. The implementation date is autumn 2017, which is two years away. According to the Government's road map, the report on the funding review will be made shortly after the November spending review, so there are some 20 months or more to achieve this objective. We believe that it can be done in that timescale.

Without the cash being made available, the Bill is worthless. Without knowing the true costs of the scheme, the Government are not in a position to make any promises on it. We therefore hope that noble Lords will support the amendment, which is crucial for delivering the free places which all noble Lords want and which can make a difference to the lives of working parents. I beg to move.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, it might first be of benefit to the House if I make a few points. I would like to thank noble Lords for their support during the passage of the Bill so far. I would particularly like to thank noble Lords whom I have met since Committee. I have found these conversations extremely helpful and I hope they have, too.

The Government are committed to supporting working families. That is what the Bill is about. It enshrines that commitment in law, with a new duty on the Secretary of State to secure 30 hours' childcare for working parents of three and four year-olds. As the Secretary of State set out last week, the Department for Education's focus should not be stakeholders or vested interests; our focus is unashamedly on children and their parents. The Bill makes that clear.

I have listened carefully and with great interest to the concerns noble Lords have raised throughout the passage of the Bill. As the noble Baroness said, I undertook in Committee to confirm a number of details ahead of Report. I hope that the package of support published earlier this month, the policy statement and the government amendments I have tabled, deliver on those commitments. I have had feedback from noble Lords across the House that this was helpful. I have listened to the debate on ensuring that Parliament has the opportunity to provide appropriate scrutiny on the detail of secondary legislation. We listened and tabled amendments in response.

Subject to the debate today, the first set of regulations made under the Bill will be subject to affirmative procedure. The amendment in question was informed by the first report of the Delegated Powers Committee and I thank the committee for meeting again on Monday to consider our proposed changes to the Bill. I am pleased that it welcomes the Government's efforts to respond to early criticisms. The noble Baroness rather overstated the case by saying these were scathing, though I note that there are areas where the committee would like us to be clearer in our intentions. I will address these points at the appropriate time during today's debate.

Noble Lords raised concerns about the detail and breadth of the Bill. We listened to and consulted parents and providers over the summer. On 2 October, we published a policy statement setting out the key

[LORD NASH]
milestones up to implementation in 2017, the delivery model and details of who will be eligible for the extended entitlements. Our amendments reflect those new details.

In Committee, noble Lords also understandably asked for reassurance on the quality of the childcare that children will receive under the Bill, and in our policy statement we have made clear that the quality of early education and childcare and the welfare of children remain paramount. I believe that the further things that I will say today in response to amendments on, for example, staff to child ratios, will provide even more reassurance.

Turning particularly to matters relating to this group of amendments, in Committee many noble Lords raised a number of questions about the funding review, which is the most comprehensive national review of the funding of childcare ever conducted. I will respond fully to the debate on this shortly. However, I take this opportunity to make clear that we have listened. In response, we published the terms of reference for the funding review, the findings of the first part of the review and the call for evidence, which received more than 2,000 responses. Yesterday, I was pleased to host a very informative meeting for Peers to meet the Minister for Childcare and Education and the department's chief analyst. I would be very happy to host another such meeting following the spending review. We have no interest whatever in producing a funding regime which does not work for providers. We have substantially increased the amount of childcare over the last five years successfully, and we are confident that we will do so this time.

This Government are spending considerably more than any other on childcare, and we want to give more working parents choice and flexibility about the childcare they access. We have already heard from working parents, employers, representatives from the childcare sector and unions, and received nearly 20,000 responses to our public survey over the summer, which showed that parents strongly welcomed the new entitlement. Further support for the entitlement has been demonstrated by the poll of parents carried out by Netmums, which showed that the Government's offer of more childcare is wanted, needed and eagerly anticipated. The survey also suggests that the reform will encourage more parents to work more hours.

I urge the House not to seek to delay this entitlement for working parents. Parents are demanding of us, and in response we should move quickly to put the new entitlement in place. During the election, we committed to 30 hours of free childcare, and we were the only party to commit to a review of childcare funding. We are now challenged on moving too quickly with some aspects and too slowly with others. Providers are keen for legislation. More than 1,000 providers have already come forward to ask to be involved in early implementation.

As many will understand, it is important that we give providers, local authorities and parents time to prepare for this substantial change. We want to move the Bill forward and take the next steps with regulations, consultation and, very importantly, early information. As the shadow Secretary of State for Education said recently, we now need those policies to be turned into reality. I completely agree.

Baroness Pinnock (LD): My Lords, I thank the Minister for the statement he has just made, for the policy statement which he provided us with over the summer and for the briefing yesterday, which demonstrated that detailed work is being undertaken to understand the different business models of providing for childcare.

However, one element fundamental to ensuring that 15 hours of free extra childcare per week can be delivered at high quality is funding. In Committee, we were assured that that information would be available prior to Report to enable a full understanding of the Government's commitment in terms of the amount of funding. At that stage, the Minister gave a commitment that the Government would announce by Report the findings from their call for evidence as part of the funding review, so that we could have details of the delivery model based on the principles laid out. Unfortunately, that is not available.

Waiting for that information will not cause a delay. The background analysis of the information has been carried out. We heard about it yesterday, and very good it is too. But the figures have not been put into the crunching machine, so we do not know how much will be available to fund this important element of improved childcare—increased hours—that we all welcome. I do not see how, as Members of this House, the role of which is to scrutinise legislation to try to improve it, we can fulfil our responsibilities unless we have that information. We support the Bill, but the funding is fundamental.

All through the progress of the Bill, on all sides of the House, we have made the point about the lack of information—both on the regulations and on the amount of funding that would be available. We have tabled an amendment about cross-subsidisation, which has already been raised in relation to funding. I will speak more about it when we come to the amendment.

The only commitment we have from the Government, as expressed in their policy statement, is that there will be an increase in the hourly funding rate for childcare. What we do not know is how much that will be. It could be 5p an hour. It could be £5 an hour; I hope it is but we do not know. Without knowing, I do not see how the other elements of the Bill can stand up to scrutiny. How can we assure ourselves of the quality of childcare that will be provided if the amount of funding that is available is not declared? How can we be sure that training for staff in childcare can be made available if the funding is not there? How can we be sure that the number of places will be available if the amount of funding does not support an increase in the number of places that will be required? It is fundamental to the success of this Bill—and we all want it to be a success. I urged the Minister to tell us how much money will be available. Unfortunately his hands are tied, and I appreciate that. That is why we ought to delay discussing this Bill, until we know how much will be available, because everything else depends on it.

At the moment, it is the equivalent of being told that we can buy a car when we do not know whether we can afford a second-hand Mini or a brand new BMW. Young children need and deserve better than that.

Baroness Andrews (Lab): My Lords, I listened very closely to what the Minister said about the progress that has been made since Committee. Clearly there has been some progress, but I want to press him on certain points and to reiterate the points of colleagues across the House. The Select Committee said that it was surprised and disappointed at the Government's response. It was surprised because it is unusual—very unusual indeed—for a government department not to respond more positively to a report of the committee. I will come back to that in more detail. Certainly I am less surprised than the committee, but I am equally disappointed. I understood, like many of us across the House, that what we were to expect, before the start of Report, was a full analysis of the impact that these changes would make, based on the information obtained about the costs borne by the sector and the distribution of those costs, so that the House, to quote the noble Lord, will,

"be able to say a lot more about the delivery model"—[*Official Report*, 1 July 2015; col. 2093.]

Frankly, that promise has not been fulfilled. We do not know more about the delivery model, we cannot comment on it and we cannot make more sense of it.

4 pm

When I looked at the road map, which I was pleased to see although my copy is a bit faint, I was slightly surprised to find that the report on the funding review was shown after the spending review. I conclude from that that the Government had, indeed, known that the report would come after the spending review, and therefore, frankly, did not have much expectation that they could present those findings to us on Report. I have a serious question for the Minister: when did he realise that he would not be able to provide those full findings for us? I think he had two choices. He could have maintained the promise he made to the House that we would have the information we need to debate the full impact and make a proper judgment about the implications of the changes to the sector and the funding issues. To do that he would have had to delay Report stage. The second choice is the one he actually made. I know that in all conscience he was under some pressure from all round the House to delay this stage of the Bill so that we could have a proper debate. In fact, the second choice has been to try to persuade us that the research on the sector done so far is sufficient for us to rest content and trust the Government that all will be well in the best of all possible worlds.

I do not blame the officials at the department one bit for the situation that the Minister is in. They are struggling to master a huge policy change with masses of information, multiple reviews, huge complications and an absurd timetable. There are many potential perverse consequences, as my noble friend on the Front Bench explained. The Minister ought to concede this point and consider delaying further stages. He should do this not least because much of the information coming forth—for example, from the online questionnaire to parents and the responses to the cost of the childcare review—raises more questions than it answers. The responses to the questionnaire for parents reveal, for example, that around 89% of respondents would take up the additional hours if they were available now. That is good news in terms of demand, but what is not clear, unless I have missed it, is how many of those parents already pay for childcare. What does that take-up do to the whole balance of subsidy across the sector? How many providers might be driven out of business because of that?

I turn to the analysis of responses to the call for evidence on the cost of providing childcare. If the Minister argues that what he meant by "findings" was, in fact, this analysis of responses, which is what he has argued—in fact, it is more of a description than an analysis—I am afraid that he is on extremely shaky ground both ethically and intellectually because the Government have now introduced the concept of a first and final stage of findings. We thought there was one stage when the findings would be produced for the House to make a judgment on.

I argue that not only are there no useful conclusions to be drawn so far from the document we have, but what is presented is simply a quantitative breakdown, which shows that the whole childcare sector is highly fragmented, fragile, confusing, based on very many different models of practice and contracts, and not well documented, as the report makes very clear. Even basic information is not sometimes sound. In fact, the report comments that items such as the main areas of expenditure,

"might not necessarily be the areas where they incur most of their costs".

In short, what has emerged from this analysis so far is what is surely self-evident: that staff-related costs—namely, wages—are the main cost drivers.

I am not denying the usefulness of this information, but what it reveals is the case for proper analysis and assessment because the reality is this hugely complex sector. This surely reinforces the argument that if we are going to have a proper policy which delivers an expanded capacity, better services for more parents, higher quality and enables more parents to be in work, the impact of those changes on this sector has to be fully analysed and properly understood. With great respect to the Minister, the findings that he has presented, while interesting, are so raw that for the most part they tell us what we know, but nothing about how the capacity or quality of the sector will be affected.

The Delegated Powers and Regulatory Reform Committee is scathing. The Minister has put a favourable gloss on it but it actually says that,

"we are surprised and disappointed that many of our recommendations have not been acted upon. It appears to us that the amendments add very little of substance to the face of the Bill: for the most part they adjust the existing delegated powers by removing some, varying others and adding more, while re-parading many in a new clause. Although the changes to some delegated powers may give the House a clearer idea of how the powers *could* be exercised, it remains unclear how they *will be* exercised".

There is much more like that.

I think I have said enough to make it clear that I believe that a wise Government acting in the general interest of the sector would delay. In the absence of

[Baroness Andrews]
such a decision, the House should support the sunset clause. As the noble Baroness, Lady Pinnock, says, this does not create delay. This policy will not be introduced until 2017. What will create delay is a dog's dinner of a policy confusing and frightening the sector into withdrawing services so that fewer people rather than more are able to access them.

Lord Sutherland of Houndwood (CB): My Lords, I welcome the progress that has been made during the Recess and the various meetings the Minster has had, not least yesterday's briefing session, which I think all of us present found useful and informative. It did not give us all the answers that we want. I shall come back to that in a moment.

I also welcome the report of the Delegated Powers and Regulatory Reform Committee. It properly criticised the procedure we are going through, which is not ideal and is certainly not perfect. The question is whether it should be continued because the benefits will be significant, or whether it should be halted. I do not accept that this would not involve delay. It is important for the health of this Bill and its implementation that we proceed with further analysis, and almost more importantly, the pilot studies. It is only through pilots that we shall begin to see where the real practical difficulties arise, many of which have already been mentioned by my colleagues on the other Benches. The pilots have to take these points on board and test the adequacy of the proposals.

As I said, I welcome yesterday's briefing. From the discussion, I saw a new capacity—not willingness, but capacity—for flexibility in the Government's response. The Government will have to exercise every jot and tittle of that flexibility in responding to the comments that are made and the views that are shared across this House. The other view we share is that we want this Bill to be passed. We want action.

The difficulty with the amendment is not the demand for a review. The review is under way and we have to get going further with it, and we had a helpful and professional briefing yesterday. However, the amendment's second demand is that a sustainable funding solution be presented before moving to the next stage. Politics is the art of the possible. That is not possible. It can come only after the funding review across the whole of government has taken place. I do not want to make much of this at the moment, but I note in parentheses the view of the Select Committee that hard choices would have to be made. I have yet to see recognition of that from the Government, but that is a consequence we shall see when the final financial package is revealed.

That said, that seems to me an inadequate reason for such a measure, granted the moves that have been made, the flexibility that was shown yesterday, and what so far has been shared with us. There is much further to go. Granted all that, I am in favour of moving ahead to the next stage, which means that I cannot support this amendment as it stands, but I welcome the provision, for example, regarding a further meeting with the group of interested Peers when the funding situation is clear, so that our views can be formally and openly expressed.

Baroness Howarth of Breckland (CB): I shall simply add to what my noble friend has just said a concern that I have, as vice-president of the Local Government Association. The Minister well knows that local government faces a funding gap of probably £9.5 billion, and £6.6 billion of cost pressures by 2020. My concern relates to the development of the Childcare Bill, about which I am very positive; for working families, it will make all the difference. My question is about the wider envelope of the funding review. When we get that review, will we actually understand in those totals what local authorities will have to give up and where the pressures will be to meet the extraordinary cost of childcare provision? We have to be very aware of the perverse consequences that might arise, and I would like the analysis to look at the pressure on small units in particular. Loss of the cross-subsidy will result in them having to close, because local authorities are not prepared to pay top-up fees; as the Minister knows, I have personal experience of that happening.

In conclusion, will the wider envelope take account of not only the Childcare Bill but the other pressures on local authorities? If so, what kind of priorities will be set, and can the wider review examine the cross-subsidy issue and the loss of places across the country?

Lord Mackay of Clashfern (Con): My Lords, I have listened to the comments made in support of the amendment—Amendments 30 and 31 are really just consequential. The amendment requires that the report on finance should take place before Clauses 1 to 3 come into force in an Act of Parliament. It does not require information to be provided at Report. What is more, the amendment contemplates that the clauses will be enforced before the review can take place and be completed. The arguments in support of the amendment are therefore not precisely in accordance with the amendment itself, because the terms of the amendment would be satisfied if the information came forward before the clauses were brought into force—which, of course, is after the Bill reaches the statute book.

The Earl of Listowel (CB): I shall make one brief comment just to remind your Lordships that there probably will not be a better opportunity in this Parliament to improve social mobility. A well-funded early education service is one of the best means to ensure that the least advantaged young people and families do better and have a fair chance equal to those who have greater privileges. What is at stake is that, if this Bill is adequately funded, we will expand that offer to many more families; more parents will go into work, lifting their children out of poverty. Yes, mainly it will benefit the middle class, but it will also benefit some of the more disadvantaged. If the Bill is not adequately funded, this will not only be a poor offer but it will steal money from and impoverish the rest of the service. So we need to be absolutely clear that we have here either an opportunity to make a difference to social mobility that we will not otherwise have in this Parliament, or an opportunity to fail. Perhaps it is comforting to realise that, because the Prime Minister's commitment to social mobility may give us some hope that, even in this difficult financial climate, the money will be found to make this work.

4.15 pm

Lord Nash: My Lords, I would like to speak to Amendments 1, 30 and 31 tabled by the noble Baronesses, Lady Jones, Lady Pinnock and Lady Tyler and the noble Lord, Lord Touhig. I understand the concerns that the noble Baronesses and the noble Lord are seeking to address through these amendments. I share their view that we need to get the funding for the entitlement right. Much of the success of the extended entitlement rests on sustainable levels of funding. However, I do not agree that these amendments are the right way to deliver that outcome. Indeed, it would simply risk delaying substantially implementation for working parents, which has been widely welcomed. This Government have already shown their commitment to ensuring that funding levels will be sufficient to deliver the 30 hours' free childcare for the working parents of 3 and 4 year-olds. The Prime Minister himself has already committed to an increase in the rate paid to providers; indeed, we were the only party to commit to such an increase during the general election.

We have acted swiftly upon our promises. Within a month of the general election, we brought forward this legislation and committed to early implementation of the extended entitlement for parents in some areas from 2016, so that we can test the provision, which is so important. We definitely do not wish to delay, because although 2017 may seem a long way off, there is a lot to get right. At the June budget, we made financial provision for the extended entitlement, announcing £840 million, including Barnett consequentials, in 2018-19. That is the current estimated cost before the average hourly rate that providers receive is raised and indicates a further commitment by this Government to the delivery of the extended entitlement. We have listened and addressed the concerns of a sector that has been asking for a review of funding for early years, by establishing a review on the cost of providing childcare as soon as possible. As I have said, this is the most detailed national review of childcare that has ever been conducted. It is a very complicated issue, as noble Lords heard yesterday, and we do not believe that we should delay.

I hope we can all agree that it is clear that we share the same objective—one which the noble Baronesses and the noble Lord have set out in their amendments. We, too, want to establish a sustainable funding solution that addresses concerns about the delivery of the existing entitlement and supports providers to deliver the extension to the entitlement. We have no interest in a solution that will not work for providers. Under the last Government we expanded childcare very substantially and successfully and we fully intend to do so again.

Noble Lords raised the question of funding and the funding review in Committee. Understandably, there were many questions about how the review would be conducted and what it would cover. We have sought to provide more information about the analysis of the first findings of the call for evidence, the terms of reference and the policy statement. The Government have also made very clear their intention to publish the final report from the review following the spending review. The findings from the review will feed directly into the spending review, which is imminent, as we all know. That is where decisions about future funding rates will be made. It is important therefore that the review is complete in order to inform this process. The Budget and the spending review are the appropriate times for the Government to set out their spending plans and Parliament debates those plans at the appropriate time. Legislating for the childcare entitlement is not the time to have this debate.

However, I have listened to concerns raised by noble Lords about ensuring that this Bill is scrutinised by Parliament once the Government's spending plans are made clear at the spending review. Third Reading will be on 26 October and the Bill will then be sent to the other place in the usual way. It is then only four weeks until completion of the spending review. Although noble Lords would not expect me to be able to comment on the precise timetabling of business in the other place, there are no plans for the Bill to reach Royal Assent before that review concludes. I hope that noble Lords will find that statement helpful.

A delay to the coming into force of key provisions of the Bill will have a knock-on effect on the ultimate delivery of childcare to parents, delaying our consultation process as well as the start of early implementation. The purpose of the review is to provide a robust analytical underpinning for a funding rate that is fair for providers and delivers value for money to the taxpayer.

The review team is considering a significant body of existing and new evidence, such as published research and academic studies, and evidence provided by sector representatives, as well as studies recently commissioned by the Department for Education conducted by a number of consultancy companies. Some noble Lords have met the review team which, led by the department's chief analyst, is working on two key analytical strands. I think that noble Lords found the meeting yesterday with the chief analyst helpful. I am sorry that the noble Baroness, Lady Andrews, was not able to come yesterday, as I think she would have found it very informative. However, if she would like me to set up a separate meeting for her to meet the chief analyst, I would be delighted to do so.

The first of these two analytical strands looks at providers' costs and the second considers the supply and demand side of the childcare market. Both are complicated and key to informing our work. The review team recognises that there is huge variation in costs between different providers and between children with varying needs, and the analysis and modelling will allow scenario testing to understand the drivers and consequences of these differences, which will inform our testing in the early-implementation pilot studies.

In Committee many noble Lords raised the importance of the review looking at the costs of providing childcare for children with additional needs. It is absolutely right that it should do so, and we are grateful to those specialist providers and charities that have helped us with this question. We will extend the analysis in the review to consider the characteristics of the families that will be eligible for the new entitlement, including which families it will help back into work or help to increase their income. Details like this are extremely complicated, yet we are clear that they need to be considered carefully to ensure that the system is funded to support all children who wish to access it.

[LORD NASH]

The Government greatly value the opportunity to engage with those who are directly affected by our policies. We have been engaging extensively with all of these groups, both through face-to-face meetings and via other channels. Key organisations in the sector such as the National Day Nurseries Association have welcomed the extended entitlement and have been key partners in the delivery of the review of the cost of childcare. While we are aware of their concerns on the delivery of the extended offer, we have sought their involvement in the development of our policies and the review in particular.

Noble Lords will have seen the report we published on 2 October on the analysis of the responses to our call for evidence. We had over 2,000 responses, the majority from providers—and, as I have said, already over 1,000 providers have come forward, wanting to be involved in the pilot studies. These responses gave us very useful information, which is informing the content of the review. The findings from the call for evidence will help us put into context the work we are doing on understanding providers' costs. The review team has followed up to gather more detailed information from some of the providers that responded to the call for evidence.

As part of our plans for engaging with stakeholders we have also held a series of round tables over the summer across the country. The round tables have been a valuable opportunity to engage with providers face to face and to tease out some of the issues that were raised in the call for evidence, building on the significant body of evidence that we are considering and looking at the challenges that providers will face in delivering the extended entitlement, while always remembering that the providers would not be doing their jobs properly if they were not asking for more money, because we are, after all, in a negotiation with them.

The childcare sector is healthy, vibrant and growing. It has grown substantially in recent years—by 12% over the three years from 2009 to 2012. It is not a sector that is severely underfunded, and the number of providers offering places under the entitlement has also continued to increase. The market has demonstrated that it is able to respond to the extension of the free entitlement. We just need to look at the rollout of the entitlement for disadvantaged two-year olds, which was introduced in the last Parliament.

I turn now to the proposal of the noble Baronesses and noble Lord for a review to be independent. In coming to a decision about the most appropriate type of review, the timings of different review options, as well as the cost to the taxpayer, were significant factors leading to our decision for this to be a government review with an element of external validation and scrutiny. We determined that the most appropriate approach would be a cross-government review with expert support from outside.

We all know that there is a rigorous and time-bound process supporting any government spending provisions, particularly when increases to particular budgets are involved. Our priority has been to secure our knowledge and understanding of providers' costs and to inform the discussions on sustainable funding rates during the spending review this autumn. An independent review would have taken significant time to set up and its findings would, therefore, not have been available to feed in to the spending review. This is a vital point. It was important that we move quickly to set up the review and meet our commitment to providers to increase the rate.

We believe strongly that the review under way strikes the correct balance of needing to move quickly and thoroughly. If we now delay, it would be for a considerable period of time because, as I have outlined, the issues here are complicated and it would take considerable time for an independent review to get its mind round it. This would put under threat the timing of delivering the full offer in 2017, because it would delay the consultation, the regulations and, most importantly, the pilot schemes.

I am very grateful to the noble Lord, Lord Sutherland, for his comments on this. He so ably argued and explained why a delay would be a bad idea, and grasped quickly the fact that it would not be a short delay.

I am grateful to the noble Earl, Lord Listowel, for his comments about the impact that the Bill will have on social mobility, as it lifts more families into work or into more work.

As for the comments of the noble Baroness, Lady Howarth, I know that she is very experienced in the field of local authorities. I found some of her comments yesterday particularly helpful. As for the wider envelope and taking that into account, I do not know about that, but I will take it back. My noble friend Lady Evans will talk later about cross-subsidies, but I can assure the noble Baroness that this review is very comprehensive, taking into account all the issues that local authorities will face, and I will take her points back.

I hope that I have provided sufficient reassurance as to the rationale for the way in which the Government have decided to conduct this review and the robustness of the processes that we are following. As I set out, the outcome of the review will be published later in the autumn, as, of course, will the spending review. It will provide sufficient explanation of the Government's intentions and the next steps, and will be made available to Parliament. As I have said, there are no plans for the Bill to reach Royal Assent before that review is completed. I am happy to ensure that there will be further opportunity for this House to scrutinise the details of the legislation after the spending review has been published. As I mentioned in my opening remarks, I would be happy to host a further meeting with the funding review team after the spending review, if noble Lords would find that helpful.

As I will outline when we debate a later group of amendments tonight, the Government are proposing that the secondary legislation under the Bill will be subject to the approval of both Houses. This will provide an opportunity for further debate on the details of entitlement, once the funding review has concluded.

I hope noble Lords will agree that placing in primary legislation a requirement to conduct a review, which is already under way, is not necessary and could in fact delay the positive progress that has already been made

if the Government were required to stop and begin again once the Bill receives Royal Assent. I therefore urge the noble Baroness and the noble Lords to withdraw their amendment.

Baroness Jones of Whitchurch: My Lords, first, I would like to thank noble Lords who have spoken in support of our amendments. I also thank the Minister for his statement and his subsequent comments. The Minister raised other issues in his statement that relate to other amendments, and I know that noble Lords will want to pick that up when we get to those items.

I want now to concentrate on the specific issues relating to the timing of the funding review. The Minister did not address in his response the concerns of the Delegated Powers Committee, which has once again criticised the Government for a lack of detail in the Bill. It does not believe that the case has been made for why all the detail should be contained in secondary legislation, to be seen at a later date, rather than in the Bill. I was sad that the Minister was not able to respond to that today.

Secondly, the Minister did not address why the Bill is being rushed through in advance of the outcome of the funding review being known, which might, as we have heard, fundamentally alter the shape of the package that will be on offer because of the complexities which I think we all now understand. In particular, he did not answer the question asked by my noble friend Lady Andrews about when he first knew that he would not be able to let us have the information that he promised us at an earlier stage. A lot was riding on that at the Committee stage and we feel let down by his lack of commitment.

I hear what the Minister said about the timing of the funding review and that it would be published after the spending review in November, but nothing that he has said so far has provided any reassurance that even Members of the Commons will have the opportunity to scrutinise the Bill at that stage. Clearly, the outcome of the funding review would need to be before them at the Commons Committee stage for there to be any chance of scrutiny of how the scheme will work in practice. Although I listened carefully to the Minister, I do not believe that he gave such a commitment.

This amendment is not about delaying the Bill. The Minister talked about scrutinising evidence and about consultation. All those things can go ahead as planned and still take place—we have got two years before the implementation date—so I do not believe that what we are asking for is unrealistic. There will be plenty of time before the Bill comes into force to allow the outcome to be published and properly scrutinised by both Houses, so the current rush to the statute book leaves us feeling sceptical about the motives.

I was saddened to hear the noble Lord, Lord Sutherland, comment that he thought that a sustainable funding solution was unobtainable, because the scheme seems untenable in the long term if we do not have that. We cannot have a scheme where the funding is made available for one year and then left to drift for following years, which appears to be what is happening at the moment and is why the sector is so unhappy about the schemes now being funded at a loss. We need a response to that. I respect the views of the noble Lord, but I thought that he was being rather too pessimistic.

We believe that what we are suggesting is fair. It would not alter the implementation date of the Bill, but it would give us more reassurance that the scheme is workable and tenable in the longer term. We are not convinced by the Government's response and would therefore like to test the opinion of the House.

4.33 pm

Division on Amendment 1

Contents 222; Not-Contents 209.

Amendment 1 agreed.

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4.46 pm

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

Amendment 2

Moved by ***Lord Touhig***

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

Lord Touhig (Lab): My Lords, Amendment 2 continues the debate we have just had over the funding review and what it means for the delivery of the additional entitlement. It seeks to end the ambiguity in the Bill as to whether responsibility for delivering the additional 15-hour entitlement will be the duty of the Secretary of State—as currently worded in the Bill—or of local authorities. We were unable to secure a firm answer at Committee; in fact, the Minister stated:

"The Government think that it is right for the primary legislation to put the duty to secure the extra 15 hours on the Secretary of State in the first instance, to demonstrate to parents the importance we attach to providing free childcare provision and to give them confidence that the Government will deliver on their manifesto commitment".—[*Official Report*, 1/7/15; col. 2114.]

We tabled Amendment 2 to gain further clarity. However, the Government have since tabled Amendment 18, which confirms that the duty falls on local authorities. If this is the case, local councils must be given the appropriate level of support to fulfil their duty. The Government have said:

"We will … look at how we can support local authorities in drawing up agreements between themselves and childcare providers (perhaps by publishing a national model agreement). In addition, we are considering what can be done to smooth out issues around payment arrangements between local authorities and providers.

A full economic impact assessment and new burdens assessment will be carried out in due course".

The Local Government Association has said that the duty will create further cost pressures on local government and will involve the risks associated with placing additional costs on an already underfunded system. Will the Minister provide an update on what is being done to ensure that local councils will not be out of pocket as a result of being responsible for delivering the entire 30-hour package of free childcare? Again, without seeing the detail of the funding review it is impossible to see how councils fit into the delivery model. I noted from the summary of evidence submitted to the funding review that only 3% of local authorities responded. The Government have committed to an uplift in the average rate that providers receive for the entitlement. The current proposal is for this to be delivered by councils through the dedicated schools grant. The Department for Education has confirmed that decisions about the size of this rate uplift and the consequent additional funding will be made at the forthcoming spending review, which the Minister referred to in the earlier debate.

On 15 June the Government announced that they are conducting a review of the cost of providing childcare. This follows warnings from providers across the spectrum that the current system is underfunded. I know that the Minister does not agree with that, but it is what the sector tells us. It is vital the Government ensure that the funding rate covers the cost of delivering 30 hours of free childcare to a standard likely to improve children's outcomes and deliver broader policy objectives on employment progression and social mobility—a point well made in the earlier debate.

An initial look at the government amendments in the group might suggest a concession, as expressed in Amendment 12, but, having removed subsections (4) to (7) with Amendment 12, in Amendment 18 the Government seek to recover ground by giving the Secretary of State a power, as opposed to a duty, to make regulations on how local authorities should discharge their duties. The Government could have made Amendment 18 more palatable if they had used "must" rather than "may". The "may" in line 2 gives the Secretary of State discretion as to whether to make regulations, although it is difficult to see how the scheme can operate without the use of regulation-making powers.

So it goes on. I am sure many noble Lords will have seen the eighth report of the Delegated Powers and Regulatory Reform Committee published yesterday, already referred to by my noble friend Lady Jones of Whitchurch. It says,

"we are surprised and disappointed that many of our recommendations have not been acted upon. It appears to us that the amendments add very little of substance to the face of the Bill: for the most part they adjust the existing delegated powers by removing some, varying others and adding more, while re-parading many in a new clause".

It sounds a bit like moving the deckchairs on the "Titanic". The report also says:

"Although the changes to some delegated powers may give the House a clearer idea of how the powers could be exercised, it remains unclear how they will be exercised".

What an indictment of a very important Bill which is welcomed all around the House.

Amendments 14 and 16 remove from the Bill the ability of the Secretary of State to criminalise parents. In new subsection (2)(h) proposed in Amendment 18, the Government use their proposed new clause to replace the power in what was Clause 1(5)(k) to create criminal offences. I agree with the eighth report of the Delegated Powers and Regulatory Reform Committee that this is welcome and that the new power is focused

[LORD TOUHIG]
only on unauthorised disclosure of official information. But the committee points out that the power is not insignificant,

"as it would enable the creation of an offence sufficiently serious to be punishable by imprisonment for up to two years".

On Monday, the *Times* revealed that Facebook, a company worth billions, paid just £4,000 in taxes to the British Crown last year—around £1,000 less than the average British worker pays in taxes and national insurance. It is tax avoiders such as this that should be criminalised, not working parents, who might get a criminal record and face a jail sentence, perhaps for completing a form incorrectly when seeking free childcare.

We will come to the issue of affirmative versus negative procedures for the making of regulations later in the debate, but I believe that this is a matter that we will have to look at in much more detail. In fact, the Delegated Powers and Regulatory Reform Committee said yesterday in paragraph 10 of its report:

"We draw subsection (2)(h) to the attention of the House, so that it may consider whether the requirement for affirmative procedure only on first exercise of the power affords an adequate level of Parliamentary scrutiny for regulations which create, or alter the statutory ingredients of, criminal offences".

I hope that the Minister will note those wise words.

Also in this group is Amendment 20A, which will be spoken to by the Liberal Democrats. We strongly support it because we believe that parents on low levels of income and those with multiple jobs need the kind of flexibility that it will engender. I do not wish in any way to take away from the comments that representatives of the Liberal Democrats will make, but I want to make clear that that amendment certainly has the strong support of this side of the House. With those few words, I beg to move.

Baroness Pinnock: My Lords, for greater clarity in the debate we withdrew our Amendment 15 and retabled it as an amendment to the new clause in government Amendment 18. Our amendment relates particularly to subsection (2)(b) of the new clause, which is about making,

"provision about how much childcare is to be so made available for each child, and about the times at which, and periods over which, that childcare is to be made available".

Over the course of the debate on this Bill—on Second Reading, in Committee and again today—we have consistently argued for greater flexibility in the periods of time over which the 15 hours' additional free childcare can be offered. We have done so for a number of reasons.

Many parents, particularly women, take on two or three jobs in a week to try to make ends meet. In my role as a local councillor I had the difficult task of trying to find new accommodation for a grandmother so that she could move from her council housing to a flat nearer her daughter as the daughter got up at five o'clock in the morning to take on a cleaning job at six and at that time no other childcare was available. I know at first hand what it means for many mothers who are trying to do, for instance, a cleaning job before the school day, something for school-lunch duties in the middle of the day and then another cleaning job at the end of the day. With this Bill we have an enormous opportunity to support those mothers and help them continue in work. That is why I have made what I hope is a strong case for defining more explicitly the flexibility that we are asking for in the Bill, rather than leaving it to vague definitions.

Not only is there the difficulty in the working week for the parents I have described; for all parents school holidays can be a nightmare. This is not just because the children are at home but because these parents are trying to juggle finding childcare for their children at home in the holidays while continuing in their work. Many parents find relatives, but not all are able to find them. The definitions of flexibility that we are proposing to include in the Bill would enable that to happen and would be of great advantage to many parents. Questions from those in the sector have indicated that one facet of the Bill they would particularly like to see is what they call a stretch of the hours over a longer period, not only during a week but also over the school holidays. That would be a tremendous help to many working families. I hope that we will not lose that opportunity.

I shall listen carefully to what the Minister says when he responds to the proposals that we have made. I feel strongly, as do my colleagues, that the Bill should contain a clear definition. It currently does not. If it is not included in the Bill today, we will have to think again about how we can move forward to ensure that it does.

5 pm

Lord Sutherland of Houndwood: My Lords, I very much support the spirit of Amendment 20A. This is one of the key points that the Bill seeks to address. However—continuing in my pessimistic mode, I fear—I think this is one of the hard choices that may have to be made. I can see how large providers might well be able to do this and how in large centres of population this kind of provision will be possible. But asking small providers to continue provision outside their normal hours may well stop them operating completely. This is a matter of hard choices and I would be much happier with the amendment if it said something like, "Regulations should take account of the need to" rather than "ensure" because I do not think that regulations can ensure this.

Very quickly, I would be unhappy to do what Amendment 2 suggests because I fear that if you take the Secretary of State out of the line of full responsibility, the danger is that the responsibility lands on the local authorities and, as we have seen in other areas—and I have a lot of interest in the provision of care for the elderly—the local authority would have the responsibility but not the funding.

Baroness Tyler of Enfield (LD): My Lords, my name is also attached to Amendment 20A. I feel strongly about this issue because a few years ago I chaired a policy working group about how families could balance their working lives with their family commitments. In looking at childcare issues, the three As—availability, accessibility and affordability—were thought to be extremely important, and we are hearing a lot about them today. But something else was felt to be equally important by the people we talked to: flexibility.

I was very taken by some recent research produced by Citizens Advice about the experience of parents in the childcare market, which really highlighted how those children who need childcare at non-typical hours were found to be at a far greater disadvantage, and parents spoke of their "intense difficulty" in finding childcare that worked for them. They often did flexible working hours or shift work, were in low-paid employment and were dependent on public transport. Their experience suggested that it was close to impossible to find childcare before 7 am and after 7 pm on workdays, or at any times at weekends; for some, even finding care outside 9 am to 4 pm was difficult. Childminders were seen as just as inflexible as nurseries. That is why I think it is very important to say something about this in the Bill.

I would just like to respond to the very important point that the noble Lord, Lord Sutherland, has just made because I think it really would be a problem if this applied to every provider, as he said. Clearly, some small providers would not be in a position to do that but if you look at the wording of the amendment, it talks about having that flexibility,

"within the local authority area",

not in relation to every single provider. That is an important point to stress.

Lord Nash: My Lords, I will concentrate first on the delivery model for the 30 hours of free childcare. The Government are in full agreement with the spirit of Amendment 2 in the names of the noble Lord, Lord Touhig, and the noble Baroness, Lady Jones. We agree that local authorities are best placed to ensure that working parents are able to access 30 hours of childcare free of charge. They have a proven track record in delivering the existing entitlement to 15 hours of free early education, which has a take-up rate of 96% and is well understood by parents and childcare providers. We therefore do not fundamentally want to move away from that approach.

Government Amendment 18 proposes to insert a new clause into the Bill which will provide for the Secretary of State to be able to discharge her duty through local authorities. As the policy statement published on 2 October set out, delivering the extended entitlement through local authorities is the Government's preferred approach and we intend to exercise the Secretary of State's power to make regulations to that effect following Royal Assent. Indeed, the Delegated Powers Committee states in its report that it welcomes,

"the Government's efforts to respond to earlier criticisms",

and goes on specifically to say that it is now clear that functions in the Bill will be conferred on local authorities. I am pleased to confirm that, further to amendments I will move later this evening, the first set of regulations imposing requirements on local authorities—and all regulations made under the new clause—will be subject to debate before both Houses. At the appropriate time, we will, of course, provide statutory guidance for local authorities on what is expected of them. This guidance will be subject to a public consultation next year.

Of course, Amendment 2, in the name of the noble Baroness, Lady Jones, and the noble Lord, Lord Touhig, is cast slightly differently from the Government's amendment and would remove the duty on the Secretary of State altogether. The Government do not wish to remove this duty from the Bill, even with very clear intentions that it will be discharged through English local authorities. That is for a very good reason: the manifesto commitment to provide three and four year-olds of working parents with 30 hours of free childcare is a significant one and a priority for this Government to deliver. We know that childcare is the issue for parents, and that it inhibits many from going back to work, or from working more, when they would otherwise choose to do so. For that reason, the Government believe that it is right for the Secretary of State to be named in the Bill because parents will, ultimately, hold her to account for delivery of the entitlement. I am grateful to the noble Lord, Lord Sutherland, for his remarks in this regard.

I can assure noble Lords that the Government are committed to working with local authorities as we develop the delivery programme; now, through the early implementer stage from September 2016, and beyond that into full rollout of the system from September 2017. In answer to the noble Lord, Lord Touhig, I can confirm that we will carry out a full new burdens assessment to ensure that any net additional costs to local government are fully funded. Our officials have met the Local Government Association to discuss this and I thank it for its positive engagement.

The positive intention behind the amendments we have brought forward today does not end there. They are also aimed at providing greater clarity about a range of other matters that were of interest to noble Lords during previous debates on the Bill and removing provisions which were causing noble Lords some concern. First, I am pleased to be able to confirm that government Amendment 12 removes some of the provisions which were of particular concern to noble Lords, for example the wide power to impose obligations on any public body or to reproduce any provision of the Childcare Payments Act. Amendment 18 would replace powers which have been criticised as being too wide in their scope with a more targeted set of powers. In particular, we have taken powers which will enable us to create gateways for government departments and local authorities to be able to share information they hold for the purposes of checking a child's eligibility for the extended entitlement. Information-sharing gateways will, of course, need to be subject to appropriate safeguards and that is why we are clear that unauthorised, onward disclosure of information obtained through those gateways ought to be subject to a criminal offence, a matter which I will speak to shortly as I know it is of great concern to the House.

Of course, successful delivery of the extended entitlement is not merely about ensuring that children who qualify can be correctly identified. It also means putting in place robust mechanisms to ensure that parents and providers can have confidence in the eligibility-checking system. We recognise that there may be occasions on which parents are not satisfied with a decision made in connection with a child's eligibility. In these cases, it is right that parents are able to challenge that decision and that is why the Government's proposed new clause enables them to make regulations providing for a right of review in relation to a determination of eligibility with an onward right of appeal to the First-Tier Tribunal.

[Lord Nash]

I turn to the amendments tabled by the noble Baroness, Lady Jones, and the noble Lord, Lord Touhig, relating to criminal offences. I hope noble Lords will be reassured that government Amendment 18 seeks to draw a clear line between conduct that will amount to a criminal offence and that which will attract a civil penalty. The new clause has significantly narrowed the power for the Secretary of State to create criminal offences and I am pleased to be able to reassure noble Lords that there will only be one new criminal offence in connection with the extended entitlement and that this will align with existing offences for schemes involving information sharing. This reflects the Government's position that criminal offences should not be created lightly and should be used proportionately. It is also intended to make clear the Government's intention to ensure that personal information, which will also often be sensitive, is not disclosed to those who have no right to see it.

In relation to the level of sanction for the offence, the term of two years that we propose aligns with that provided for in Section 13B of the Childcare Act 2006. Moreover, it is important to remember that this is not a fixed penalty but a statutory maximum and that ultimately the sanction in any particular case will be a matter for the courts. I reassure the noble Lord, Lord Touhig, that we have no intention of criminalising parents. The Bill creates a criminal offence only where sensitive information is disclosed without authorisation, which is designed to protect parents and their information. Although we have sought to narrow the scope of offences, the Government are clear that there should be the possibility of financial penalties on those who provide false or misleading information, make false or misleading statements or otherwise act dishonestly in applying for the extended entitlement. The maximum amount of any penalty will be £3,000. Again, it is only a maximum and there remains discretion to impose a much lesser penalty, depending on the circumstances. Any proposal to amend the maximum level of the penalty would need to be by affirmative resolution and so subject to debate by this House. I hope that noble Lords will agree that that is a more proportionate approach to tackling any dishonesty on the part of parents or providers seeking to benefit from the extended entitlement than the imposition of criminal sanctions.

I shall now speak briefly to Amendment 20A, tabled by the noble Baronesses, Lady Pinnock and Lady Tyler, which is aimed at ensuring that sufficient flexible childcare is available for working parents. As my noble friend Lady Evans acknowledged in Committee, it is important that the extended entitlement is made available at times which provide sufficient flexibility to parents working outside the hours of 9 to 5 and during holiday periods. I once again reassure noble Lords that we want to build on the flexibility that is already in the system to accommodate out-of-hours childcare and holiday periods. We will set out in in statutory guidance provisions about flexibility which local authorities should consider, as well as work that local authorities can do to enable parents to take the entitlement in a pattern of hours that best meets their needs. This will build on what we say in the statutory guidance for the existing entitlement, and we will ensure that the early implementation pilots focus on the issue of flexibility.

We also want local authorities to work with all forms of providers in their areas, including schools, to ensure that, as far as possible, there is sufficient childcare in their areas which responds to parental demand, including out of hours and during the holidays. Given that many early-years childcare providers open throughout the year, provision during holiday periods is less of an issue for parents of children who have not yet reached compulsory school age, but we acknowledge that more could be done to support parents with school-age children to access wraparound care. That is why we recently announced two new measures which will enable childcare providers to open school sites outside school hours and give parents the right to request childcare. Schools will receive clear guidance on the circumstances under which we will expect them to allow a provider to use their site, and we will also make clear how schools should consider and respond to proposals. These new powers will help with the availability of childcare and demonstrate that the Government are on the side of working families.

In conclusion, I believe that the Government's proposed new clause in Amendment 18 achieves our shared aim of delivering the entitlement through local authorities. Similarly, Amendments 12, 17 and 18 further address noble Lords' concerns in Committee about the scope of the powers set out in the Bill. The powers are now more clearly defined and, I hope, offer greater clarity as to how the Government intend to ensure that all eligible children receive the childcare to which they will be entitled.

I hope that noble Lords will feel able to support the Government's amendments, recognising that we have listened to and taken on board their previous concerns. I also hope that they are reassured that the Government are absolutely committed to ensuring that parents have access to childcare in ways and at times which meet their needs. I therefore urge the noble Lord, Lord Touhig, and the noble Baronesses, Lady Jones, Lady Pinnock and Lady Tyler, not to press their amendments.

5.15 pm

Lord Mackay of Clashfern: My Lords, I ask my noble friend whether—assuming that Amendment 18 is agreed to, and not Amendment 2—the Secretary of State will be liable if a local authority fails in some way in its duty under this Bill.

Lord Nash: I assume that is the whole point of the duty. I imagine that the answer to that question is yes.

Lord Touhig: My Lords, I thank all noble Lords who have taken part in this very short debate. In response to Amendment 2, the Minister agreed that local authorities were best placed to deliver the additional childcare. It begs the question why the first four words in Clause 1(1) were ever in the Bill in the first place—but that is another matter. I received some reassurance on Amendments 14 and 16, although I am still not entirely convinced. However, we have done our very best to try to improve the Bill on these matters and it is time to cede responsibility for improving the Bill—certainly as

far as Amendments 2,14 and 16 are concerned—to those who legislate in the other place. I beg leave to withdraw Amendment 2.

Amendment 2 withdrawn.

Amendment 3

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

3: Clause 1, page 1, line 3, after "that" insert "high-quality"

The Earl of Listowel: My Lords, Amendments 3, 5 and the remaining amendments are in my name. I will be brief. I begin by thanking the Minister for the helpful conversation we had around family homelessness and childcare on Monday evening. As a result of that conversation, I will not move the next group of amendments in my name, and will save the time of the House by that means.

I bring back Amendment 3 on the key person in the nursery. I remind your Lordships that each child in the nursery is assigned a key person whose role is to help ensure that every child's care is tailored to meet their individual needs and to offer continuity of care and a settled relationship for the child. That is the offer. I was really grateful to the noble Baroness for her reassuring and robust reply at Committee on this matter. I bring this back briefly on Report because that key person role is so important, because it is notoriously difficult to do well, and because it is particularly the most vulnerable children—the children from the most disadvantaged backgrounds—who need the secure attachment in the nursery. It is particularly difficult to give that child that support in the nursery. I speak to the concerns so admirably expressed by the Select Committee on Affordable Childcare when I say that it is the most disadvantaged families that need the best quality support.

I spoke to a mother this weekend. She was heavily pregnant, with three sons, and just about to celebrate two of her sons' birthdays. I was speaking to a small group of mothers—I do not often have a chance to do that—and talked to them about the key person in the nursery. This mother said, "Ah, yes. I remember that. In the first nursery my son went to, there was the key person role, and it worked excellently. I spoke with the child carer about my child—a very good model. In my new nursery, we don't have it. I'll have to speak to them about it". So there is an issue. It is not present at all nurseries. Why is this so important? Just think about the care system. Across services for children—particularly vulnerable children—we employ this model of the key worker. In youth custody, there is a key officer working with particular children; in children's homes there is a key worker for particular children; and in our debate on the education Bill, with regard to looked-after children staying with their foster carers to the age of 21, the principle was that they had made this relationship with an important person in their lives and it is this continuity of relationship that is so important to them. It is just as important, or even more important, for three year-olds and four year-olds to have this stable relationship with a particular person. If they do not have it, they risk being either just forgotten about if they are difficult children in favour of children who are easy to deal with, or they receive multiple indiscriminate care and are passed from pillar to post. It all looks very nurturing but they are not getting the secure attachment they need to thrive.

I give the example of a man born in the mid-19th century. It seems that his parents were not very interested in him and were much more interested in pursuing their love lives with other people. His father once said to him, "You will never amount to anything". Fortunately for this child he had a loving nanny, Mrs Everest, and so, fortunately for us, he grew up to be most successful, most robust emotionally and, despite suffering problems with the "black dog" from time to time, was able to withstand many setbacks and be of great service to this nation. We have a great deal to thank Mrs Everest for. For children from struggling families whose parents may not be getting on that well or who are experiencing difficulties, that relationship with a key person in the nursery is absolutely vital.

I wish to make two further points. First, it might be helpful to advise parents more widely about the importance of the key person role. For example, an organisation such as Mumsnet could conduct regular surveys among its users on the quality of childcare and could ask specifically about the role of the key person in the nursery and how well that is being carried out. Secondly, will the Government communicate with parents to advise them how they can identify quality and on the importance of the key person role in the nursery?

To sum up, the most vulnerable children from disadvantaged backgrounds most need this key relationship with one person, or possibly one person and a supporter, in the nursery in the provision of flexible childcare hours. We must not do anything in this legislation to water that down. I look forward to the Minister's response.

Baroness Massey of Darwen (Lab): My Lords, I rise to speak to Amendment 11, which is part of this important group of amendments relating to the quality of childcare.

In Committee, I tabled an amendment which proposed that in all dealings with children, the welfare of the child should be paramount, in accordance with the United Nations Convention on the Rights of the Child. The Minister mentioned "paramount" earlier today. I do not recall the term coming up in any previous government document or discussions, but I stand to be corrected.

The amendment I am discussing is based on ensuring quality childcare, which means having good staff-to-child ratios, staff who are trained in childcare at level 3 or above, or who are in training for that, and a member of staff qualified to care for children with SEN or a disability. Funding, of course, affects all this and I share my noble friends' concerns about funding expressed earlier.

I know that some of my dear friends round the Chamber are concerned about the qualifications issue. I am not knocking their comment that you do not necessarily need to have high-level qualifications to undertake childcare. However, I am not talking about having a PhD in physics; I am talking about people

[Baroness Massey of Darwen]
aspiring to better their childcare qualifications, thereby improving their ability to deal with child development. That is all I am saying.

The third point of the terms of reference for the Department for Education's review of the cost of providing childcare in England does indeed speak of sufficient quality of childcare. The fifth point refers to,

"the need to secure value for money for the taxpayer, and for the entitlement to be affordable to the public purse".

In my view, the quality of care for children far outweighs value for money for the taxpayer. I understand accountability but I maintain that the first duty of childcare is quality for the child. Without that quality, all efforts to provide childcare are useless. Quality also impinges on parents going to work. Quality impinges on social mobility. No parent is going to place a child into poor-quality early years care or education. Indeed, surveys show that the top two requirements for parents are, first, location and, second, quality.

I note that many organisations share my concern. The National Association of Head Teachers states that the failure to address funding—the important issue raised earlier today—will compromise quality and that early years education, not just childcare, is essential in order to have an impact on child development. The Local Government Association talks of the danger of an underfunded system. The National Day Nurseries Association in its excellent analysis of this Bill is concerned about the threat of low pay and about recruitment and retention of staff. It suggests looking over the long term in a cross-departmental way at childcare funding and the development of a workforce strategy to improve quality. I agree.

The Special Educational Consortium has pointed out that 60% of parents with disabled children do not believe that childcare providers can cater for their child's disability. It proposes that the Childcare Bill be amended to require the largest childcare centres to have an early years special educational needs co-ordinator. The Association for Professional Development in Early Years states that in relation to sufficient provision, quality of staff and the development of the health care and education plan is vital.

The importance of staffing could not be clearer. Skill and confidence in caring for and educating children with special needs are vital for the confidence of parents and the well-being of the child. In small settings, area special educational needs co-ordinators could be in place to advise parents and plan for health and education needs.

I hope that the Government will respond sympathetically to this group of amendments and ensure that quality of childcare is reflected in all their deliberations.

Baroness Tyler of Enfield (LD): I speak to Amendment 23 standing in my name. In so doing I give my broad support to Amendment 11 in the name of the noble Baroness, Lady Massey, that covers similar ground. The policy statement on this Bill that we recently received stated that the workforce is the key driver of high-quality childcare. I agree—we probably all agree with that. I welcome the Government's commitment to exploring career progression routes in 2016 and look forward to hearing more about these plans from the Minister. However, more needs to be done to support new entrants to the sector. This is the primary purpose of my amendment on minimum workforce qualifications.

The Affordable Childcare Committee felt that it was crucial to increase the proportion of staff qualified at a higher level in the private, voluntary and independent sector in order to drive up overall quality and improve outcomes for children. Setting a minimum qualification level for working with young children at level 3 was suggested by Professor Nutbrown during her review of early education and childcare. This would help to level the playing field and to ensure that where children grow up and live has much less of an impact on the quality of care and education that they receive than, sadly, is sometimes the case at the moment. It is telling that new evidence from Ofsted has identified that settings that have at least 75% of their practitioners qualified to level 3 achieve better inspection results. Indeed, the Nuffield Foundation recently reported on a strong relationship between the level of staff qualifications, the quality of provision, as judged by Ofsted and, most importantly of all, outcomes for young children.

The second part of my amendment is around disabled children. There is overwhelming evidence that parents of those children are struggling to access their current entitlement to childcare. Indeed, in 2014, the Department for Education found that only 40% of parent carers believe that the childcare providers in their area can cater for their child's disability. Last year, the parliamentary inquiry into childcare for disabled children concluded that lack of staff skill and confidence was often the reason for parents,

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

5.30 pm

The Government will be unable to fulfil their pledge to ensure equal access to the new 30 hours' free entitlement unless some action is taken to address this. Of course—and this is an argument that we had earlier this afternoon—it is important to be realistic and proportionate about this and to take scale into account as well. That is why my amendment applies to larger childcare settings, which should be required to have an early years special educational needs co-ordinator, who could actively promote the inclusion of disabled children and those with special educational needs.

The best way in which to achieve the skill levels and the highly skilled workforce, which we would all like to see, is through a workforce that in most cases is qualified to level 3. We need to do that within a realistic timetable; I completely understand that—but the best way in which to do it is through a national workforce strategy, drawn up in conjunction with the sector, which sets out the actions that need to be taken to strengthen the quality and capacity of the workforce over the next five years, including things such as progression pathways, both for new and existing entrants. Can the Minister say what steps the Government are taking to develop a strategy for expanding and improving the quality of the early years workforce, and when such a strategy may be available?

Lord Sutherland of Houndwood: My Lords, none of us would disagree with the importance of quality of staff; that is the fundamental thing that will make a childcare centre work, and work well. I have sympathy with all these amendments, because they point to particular features that may be part of ensuring, or giving reassurance, that quality is present—for example, qualifications. The evidence that we had in our committee was that qualifications are one of the most important identifiers of quality of staff. However, I have to put in the rubric that, of course, there is no guarantee. I have met many well-qualified people who do not exude quality in the required way. However, there is good evidence that qualifications are one indicator. For example, we have heard about the importance of a special individual in the setting. When I was at school, I suppose that would have been my form master. He did not teach me French, maths or physics, and sometimes he was a pain in the neck—but sometimes he was very useful and helpful. It is a relationship with an individual that is fundamental here. When it works well, it works exceptionally well, but it is not the only indicator. Equally, the staff training and development process is important.

Quality is a complex thing, with a whole series of factors, including the quality of the buildings in which the groups take place. A better way in which to tackle this issue would be to ensure that, off the Bill, instructions and guidance to Ofsted, which inspects these nurseries and care centres, are sufficiently clear to provide reassurance to parents that there is high-quality provision. Flexibility will be required and will vary from one place to another. Not all groups will be able to provide a specialist in SEN, but there need to be arrangements so that they have access to a specialist, even if it is in some other group. So I am pleading for flexibility here, rather than detail in the Bill.

Baroness Howarth of Breckland: My Lords, I support the noble Baroness's wish for a national workforce strategy, for children with disability generally but particularly for those with learning disabilities or in specialist nurseries. That is because the availability of places for those children is simply not there, in my experience: that is why parents cannot access them. Where parents do wish to access them, local authorities often make it very difficult for them to do so, by producing very complex financial arrangements that exclude those nurseries from the capacity to give help to children. I have spoken about this to the noble Lord, Lord Nash. The Bill is complex, and this is another range of complexities that would benefit from a further look at a later stage, outside the Bill.

At the same time, as many of my colleagues know, I believe that we need a good mix. Of course we need qualifications. Having been involved sometimes at both ends of inspections, I know that qualifications belong to a tick box that is easier to look at, measure and add up than it is to look at skills, competency and relationships. Those are the things that actually matter. They are often enhanced by qualifications, but we need to look at provision that has a mix of all those qualities, particularly for children with difficulties. I do not believe, therefore, that qualifications are everything, but I do think that it is sometimes difficult to measure the other areas of expertise. Moreover, many voluntary organisations would like to add to the training of their staff, but as their colleagues will know, if you are going to train a member of staff you have to release them. Even if organisations are doing in-house training, they have to find time. That adds to the cost, so they have to make sure that cost is covered, which puts extra pressure on the budget.

Therefore, I cannot fully endorse the amendments in terms of qualifications, but we all need to move forward and look at the complexity of what we are trying to provide for children in these situations.

Lord Storey (LD): My Lords, I will speak to Amendments 3 and 23. I find this debate a little frustrating. My noble friend Baroness Pinnock is right when she says that it is not just about care, but about educational experience: for instance, the importance of play. It is not about the type of provision or the amount of time we spend talking about costs. If the Government are going to invest—and are investing—huge amounts of money, it is important that we get the quality right. The best way of guaranteeing that quality is by the people delivering it.

I am sorry to disagree with the noble Baroness, but qualifications are not—and should not be—tick boxes. Qualifications are about a body of understanding and practice that one has to go through. It is hugely important that people working with young children know about child development. Notions that one is working with children but has no understanding of how children develop are anathema to me. Yes, it is hugely important that the assistant understands the importance of play and that the setting has an understanding of some of the special needs issues. It is not about ticking boxes but making sure that people have the qualifications.

The people who used to work in nurseries were of course called nursery nurses. They were highly regarded and highly trained, and resented it when, suddenly, nursery nurses were done away with and became level 3s —or perhaps level 4s. Level 3 is not a particularly onerous qualification to get; one can do it in 12 months or over two years. I hope that we stick our mast firmly to the top of our nurseries and say, yes, we want the people working there to have the right qualifications.

Of course, there are some wonderful people working in playgroups and helping out in nurseries who do not have these qualifications, but for goodness' sake—we asked for a commission to look at this issue, and the Nutbrown commission spent a lot of time working on this. It said, "Yes, they should be at level 3". Should we just ignore that and tear it up? No, we should not. We should make sure that quality is at the heart of the provision. Finally, we should also make sure that the leadership of those nurseries is of the highest calibre.

Lord Touhig: My Lords, I thank the Minister for the very helpful meeting he held yesterday, when we had the opportunity to explore a number of issues that have exercised us throughout the passage of the Bill, in particular, the outline of the funding review.

Amendment 11 in this group was much in my thoughts after our meeting and the presentation. I fear that the funding review's progress and the conclusions

[LORD TOUHIG]
it will reach may well be a threat to the existing staff-child ratios, which would be a retrograde step were it to happen. Of course, because the Government, sadly, seem determined to put the cart before the horse—passing legislation through your Lordships' House and telling us afterwards how it will be funded—I feel I have every reason to be concerned.

Amendment 11 goes to the very heart of the standard of education and childcare that parents can expect, especially those with special educational needs children. While I am the first to recognise that there are many good educators in the childcare education sector who themselves have no formal level 3 qualification—a point well made yesterday by the noble Baroness, Lady Howarth of Breckland—that does not mean we should not seek to do something about that and ensure that everybody has the appropriate qualification. The simple fact is that no one leaving education today will have a job for life. Everyone will have to retrain and upskill in their working lives. If we do not recognise that by ensuring that the first learning and educational experience a child receives in its life is delivered by someone who themselves has been well trained, we start at a disadvantage.

We must be bold in our ambition for our children, and Amendment 11 is surely the foundation of that ambition. That is why we on this side strongly support it.

Lord Nash: My Lords, I will speak to Amendments 3, 5, 11 and 23 regarding the quality of childcare to be delivered under the Bill, staff to child ratios, the workforce, and provision for children with special educational needs. I thank the noble Baronesses, Lady Massey, Lady Tyler and Lady Pinnock, and the noble Earl, Lord Listowel, for highlighting the importance of high-quality childcare and, in particular, the skills and qualifications of the early years workforce, including for children with special educational needs and disabilities.

I reassure noble Lords that we all want childcare that meets the needs of working parents and their children, including those with special educational needs. I have listened carefully to the debate this evening and I completely agree with the points that have been made about the importance of the quality of childcare and its impact on child development. I reassure the House, and particularly all those who have contributed to this debate, that the quality of early education and childcare and the welfare of children remains paramount.

All childcare must be delivered in a safe, secure and welcoming way that contributes to a child's welfare and their development. The Government believe that the extended entitlement needs to supplement and complement the current early education entitlement. It will need to provide positive and stimulating experiences for children, and staff will need to have the right skills and knowledge to deliver this care. There are a number of aspects to these amendments, each of which I will address in turn.

First, the amendment tabled by the noble Baroness, Lady Massey, seeks to extend the existing ratios for the current 15-hours early education entitlement to the 30-hours childcare entitlement and to set these out in primary legislation. All early years providers registered on the early years register must meet the early years foundation stage framework requirements for welfare and well-being, including ratio and qualification requirements.

The English childcare system has some of the tightest adult-child ratios in the world. For three and four year-olds in group provision there must be one adult for every eight children. Or, where a person with a suitable level 6 qualification is working with the children, a 1:13 ratio can be used. The existing ratios have been set out in the EYFS since 2008 and we are committed to keeping them. I would like to place on record that there are no plans to change the ratios to deliver the new entitlement. I am very clear about this. The Government consider the current approach of using secondary legislation to be the right one for ratios, as was discussed in Committee. Ratios for all providers are already set out in secondary legislation, and this allows for a quick response if changes are needed to keep children safe and well cared for. I hope I have reassured noble Lords on this point and urge the noble Baroness to withdraw her amendment.

5.45 pm

I turn next to those parts of the noble Baroness's amendments that seek a minimum level 3 qualification for all staff. We know that highly qualified staff lead to better outcomes for children. I am sure that noble Lords will welcome the Government's commitment to wanting the sector to continue to attract highly qualified staff with a strong aptitude for working with young children and the right mix of knowledge and skills to deliver good-quality childcare.

The qualification level of the early years workforce has risen in recent years. Continuing this increase is a key aim of the Government's workforce strategy, through the introduction of early years educator qualifications—these are equivalent to A-level standard—and early years initial teacher training. Research tells us that, in group daycare settings, 87% of the workforce has a relevant qualification at level 3. Indeed, many of the workforce are qualified beyond level 3. Since 2007, more than 16,000 individuals have achieved early years professional status and early years teacher status.

Over the summer, the Government, in partnership with the early years sector, made some key strategic changes to widen access to level 3 courses, allowing more individuals to begin their training. This included removing the requirement for new entrants to level 3 apprenticeships and level 3 stand-alone courses to hold GCSEs in English and maths at grade C or above on entry to their course. Now, those who do not already hold their GCSEs will be supported to gain them alongside their early years qualifications before entering the workforce at level 3. I hope that noble Lords will welcome this change.

The Government have made these changes in response to calls from the early years sector to simplify the route to early years qualifications. As a result of this collaborative approach, the changes have been warmly welcomed in the early years sector. I would like to quote Sue Robb, head of early years at 4Children, who said:

"We welcome the government's decision that apprentices can work for their childcare qualifications at the same time as studying for their GCSEs in maths and English. This will encourage more apprentices into childcare and early years".

It is through this collaborative approach that the workforce strategy will continue in 2016, when the Government will review progression routes within the sector to determine what more can be done to enable good-quality staff to maximise their potential and forge a successful career in early years.

We also know that it is not just the certificate that a member of staff holds that leads to benefits for young children but the proven ability of individuals to interact with children and care for them. This is what Ofsted focuses on when inspecting and making its judgments. Many members of the workforce qualified below level 3 provide the high-quality care that is needed. I believe it is important to recognise the excellent work that these people do; 44% of childminders, for example, come into this category, representing a significant part of the childcare workforce.

For these reasons, I believe that it is unnecessary, and would indeed be unnecessarily disruptive, to require all staff, including many in the private, voluntary and independent sectors, to have a level 3 qualification. I therefore urge that the amendment be withdrawn. I am in no doubt that the early years workforce will continue to be central to ensuring benefits for children across all types of settings.

I will next respond to the amendments relating to staff skills and qualifications in order to deliver the appropriate care to disabled children and those with special educational needs. It is the Government's intention to ensure that the safety and care of all children is met, and we recognise that staff need to have the right skills and knowledge to deliver this care.

I would like to take this opportunity to restate something that I said in Committee: the law is very clear that this entitlement and the existing entitlement must be available for every eligible child who wishes to access it. A child with SEN or a disability not being able to find quality childcare in their area is not acceptable. It is not right and nor is it the responsibility of the parent of a child with SEN or a disability to have to scour the local area to find a place. Local government and providers who wish to deliver the entitlements need to work together to improve this situation. The early years foundation stage already requires providers to ensure that the necessary arrangements are in place to support children with SEN or disabilities. It also requires providers delivering funded places to have regard to the SEN code of practice.

Individuals gaining early years teacher status through early years initial teacher training routes must meet the teacher standards on early years to qualify and work as early years teachers. It is a requirement for them to adapt the education and care they provide to respond to the needs of all children. This means that they must demonstrate a clear understanding of those with special educational needs and disabilities, and be able to use and evaluate distinctive approaches to engage and support them.

I hope that noble Lords are reassured that the Government continue to support the development of the early years sector within a broader, self-improving education system. The Government have invested £5.3 million in voluntary and community sector organisations this year, many of which focus on upskilling the workforce by offering training and development. A number of these programmes are delivering specific SEN and disabilities training to the early years workforce. In particular, the National Day Nurseries Association's current SEND champions grant has proven very popular among the workforce and has been oversubscribed three times.

Local authorities also have a role to play. SEN and disability reforms within the Children and Families Act set out how local authorities, early years settings and schools must meet the needs of children with SEN and disabilities. Local authorities are expected to ensure that there is sufficient expertise and experience among local early years providers to support children with SEN. In many local authorities, they are doing this by having an area SENCO. A recent local authority implementation survey, which received responses from 104 local authorities, indicated that 78% already have an area SENCO for early years providers to access. We are confident that this number will continue to grow as the reforms become embedded.

It is clear that the early years workforce has an important part to play to ensure that children with SEN and disabilities are suitably cared for. However, the market is diverse—the majority is made up of private and voluntary institutions—and it would be very challenging to require every provider to have a suitably qualified member of staff or a SENCO. This would be a particularly challenging requirement to place on childminders, who make up 52% of the sector. As I have previously explained, every provider delivering the early years foundation stage, regardless of their size, must ensure that arrangements are in place to support children with SEN and disabilities.

I recognise that the amendment allows the Government to set a prescribed size, but I would be concerned about the potential perverse incentives with this; for example, a provider not taking more than 49 children if at 50 children the regulations would be more burdensome. Therefore, it would be more appropriate to look at ways in which we can learn from local authorities with area SENCOs and encourage other areas to follow them, building on the model of local authorities that we heard from in our recent survey.

From September 2016, we will roll out the 30 hours' extended entitlement in certain areas to test market innovation and flexibility of provision, including the access available to those children with SEN and disabilities. One of the criteria we will set for local authorities which want to become early implementers is that they must clearly demonstrate how they will meet the needs of children with special educational needs and disabilities. While SENCOs are already a valued part of the landscape, we want to develop and test other innovative ways of meeting the needs of children with SEN and disabilities. We do not want to prejudge the learning that we will gain from the early implementers and I hope that noble Lords will understand why we do not want to close down other potential options by settling on a single solution now.

Finally, but by no means least, I turn to Amendments 3 and 5, which seek to ensure that the childcare provided under this Bill is "high-quality", including making it a

[Lord Nash]
requirement for every child to be assigned a "key person". I assure all noble Lords, as did my noble friend Lady Evans in Committee, that children are at the centre of our thinking. The Government are committed to ensuring that the entitlement delivers quality childcare that supports early development and is flexible and affordable for parents.

I hope that noble Lords have recognised the Government's commitment to quality childcare in my response to the other amendments in this group. We have committed to keeping the current ratios. An effective strategy is in place to develop further the early years workforce, which has been welcomed by the sector. We are committed to getting high-quality provision in place for children with SEN and disabilities, and testing the best way to secure that.

The required quality of provision for funded childcare places is set out in regulations, and providers are held to account for the quality of the service they provide through a strong accountability framework. The noble Lord, Lord Sutherland, mentioned Ofsted. The current Ofsted framework gives a strong focus on the quality of adult interactions with children, with outcomes for children improving as a result. The combination of regulation and accountability has produced a childcare offer in which 85% of providers are now judged "good" or "outstanding" by Ofsted, compared to less than 70% five years ago.

In addition, it is vital that parents understand what to look for in high-quality provision. I am grateful to the noble Lords who emphasised this when we met yesterday and I would be very happy to write to the noble Earl, Lord Listowel, to set it out in more detail. Ofsted is already taking steps to make its inspection reports simpler and clearer for parents, and I am pleased to say that, in addition, the Minister for Childcare and Education will take forward work to develop easy-to-use guides and questions for parents to use when choosing a childcare provider. This will build on the recently published and hugely popular *What to Expect, When?* guide for parents, which shows parents what their children should be able to do as they progress and develop through their early years, providing tips for parents on how they can help their children reach those milestones. The new, easy-to-use guides will refer to key workers.

While there is of course always more to be done, the approach that we are taking is working. As the early years foundation stage profile data published yesterday reveal, an increasing proportion of children are achieving a good level of development at age 5: 66% in 2015 compared with 52% in 2013.

There have also been improvements in provision for disadvantaged children, for whom high-quality childcare can help to mitigate the risk of falling behind early and staying behind. As the quality of providers in disadvantaged areas has improved—78% are now judged "good" or "outstanding", compared with 59% five years ago—so, too, have outcomes for lower-attaining children. The newly published data reveal that the gap between the lowest-attaining 20% achieving a good level of development and the rest continues to close, from 37% in 2013 to 32% in 2015.

We know that the quality of childcare makes a difference to outcomes, particularly for the most disadvantaged, and as such government will make sure that the regulations and the accountability framework that underpin the system continue to drive quality delivery. Section 7 of the Childcare Act 2006 places a duty on local authorities to secure prescribed early years provision free of charge. The details of how this provision is delivered, including various aspects of its quality and safety, are set out in regulations. We intend to use the same approach for the extended entitlement and will consult next year on those regulations.

I turn to Amendment 5, on key workers. All registered early years providers must meet a comprehensive set of safeguarding and welfare requirements. The requirements already cover child protection, ensuring that those who care for our youngest children are suitable to do so, promoting children's good health, ensuring that premises are safe, and preventing accidents and injuries as far as possible. To strengthen these requirements even further, the Government are already introducing new measures outside the Bill significantly to increase the number of staff with paediatric first aid training. Providers are already required to assign every child a "key person". Key persons have an important role to play, helping to ensure that every child's learning and care is tailored to meet their individual needs. The key person is a familiar figure who is accessible and available as a point of contact for parents, too.

The key person system is already well established, as required under the EYFS. The safeguarding and welfare requirements for registered early years providers are comprehensive, as is absolutely right. Parents want to be reassured that when they leave their child, or, indeed, grandchild, all aspects of their safety and welfare will be addressed.

I do not believe that we should single out any individual requirements in order to given them prominence in primary legislation. It seems odd to stipulate that regulations setting out what is meant by "high-quality" childcare must require that each child is allocated a key worker, but not mention the other requirements around safeguarding and welfare. In saying this, I am not downplaying the valuable role that the key person plays but I do not see a case for singling out their role in primary legislation. I think we are in agreement that secondary legislation is the right place for us to set out the comprehensive suite of requirements, but I did enjoy the noble Earl's comments about Mrs Everest, aka "Woomany".

In conclusion, I would like to reiterate the point that high-quality childcare, delivered by staff with the right skills and qualifications, which meets the needs of children, including those with special educational needs and disabilities, is a vital principle for this Government. I hope the noble Baronesses and the noble Earl have been reassured by my responses and I urge them not to press their amendments.

6 pm

The Earl of Listowel: My Lords, I am most grateful to the Minister for his careful response and to noble Lords who have tabled amendments and taken part in this important debate on quality. I should first point out that I made a couple of omissions in my opening

statement because of my wish for brevity. The man I spoke of was, of course, Winston Churchill. Also, the Minister kindly made some comments to me earlier but I was not in my place. I assure him that I was stretching my legs behind the Bar and heard every word he said, but it was not a good time to choose to do so. I apologise for that.

I am grateful to the Minister for taking the time to answer in detail on these important matters. It is good to be reminded that he is developing a strategy for the early years workforce. It is most important to all of us, I am sure. I listened with interest to the debate about the importance of Ofsted versus the importance of high-quality qualifications for staff. I am very familiar with this issue from discussions about children's homes, and there seems to be a parallel. Within the culture of residential care for looked-after children in this country, there is a strong conservative bias towards a low-qualified workforce and a high level of regulation. Many people working in this field and many authoritative figures would say, "We do not need higher qualified staff; we need good regulation and we will work with what we've got". I have followed this issue for many years and have always taken the opposite view. We need highly qualified staff when working with such vulnerable children—even more so than the staff on the continent, who are definitely more highly qualified. I am very sympathetic to the argument of the noble Lord, Lord Storey. We should start with high-quality teachers and professionals, and then regulate to make sure everything is done properly. That is the motor to real improvement.

There is a concern about private group provision and the percentage of early years teachers in those settings. We should not be too prescriptive but we know how important having professionals in early years settings is, particularly for the most disadvantaged children. It is a matter of concern that nearly 50% of independent group providers do not have early years teachers in those settings. I am sure that this will be debated further in the other place. I welcome the Minister's many comments about the improvement in the qualifications of the workforce during the last Government. I beg leave to withdraw the amendment.

Amendment 3 withdrawn.

Amendments 4 to 6 not moved.

Amendment 7

Moved by ***Baroness Evans of Bowes Park***

7: Clause 1, page 1, line 6, leave out from second "child" to end of line 10 and insert "—

(a) who is under compulsory school age,

(b) who is in England,

(c) who is of a description specified in regulations made by the Secretary of State,

(d) in respect of whom any conditions relating to a parent of the child, or a partner of a parent of the child, which are specified in such regulations, are met, and

(e) in respect of whom a declaration has been made, in accordance with such regulations, to the effect that the requirements of paragraphs (a) to (d) are satisfied."

Baroness Evans of Bowes Park (Con): My Lords, I shall also speak to Amendments 8, 9, and 10, which concern eligibility for the extended entitlement.

The additional childcare provided for in the Bill builds on the existing entitlement to 15 hours of early education for three to four year-olds and disadvantaged two year-olds. The Government's intention with this extended entitlement is to support working parents with the cost of childcare and to enable them, should they wish to do so, to return to work or to work more.

I will first address Amendment 10, tabled by the noble Baronesses, Lady Pinnock and Lady Tyler. While I understand that the noble Baronesses would like working parents of children aged between one and two to benefit from additional childcare, I can assure them that there is already a significant amount of support for parents of children in this age group. In the last Parliament we introduced the entitlement to 15 hours free childcare for disadvantaged two year-olds. We have legislated for tax-free childcare, which will save around 1.8 million working families with children under the age of 12 up to £2,000 per child per year. We have committed to increasing childcare support within universal credit by around £350 million, to provide 85% of childcare costs from next year, rather than the current 70%, where a lone parent or both parents in a couple are in work. The Government's clear commitment is to increase the hours of free childcare available to working parents of three and four year-old children, when many parents feel more able to return to work.

Turning to those children that the Government intend to benefit from the new entitlement, our intention is that the criteria for accessing the entitlement will include conditions relating to paid work undertaken by the child's parent or the parent's partner. The criteria will be set out in regulations, rather than in the Bill, but our intentions are clearly signalled by Amendments 7 and 8. As set out in Committee, the amount of work parents will need to undertake will be set relatively low. Children of parents who earn at least the equivalent of eight hours per week at the national minimum wage, including those who are self-employed, will qualify for the extended entitlement. In the case of lone-parent households, the same threshold will apply. That makes this a significant offer of additional support.

We have considered carefully the debate in Committee about parents who may not be in a position to meet the minimum income threshold, for reasons which may be connected with incapacity for work, caring responsibilities or because they are temporarily away from the workplace. That is why the Government's policy statement, published at the beginning of this month, set out further information on the circumstances in which we think that children of such parents should nevertheless qualify. The amendment we have brought forward would enable the Government to specify the circumstances in which a person should be regarded as in paid work for the purposes of the new entitlement. This would enable the Government to include, within regulations, those parents who are out of work or temporarily away from the workplace.

In summary, the Government intend that the additional entitlement should be available in the following circumstances: where both parents are employed but one or both parents is temporarily away from the

[Baroness Evans of Bowes Park]
workplace on parental, maternity or paternity leave; where both parents are employed but one or both parents is temporarily away from the workplace on adoption leave; where both parents are employed but one or both parents is temporarily away from the workplace on statutory sick pay; where one parent is employed and one parent has substantial caring responsibilities, based on specific benefits received for caring; or, finally, where one parent is employed and one parent is disabled or incapacitated, based on receipt of specific benefits. The Government believe that including parents who meet these criteria within the entitlement provides an appropriate balance in supporting parents to work where they can do so but also avoiding undue disruption to providers and children due to short periods of parental absence outside the workplace. I hope noble Lords will welcome the Government's intention to include these circumstances in the eligibility criteria for the extended entitlement, which includes a number of groups specified in Amendment 9 tabled by the noble Baroness, Lady Jones, and the noble Lord, Lord Touhig.

Turning to parents on zero-hours contracts, as mentioned in the Opposition's Amendment 9, we recognise that the system needs to reflect the variety of working patterns of families across England. I should therefore like to reassure all noble Lords that the contractual position of parents will not determine whether they are eligible for the additional childcare. Parents on zero-hours contracts will be eligible in the same way as anyone else if, on average, they earn at least eight times the minimum wage per week as determined by information held by HMRC on parental earnings.

For parents who are not in work but are undertaking work-related training, in addition to the existing entitlement for three and four year-olds the Government already provide support to help with the costs of childcare to parents in recognised education courses. This includes schemes such as the childcare grant which offers parents support of up to 85% of their childcare costs depending on their household income. We believe that that is already a significant contribution to childcare costs while a parent is studying. Children whose parents are students but who are also in work will qualify for the extended entitlement in the same way as any other parent, as long as they meet the eligibility criteria. I would also like to mention very specifically here that parents on an apprenticeship, who by definition will be working full time, will be able to benefit from the extended entitlement.

As I have already explained, it is our intention that where one parent receives benefits for undertaking caring responsibilities, in the case of couple families they will be regarded as if they were in paid work as long as the other parent is working. This will mean that in such families they will be able to receive the additional entitlement supporting the other parent to remain in work or extend their hours of work. The entitlement is intended to help parents work. In the case of single-parent carers, should they work in addition to their caring responsibilities, they will be entitled to the additional childcare, like other parents.

I should also like to reassure the noble Baroness, Lady Jones, and noble Lord, Lord Touhig, that it is not our intention that children of parents who lose their job unexpectedly should be disadvantaged. If a parent's circumstances change their child will remain eligible for the extended free entitlement for a short period. We hope that within this time the parent will be able to regain employment and continue to declare that they expect to meet the criteria that I have just set out. If that is not the case, and after the grace period the parent is clear that they no longer expect to be in paid employment, they would become ineligible. We expect to provide further detail on how this will work in regulations and statutory guidance but a common-sense approach would be for children to keep their place for the remainder of that term.

The Government recognise the importance of volunteering and the role that volunteers play in improving their local community. However, the purpose of the extended entitlement is to help parents go out to work if they want to. As I have explained, entitlement is based on working the equivalent of eight hours, which means that parents who work part time and wish to combine this with some voluntary work will, of course, be able to do so.

Today, and in our policy statement, we have aimed to set out who the Government intend to benefit from the extended entitlement, but I am aware that noble Lords may question why we do not intend to set this level of detail out in primary legislation. As explained, eligibility will broadly align with that for tax-free childcare. The Childcare Payments Act 2014, which established tax-free childcare, sets out general conditions of eligibility, including the need to be in qualifying paid work. However, it is secondary legislation which sets out what is meant by qualifying paid work and when a person is to be regarded as being in such work. Those regulations are obviously highly technical, cross-referring to benefits, allowances and credits established under a number of pieces of primary legislation. Similarly, the approach that the Government have taken in this Bill is to signal in primary legislation that parents will be expected to meet conditions as to paid work in order for their children to qualify.

By taking a power to specify in regulations the circumstances in which a person is to be regarded as in such work, we have also signalled a clear intent to cater for circumstances in which a parent does not meet the paid-work condition, for example because they are temporarily away from the workplace due to sickness or parenting responsibilities, but their child ought nevertheless to qualify. However, we think it is appropriate that the technical detail as to which allowances will mean that a parent can continue to be regarded as being in paid work ought to be left to secondary legislation, and we feel that this strikes the right balance. This will also mirror the approach taken to the entitlement to 15 hours of free childcare for certain eligible two year-olds, where the detail as to which children are eligible is set out in regulations. The secondary legislation for the new entitlement will be laid and approved by each House using the affirmative procedure on their first use, therefore providing the opportunity for debate in both Houses.

I hope noble Lords will recognise that the Government have given careful consideration to the question of eligibility and, through their own amendments, have

addressed the key issues raised in Committee and provided a clear explanation for why some groups mentioned by the noble Baroness and the noble Lord may not be eligible. I therefore urge the noble Lords not to press their amendments and I commend Amendments 7 and 8.

6.15 pm

Baroness Jones of Whitchurch: My Lords, I rise to speak to Amendment 9. Our amendment builds on the Minister's own previous admission that a more detailed criterion was needed and his pledge to consider the issues again, taking into account what he described as our helpful contributions at Committee stage.

In this spirit, we are again trying to be helpful. Although the Government have made some concessions, we do not believe they have gone far enough, or are clear enough about which parents would qualify for the free hours. Again, we share the concerns of the most recent report of the Delegated Powers and Regulatory Reform Committee, which criticises the Government for relying on the detail of the eligibility criteria being spelled out in regulation rather than on the face of the Bill. It went as far as to say it was "mystified" by this omission.

This is particularly important given that the Government seem to be rushing this Bill through because they want to send an early message to parents that the new entitlement is on its way. However, unless parents are clear on whether or not they will qualify, I rather think that that message will be lost on them. Of course, the current 15 hours of free entitlement applies to all parents, but the additional hours envisaged in this Bill will apply only to parents working a minimum of eight hours a week. I have to say that I do not think that that will go down well among parents with different circumstances sharing the facilities in nurseries. For example, nursery providers and parents will find themselves grappling with definitions and calculations. Some weeks parents will qualify, and other weeks they will not.

As the noble Lord, Lord True, pointed out in Committee:

> "At the moment we have a beautifully simple system".—[*Official Report,* 1/7/15; col. GC 2099.]

It is easy to administer, and there is a strong case for maintaining the additional free hours as a universal benefit.

However, if we accept the Government's focus on just helping working parents with the cost of childcare, helping them return to work or to work more hours, then it is important that those new eligibility rules deliver that objective. That is what our amendment seeks to do. The first part of our amendment reflects the Government's plan that there should be a minimum eight hours worked each week. The second part of our amendment identifies the exceptions to this rule for parents who are in the job market, training for work or unable to work through no fault of their own.

I submit that the categories we have identified are the very people whom the Government are most likely to help back into work by providing additional free childcare. These are the hard-working parents on the bottom rung of the jobs ladder, who will genuinely struggle with childcare costs. If the Government want to encourage work and extend working hours, these are the very people we need to help. Putting an artificial bar of a minimum of eight hours a week does not really address those concerns.

When the Minister addressed these issues in Committee he argued that there were some discretionary payments that might help parents who study or who were carers. The Minister has repeated those assurances today. However, that is very different from an automatic entitlement to free childcare and, as I have said, there is a strong case for keeping it simple. The Minister also made it clear that parents on flexible contracts, zero-hours contracts or who lose their job unexpectedly should not be disadvantaged. We welcome this commitment and our amendment seeks to enshrine it on the face of the Bill. Our amendment would provide a simple entitlement to categories of parents for whom the Minister has already expressed some sympathy. On that basis, I hope that the Government will feel able to support our amendment.

Baroness Pinnock: Throughout the debate, we have grappled with eligibility criteria. I recognise the fact that the Minister has listened and defined much more clearly the working parents who will qualify under the scheme. However, as the noble Baroness, Lady Jones, has just described, it will be a very complex scheme, as set out in the Bill.

I want to speak to Amendment 10, which we tabled, by first of all thanking the noble Baroness, Lady Evans, for reminding everybody that it was a Liberal Democrat initiative to ensure that 40% of two year-olds from the most deprived and disadvantaged families were for the first time given 20 hours of free childcare a week.

What concerns us here is the huge gap in childcare provision for the majority of parents and their children between the end of paternity or maternity leave and access to free childcare at age three. We want to keep reminding the House and the Government that this gap must be bridged. Despite what the Minister said, it will cost most parents who are in work around £400 a week, which is a significant sum of money, for their one and two year-olds to access full-time childcare. This is somewhat addressed by the tax-free childcare allowance of £1,000-plus a year, but that comes nowhere near addressing the substance of the bills that parents face.

The other issue that I want addressed and have consistently raised is that people who are out of work for more than a year find it increasingly difficult to get back into work. If we can reduce those barriers by providing free childcare, we will be helping them, their families and the state in the long term. That is why I continually raise this point whenever we debate childcare. For those reasons, I want to stress this amendment today. I know that it will not be supported across the House, but I want to keep reminding people about this issue. I shall keep coming back to it, because it is very important for many parents—and for social mobility, which the noble Earl, Lord Listowel, for instance, is concerned about. I hope that in the longer term the Minister will be able to address this gap in childcare provision.

Baroness Evans of Bowes Park: My Lords, I thank the noble Baronesses, Lady Jones and Lady Pinnock, for their very helpful and clear contributions. As I explained earlier, the Government have attempted to set out clearly which children will be eligible for the new entitlement. We are making provision to ensure that parents who are temporarily away from the workplace as a result of other vital duties, such as caring for a new baby or adopted child, will be able to continue to receive their free place, reducing any disruption that short-term absences could cause to providers, and most importantly to the children.

The Government's commitment is clear. I am afraid that this provision is for working parents of three or four year-olds and that is the entitlement that we intend to keep. The noble Baroness, Lady Jones, asks why we will not define eligibility in primary legislation. As I explained, the details are technical and the nomenclature of the various underlying benefits and allowances may change. By putting this level of detail in regulations, we will be better able to amend eligibility to ensure that we continue to provide places to those whom we want to benefit. We provided substantial details of our intentions in our recent policy statement, which I have put on record in the House today. The House will have the opportunity to debate the detail of the regulations, which will be affirmative.

Amendment 7 agreed.

Amendment 8

Moved by ***Lord Nash***

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

"(2A) The conditions mentioned in subsection (2)(d) may, in particular, relate to the paid work undertaken by a parent or partner.

(2B) For the purposes of subsections (2) and (2A), the Secretary of State may by regulations—

(a) make provision about when a person is, or is not, to be regarded as another person's partner;

(b) make provision as to what is, or is not, paid work;

(c) specify circumstances in which a person is, or is not, to be regarded as in such work;

(d) make provision about the form of any declaration, the manner in which it is to be given and the period for which it has effect."

Amendment 8 agreed.

Amendments 9 to 11 not moved.

The Deputy Speaker (Lord Bichard) (CB): If Amendment 12 is agreed, then Amendments 13 to 16 cannot be called by reason of pre-emption.

Amendment 12

Moved by ***Lord Nash***

12: Clause 1, page 1, line 19, leave out subsections (4) to (7)

Amendment 12 agreed.

Amendments 13 and 14 not moved.

Amendment 15 had been withdrawn from the Marshalled List.

Amendment 16 not moved.

Amendment 17

Moved by ***Lord Nash***

17: Clause 1, page 2, line 36, leave out subsections (10) and (11)

Amendment 17 agreed.

Amendment 18

Moved by ***Lord Nash***

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

"Discharging the section 1(1) duty

(1) The Secretary of State may make regulations for the purpose of discharging the duty imposed by section 1(1) ("extended entitlement regulations").

(2) Extended entitlement regulations may (amongst other things)—

(a) require an English local authority to secure that childcare of such a description as may be specified is made available free of charge for children in their area who are qualifying children of working parents;

(b) make provision about how much childcare is to be so made available for each child, and about the times at which, and periods over which, that childcare is to be made available;

(c) make provision about the terms of any arrangements made between English local authorities and providers or arrangers of childcare for the purposes of meeting any requirement imposed under paragraph (a) or (b);

(d) impose obligations or confer powers on the Commissioners for Her Majesty's Revenue and Customs;

(e) make provision requiring information or documents to be provided by a person to the Secretary of State, the Commissioners for Her Majesty's Revenue and Customs or an English local authority;

(f) make provision for the purpose of enabling any person to check whether a child is a qualifying child of working parents;

(g) for that purpose, make provision about the disclosure of information held by a Minister of the Crown, the Commissioners for Her Majesty's Revenue and Customs or an English local authority;

(h) create criminal offences in connection with the onward disclosure of information obtained under paragraph (g) where that information relates to a particular person and is not disclosed in a way authorised by or specified in the regulations;

(i) make provision for reviews of, or appeals to the First-tier Tribunal against, determinations relating to a child's eligibility for childcare under section 1;

(j) make provision for a person specified in the regulations to impose financial penalties on persons in connection with—

(i) false or misleading information provided, or statements made or provided, in connection with a determination of a child's eligibility for childcare under section 1, or

(ii) dishonest conduct in connection with the process of making such a determination;

(k) require English local authorities, when discharging their duties under the regulations, to have regard to any guidance given from time to time by the Secretary of State.

(3) Extended entitlement regulations which impose a duty, or confer a power, on the Commissioners for Her Majesty's Revenue and Customs, or authorise disclosure of information held by the Commissioners, may only be made with the consent of the Treasury.

(4) In relation to a criminal offence created by virtue of subsection (2)(h), extended entitlement regulations may not provide for a penalty of imprisonment on conviction on indictment greater than imprisonment for a term not exceeding two years (whether or not accompanied by a fine).

(5) If provision is made by virtue of subsection (2)(j)—

(a) the maximum amount of any penalty that may be specified in, or determined in accordance with, the regulations is £3,000;

(b) the regulations must include provision enabling a person on whom a financial penalty is imposed—

(i) to require a review of the imposition of the penalty or its amount by the person who imposed the penalty;

(ii) to appeal against the imposition of the penalty or its amount to the First-tier Tribunal.

(6) The Secretary of State may by regulations substitute a different amount for the amount for the time being specified in subsection (5)(a).

(7) In section 15 of the Childcare Act 2006 (powers of Secretary of State to secure proper performance of English local authorities' powers and duties under Part 1 of that Act) references to Part 1 of that Act are to be read as including a reference to section 1 and this section.

(8) In this section—

"childcare" has the meaning given by section 18 of the Childcare Act 2006;

"English local authority" means—

(a) a county council in England;

(b) a metropolitan district council;

(c) a non-metropolitan district council for an area for which there is no county council;

(d) a London borough council;

(e) the Common Council of the City of London (in their capacity as a local authority);

(f) the Council of the Isles of Scilly;

"parent" has the same meaning as in section 1;

"qualifying child of working parents" has the meaning given by section 1(2)."

Amendments 19 to 20 (to Amendment 18) not moved.

Amendment 20A (to Amendment 18)

Moved by ***Baroness Pinnock***

20A: After Clause 1, line 44, at end insert—

"( ) Regulations as described in subsection (2)(b) must ensure that the times at which childcare is to be made available provide sufficient flexibility—

(a) for parents who work outside the hours of 9am to 5pm, Monday to Friday; and

(b) to ensure that childcare is available during school holidays within the local authority area of the relevant childcare provider."

Baroness Pinnock: I thank the Minister for his very general but principled commitment to greater flexibility and for his willingness to explore the possibilities. However, at this stage I would have hoped for a much clearer definition of expectations in the flexibility that we are going to allow when providing childcare. For those reasons, I would like to test the opinion of the House.

6.26 pm

Division on Amendment 20A

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Amendment 20A agreed.

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6.38 pm

Amendment 21 (to Amendment 18) not moved.

Amendment 18, as amended, agreed.

Amendment 22

Moved by ***Baroness Evans of Bowes Park***

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

"Childcare duty: consequential amendments

(1) In section 99 of the Childcare Act 2006 (provision of information about young children: England), in subsection (1), omit the "and" at the end of paragraph (aa) and after paragraph (b) insert "and

(c) any other person who provides early years provision for the purposes of section 1(1) of the Childcare Act 2015 (Secretary of State's duty to secure 30 hours free childcare available for working parents),".

(2) In Chapter 4 of Part 2 of the School Standards and Framework Act 1998 (financing of maintained schools)—

(a) in section 45A (determination of specified budgets of local authority), after subsection (4B) insert—

"(4C) For the purposes of this Part, a duty imposed on a local authority in England under section (Discharging the section 1(1) duty) of the Childcare Act 2015 (duties in connection with Secretary of State's duty to secure 30 hours free childcare for working parents) is also to be treated as an education function of the authority.";

(b) in section 47ZA (free of charge early years provision outside a maintained school: budgetary framework: England), in subsection (3), for paragraph (a) (but not the "and" after it) substitute—

"(a) for the purpose of the discharge of—

(i) the authority's duty under section 7 of the Childcare Act 2006, or

(ii) a duty imposed on the authority under section (Discharging the section 1(1) duty) of the Childcare Act 2015,"."

Baroness Evans of Bowes Park: My Lords, this new clause makes amendments to existing provisions of primary legislation that are consequential on the new duty on the Secretary of State under Clause 1 of this Bill and the Secretary of State's powers to make regulations for the purpose of discharging that duty.

The proposed amendment to Section 99 of the Childcare Act 2006 would enable the Secretary of State to require childcare providers who deliver the extended entitlement to supply basic information about children receiving free childcare to local authorities and to the Secretary of State. Since 2008, childcare providers who deliver the current early education entitlement have been required to provide individual child-level data to local authorities and the Secretary of State through the school census and the early years census. The information collected enables the department to monitor take-up of free places and measure the success of the early education entitlement. Take-up rates are then published annually.

Take-up rates are key to ensuring that funding for the early entitlement is properly allocated to local authorities and, in turn, to providers. This also enables us to identify any children who are accessing more childcare than they are entitled to, which is vital in order to guard against abuse of the system. We wish to do the same for the new extended entitlement. Providing basic information about children in their care, such as their name, date of birth and the number of government-funded hours they take up, does not place an undue administrative burden on providers, as it is information they hold as a matter of course.

I should also like to reassure noble Lords that robust safeguards are in place that prohibit publication of the data in a form that names or identifies individual children. The collection and use of data by the Secretary of State, local authorities and other specified persons is, in any case, also bound by the provisions of the Data Protection Act. I am sure that noble Lords agree that making provision to enable local authorities and the Government to collect data on children accessing free childcare is key to enabling us to monitor the successful delivery of the entitlement.

Secondly, I turn to the amendment to the School Standards and Framework Act. That Act, together with regulations made under it, sets the legal and budgetary framework for the allocation of financial assistance by local authorities to maintained schools, and to private, voluntary and independent providers of free early years provision in their area. This amendment extends that legal framework to financial assistance provided to settings delivering the new entitlement to 30 hours of free childcare for working parents.

I hope that noble Lords agree that it is important that we monitor take-up of the extended entitlement and that the existing legal framework for the allocation of funding by local authorities to childcare providers is updated to reflect this new entitlement. I urge noble Lords to accept this amendment, and I beg to move.

The Earl of Listowel: My Lords, will the data give information about the number of homeless families that are taking up the entitlement, for instance, or about the number of families with children in income poverty taking up the entitlement? If it is helpful to her, I am happy for the Minister to write to me.

Baroness Evans of Bowes Park: I will happily write to the noble Earl.

Amendment 22 agreed.

Amendment 23 not moved.

Amendment 24

Moved by ***Baroness Pinnock***

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

"Funding of childcare

For the purposes of discharging the duty imposed by section 1, the Secretary of State must ensure that—

(a) the level of payment made to any childcare provider by the Secretary of State for the provision of childcare is paid at a rate which ensures that the provider does not have to subsidise the cost of providing free of charge childcare by placing additional charges on other childcare which they provide; and

(b) particular provision is made for children living in deprived areas."

Baroness Pinnock: In moving Amendment 24, I will speak also to Amendment 25. I have three things to say, as there are three areas that these amendments cover.

First, we know that capital funding is a big issue for the National Association of Head Teachers in particular. The association is concerned that, with growing numbers in the primary phase and the early years phase per se, there will be inadequate buildings expansion to address the additional 15 hours' free childcare. Local government associations are also pressing the Government to commit to a capital fund for the expansion of buildings to ensure that the childcare can be accommodated. That is one reason why we tabled the amendment: to ensure that the Minister considers this issue when he makes these decisions.

6.45 pm

Secondly, I want to focus on children in deprived areas. I know that the Government will respond by saying that there is an early years pupil premium. Indeed there is. It is worth £300 a year. That is 25p for

[Baroness Pinnock]
every hour that a child is in full-time childcare. This is not really sufficient to make a significant difference to those children. On top of that, increasingly, the direct schools grant is not focusing on deprivation factors. Together, those two elements have resulted in us tabling the amendment in order to draw the Government's attention to the importance of considering this issue as a matter of urgency when funding decisions are made.

My final point, raised earlier in the debate, is about cross-subsidisation. I will repeat the figures I was given—on Facebook, as it happens. Some parents are paying a rate of £5 an hour in the free element of their childcare. That rises to £8.53 when parents are paying for childcare outside the free hours. That shows the difference between the cost applied to free childcare and the figure that the provider needs in order to have a sustainable business. For those reasons, I have tabled these two amendments. I beg to move.

Baroness Jones of Whitchurch: My Lords, I support these amendments. In essence they follow on from our earlier debate about funding. The noble Baroness has made a compelling case for the payment schemes being fully funded. This is important for providers and local authorities, who do not want to discover that once again, they are being expected to cross-subsidise the free places from other budgets or income streams. It is particularly important for children living in deprived areas, for whom additional funding from another pot simply might not be available.

We also support the strong case being made for an element of capital funding being included in the local authority grant. If part of the Government's strategy is to increase demand and bring new people into the jobs market, rather than simply provide a higher subsidy for those already in work, extra capacity will need to be found. We cannot rely on the market to fill this gap, particularly in the poorer areas, so local authorities will need to step in and help.

The last thing that we want as a result of this Bill is for the gap in provision between the more affluent areas and deprived ones to widen, but if we are not careful that could be the consequence if the places are not fully funded. We support these amendments and the certainty that will arise from the commitment to funding being enshrined in the Bill.

Baroness Evans of Bowes Park: My Lords, I would like to speak to Amendments 24 and 25, tabled by the noble Baronesses, Lady Pinnock and Lady Tyler, to which the noble Baroness, Lady Jones, has just referred, and to which the noble Baronesses, Lady Andrews and Lady Howarth, referred earlier in relation to cross-subsidy.

On Amendment 24, I thank the noble Baronesses for highlighting the need for the rate paid to be sufficient for providers delivering the extended entitlement, and for bringing to my attention the need to secure provision for children in deprived areas. I understand the concerns they are seeking to address through these amendments, and the Minister mentioned earlier that we share the aim of getting the funding for the entitlement right. We are clear that this funding must be sufficient to ensure that providers are funded adequately to be able to deliver the additional requirements set out in the Bill.

We have listened to providers' concerns that increasing government-funded hours will limit their ability to cross-subsidise from parent-funded hours and that delivering at current rates may not be sustainable. That is why the Prime Minister has committed to increase the average hourly funded rate paid to providers. As was mentioned earlier, we are the only party to have made this commitment. We have already committed £840 million of new funding to deliver the extended entitlement, and that is before we deliver on our pledge to increase the hourly funding rate.

My noble friend Lord Nash has spoken at length about the review of the cost of providing childcare, the purpose of which is to provide a robust analytical underpinning for a funding rate that is fair and sustainable for providers and delivers value for money to the taxpayer. I confirm that the review will include in its consideration the needs of children in deprived areas. I also assure noble Lords that the Government understand the importance of early years education for children from disadvantaged households.

We know that high-quality early education can lead to higher attainment later but there is a persistent gap between children eligible for free school meals and their peers in the proportion achieving a good level of development in the early years foundation stage profile. This is why we introduced the early years pupil premium in April this year, which provides extra funding to early years settings for each three or four year-old child from a disadvantaged household. We have estimated that there will be around 170,000 children eligible for this extra support in 2015-16. We expect to receive the first data on take-up of the early years pupil premium by the end of this year and will consider these very carefully and take them into account when we develop future policy.

Turning to Amendment 25, the Government aim to deliver a quality free childcare entitlement, with capacity created cost-effectively without driving up costs to parents. The majority of working families with three and four year-olds already use more than 15 hours of childcare. This means that many children will already be in a childcare place and will not require a new one. Rather, the new extended entitlement will pay for the additional hours parents are already purchasing from an early years setting themselves, helping working families with the cost of childcare.

There is natural growth in the childcare system but we can, and should, encourage new providers to enter the market or existing providers to expand. Collaborative arrangements across different types of providers and increased flexibility for providers are important elements of this. That is why, for example, under the Small Business, Enterprise and Employment Act, childminders will be able to provide childcare on non-domestic premises.

The Government have already made a £100 million investment of capital in early years to support the expansion of provision for two year-olds. We believe there is existing capacity in the system to help deliver

the new entitlement, and we are continuing to talk to local authorities to increase our understanding and evidence of where this is. The Government are committed to funding the extension of the entitlement at a level that ensures choice and flexibility for parents, is sustainable for providers, and is fair to the taxpayer. Decisions on the level of funding, including any capital, will be made in the forthcoming spending review. I therefore urge the noble Baroness to withdraw her amendment.

Baroness Pinnock: I thank the Minister for her commitment to the capital element and to focusing on areas of deprivation and disadvantaged families in future deliberations. With that in mind, I beg leave to withdraw the amendment.

Amendment 24 withdrawn.

Amendment 25 not moved.

Clause 2: Supplementary provision about regulations under section 1

Amendment 26

Moved by ***Lord Nash***

26: Clause 2, page 3, line 8, at end insert "or (Discharging the section 1(1) duty)"

Lord Nash: My Lords, this group of amendments concerns the regulations made under the Bill, which will be key to setting out the detail of the new entitlement, including who will be eligible and how it will be delivered. Therefore, I understand noble Lords' concerns about ensuring that they have a proper opportunity to scrutinise this detail.

There was much interest in the regulations in our earlier debates in this House and in the report by the Delegated Powers and Regulatory Reform Committee. The committee concluded that the scope of the delegations and powers under Clause 1 as drafted were too wide. Given the importance of secondary legislation to the Bill, I am in complete agreement with noble Lords and with the committee's report that it would be appropriate for regulations to be approved by a debate in both Houses. That is why I have brought forward these amendments, which would require regulations made under Clause 1 and extended entitlement regulations to be laid and approved by each House using the affirmative procedure. I hope this will reassure noble Lords that we have listened. I hope the Government's amendments will be welcomed.

Amendment 27, tabled by the noble Baroness, Lady Jones, would ensure that a statutory instrument containing regulations in exercise of any power in the Bill would not be made unless a draft of the instrument had been laid and approved by each House; in other words, it would subject regulations to the affirmative procedure each time the regulation-making power was exercised. We believe it is right that initially we should deal with the regulations under the affirmative procedure, rather than the negative procedure as originally planned. However, we do not believe it is necessary to make them affirmative each time.

We need to strike the right balance between the mechanics of the affirmative process—for example, the need to find time in the parliamentary timetable for debates in both Houses, no matter how small the change—and the ability of government to respond efficiently and effectively to support delivery of the new entitlement, should this be necessary. That is why the government amendments in this group envisage that regulations made under Clause 1 and regulations made for the purpose of discharging the Secretary of State's duty will be subject to a debate the first time the powers are exercised but that subsequent regulations made under the Bill would be subject to the negative resolution procedure.

The exception to this would be in any instances where regulations seek to amend or repeal primary legislation, or in the case of regulations seeking to update the maximum level of any financial penalty set out in the Bill, which would be subject to the affirmative procedure. This follows the precedents of parliamentary scrutiny adopted in childcare legislation or comparable education legislation. The regulations that underpin the current Section 7 entitlement have been subject to the negative procedure since they were introduced in 2008. These have been amended only four times, and each time the changes were subject to a public consultation.

We believe that our approach is the right one. As noble Lords have already heard, we have made great progress since Committee to narrow the scope and clarify the detail of what we will include in the regulations. I also reassure noble Lords that feedback from parents, providers and employers will be taken into account in the development of the draft regulations, and we will wish to draw on the expertise of noble Lords. Furthermore, we have committed to providing a full impact assessment on the extent of the free entitlement, which will be published when we undertake a formal public consultation on the draft regulations in 2016. Following the consultation, we will lay the draft regulations before the House for a full debate before they can be approved and added to the statute book.

I hope noble Lords agree that by the time they are laid, these regulations will have undergone a significant amount of close scrutiny. Therefore, I am confident that we will be able to present a set of regulations to the House that are fair and workable and remain true to the spirit of the Government's commitment to support and reward thousands of hard-working families. I beg to move.

Lord Touhig: My Lords, I regret very much having to put Amendment 27 before the House but, frankly, the Government leave us no choice. We have seen throughout the passage of the Bill the cavalier attitude the Government have taken—not by the Ministers who have represented the Government in this House, I hasten to add, but by the Government as a whole. In support of that assertion, I quote from the 2nd Report of the Delegated Powers and Regulatory Reform Committee, published on 26 June, which says at paragraph 10:

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

[LORD TOUHIG]

Earlier, in paragraph 8, the committee says:

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

Finally, in paragraph 9 of the report, the committee states that:

"We do not accept the Government's attempt to dignify their approach to delegation by referring to a need to consult. We of course acknowledge the need for consultation as a precursor to the formation of policy; but this should in our view have followed the well-established sequence of a Green Paper setting out proposals, followed by a White Paper containing the Government's legislative intentions, and finally the presentation of a Bill".

There we have it—that spells out quite clearly how the Government should be presenting legislation to Parliament.

7 pm

Since then, we have had some concessions, but not enough to persuade us on this side not to table Amendment 27. We have argued that all the regulations made on the Bill should be subject to affirmative resolution of both Houses of Parliament. The Government's response is to say that the initial regulations made under Clause 1 would be subject to an affirmative resolution but not the rest. Why is this? I do not think the Minister has given us a thoroughly acceptable answer this evening. In its 8th report, published yesterday, the committee points out that,

"conditions could subsequently be altered—and conceivably removed—by negative procedure regulations".

It also says:

"The first-time affirmative procedure that the Government now propose for regulations under clause 1 would mean that the initial (affirmative) regulations would include the eligibility conditions; but conditions could subsequently be altered—and conceivably removed—by negative procedure regulations. We do not regard that as satisfactory, and, in the absence of provision about eligibility on the face of the Bill, we recommend that regulations under clause 1(2)(d) and (2B) in particular should require the affirmative procedure whenever made".

That is a report of distinguished Members from all sides of this House and we should take note of it. I am not alone in believing that this is a damning indictment of the structure of the Bill, handed down by a distinguished committee. I invite the Minister, in his reply, to state quite clearly that the Government will look further at this and come back, at Third Reading, with an amendment to make all the regulations in the Bill subject to an affirmative resolution. That is righting a wrong and I hope the Government will do it.

Baroness Andrews: My Lords, I support my noble friend on this point. If the Delegated Powers Committee had believed that first-time affirmative action was sufficient it would certainly have said so, because its mark as a committee is to be proportionate. There is a very good reason why it has said, so strongly, that any changes must be done through the affirmative procedure each time. Perhaps I may use the Government's arguments against them. The Minister previously argued that these definitions of eligibility were technical, but they are not. The point about these regulations is that the definitions represent the substance of the Bill: who is going to be eligible for these extended childcare provisions. They are a serious aspect of the Bill and should be on the face of it. The Minister argued that there may be a need to change the definitions and if they are in secondary legislation they can be changed more easily. If that is the case, the changes to the definitions are very serious indeed. As the committee says, they may be made to remove or add new categories. The Government know that they are dealing with a febrile and dynamic situation with a complex aspect of policy and they may well require to change these regulations. We are dealing with massive uncertainties here. The Government would be well advised—I say this in all sincerity—to follow the advice of the committee in this instance and ensure that each change in the regulations is properly debated in this House by way of an affirmative resolution

Lord Sutherland of Houndwood: My Lords, I do not often listen to myself in debates but I did so earlier on and began to wonder if I was sitting on the right set of Benches, on a Cross Bench. However, I am now reassured that I am, on two grounds. First, I welcome the report of the Delegated Powers Committee very warmly indeed: somewhat more so than the Minister. Secondly, I support the amendment on a belt-and-braces basis. The point has just been made that there are many uncertainties here and we need to be reassured that these will be resolved on the Floor of this House.

Lord Mackay of Clashfern: My Lords, I have one comment on the report of the Delegated Powers Committee. If all Bills had to be preceded by a Green Paper and a White Paper, there would be a long interval after a general election before there would be any legislation at all. Some people would welcome that but, on the other hand, those who are anxious to fulfil their commitments might not wish to wait that long.

Lord Nash: The Government recognise and understand the expressed views and wishes of the House and the Delegated Powers Committee to be able to debate the regulations in more detail. Our amendments will provide a higher degree of parliamentary scrutiny beyond the original intention. Furthermore, the department will continue to consult on any material changes to the regulations once they have been approved and laid under the negative procedure. We recognise the importance of seeking the views of parents, local authorities and providers. Each time the regulations that underpin the current entitlement have been amended, which is only four times, they have been subject to a public consultation. The current entitlement is subject to a negative procedure and we are not persuaded that this situation is sufficiently different to warrant finding parliamentary time for changes which may be minor. The department will continue to follow this good practice and will consult on any material changes to regulations made under Section 1 and regulations made for the purposes of discharging the Secretary of State's duty under what will become Section 2. Therefore, in the Government's view, it would not be necessary to include this type of direction on the face of the Bill. I hope noble Lords will be reassured by my explanation that we have listened to their concerns and taken them seriously. I therefore urge the noble Baroness not to press Amendment 27, and for noble Lords to accept government Amendments 26, 28 and 29.

Amendment 26 agreed.

Amendment 27

Moved by ***Lord Touhig***

27: Clause 2, page 3, line 17, leave out subsections (4) and (5) and insert—

"( ) A statutory instrument containing regulations under section 1 or section (Discharging the section 1(1) duty) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament."

Lord Touhig: My Lords, I beg to move and wish to test the opinion of the House.

The Deputy Speaker (Viscount Ullswater) (Con): My Lords, I must inform the House that if this amendment is agreed to I will not be able to call Amendments 28 and 29.

7.07 pm

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Amendment 27 agreed.

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McAvoy, L. [Teller]
McDonagh, B.
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Symons of Vernham Dean, B.
Taverne, L.
Taylor of Bolton, B.
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Thomas of Winchester, B.
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Walpole, L.
Watson of Invergowrie, L.
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Berridge, B.
Best, L.
Black of Brentwood, L.
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Brabazon of Tara, L.
Bridgeman, V.
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Carrington of Fulham, L.
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7.18 pm

Amendments 28 and 29 not moved.

Clause 5: Commencement

Amendments 30 and 31

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

30: Clause 5, page 4, line 2, at beginning insert "Section (Funding review),"

31: Clause 5, page 4, line 4, at beginning insert "Subject to section (Funding review),"

Amendments 30 and 31 agreed.

Amendment 32 not moved.

Prosecution of Offences Act 1985 (Criminal Courts Charge) Regulations 2015

Motion to Regret

7.19 pm

Moved by ***Lord Beecham***

That this House regrets that the Prosecution of Offences Act 1985 (Criminal Courts Charge) Regulations 2015 undermine the principle of judicial discretion, and add an artificial inducement to plead guilty; and further regrets that the Regulations were laid at a time that severely limited Parliamentary oversight, as well as making claims for savings that cannot be substantiated (SI 2015/796).

Relevant document: 1st Report from the Secondary Legislation Scrutiny Committee

Lord Beecham (Lab): My Lords, I refer to my interests as an unpaid consultant with the firm with which I was formerly a senior partner.

A few months ago a 32 year-old woman, Louise Sewell, stole a pack of four Mars bars worth 75 pence from a shop in Kidderminster. She was undergoing a benefits sanction and had not eaten for two days. She pleaded guilty and was ordered to pay a criminal courts charge of £150. A man in Newbury who lives in a tent and stole a £2.99 bottle of wine from a supermarket was subjected to the same charge, but was not required to pay the criminal courts charge in the light of his limited means. I am grateful to the Law Society and the Howard League respectively for supplying details of these and other cases—of which there are many—to my old firm and to a magistrate friend who has served for a long time on the Bench and has much experience chairing the Bench in his area.

A client of my old firm who was addicted to legal highs and is on probation received a summons for littering and was convicted in his absence. The court wished to impose a small penalty or conditional discharge. Either of those would have required the imposition of the £150 court charge. The court decided to order an absolute discharge and thereby avoid the financial penalty. Faced with a similar situation, my magistrate friend presided over a case of minor criminal damage where the fine would have been around £75, costs £85, and victim compensation £20, to which would have been added a criminal charge order of £150. The defendant's income consists of £115 in benefits per fortnight. The court decided to give him a discharge, which meant not only that the courts charge was not payable but that no victim compensation could be ordered.

These cases and many like them proceed from the criminal courts charge regulations, which are the subject of this Motion, which among the many dubious legacies bequeathed to Michael Gove by his predecessor as Lord Chancellor, Chris Grayling, ranks as one of the most misconceived. Those convicted of criminal offences face, rightly, the prospect of fines, contributions to prosecution costs, and payment of compensation to victims. Some contribution to court costs might well be reasonable, but this order, tabled just before the dissolution of Parliament, never having been the subject of consultation, imposes a rigid structure of charges with no judicial discretion as to their amount or any regard as to the defendant's means. They apply to all cases since 13 April.

A defendant pleading guilty in the magistrates' court will be charged £150, which will in many cases exceed the fine, prosecution costs and even some compensation orders combined. If defendants are convicted after a not guilty plea, the charge will be £520 or £1,000 in what is called an either-way case—one that could be heard in either the magistrates' court or the Crown Court. Guilty pleas in the Crown Court will attract a charge of £900, while £1,200 will be levied where there is a conviction following a not guilty plea.

The uniform imposition of these fixed charges is contrary to the courts' current approach, which is one of totality—taking into consideration the nature of the offence and the effect, including the financial effect of fines and costs already levied. Judicial discretion under these regulations is being displaced by what one might call Ryanair justice, with significant add-ons, often disproportionate to the basic financial penalty.

Magistrates and others, including the senior judiciary, are concerned not only about the potential impact on those convicted but also about the likelihood that some defendants will plead guilty rather than risk doubling or quadrupling the financial penalty they face. There is of course already something of an inducement to plead guilty in the one-third discount for a guilty plea. But my old firm has experienced a number of cases where charges that could properly have been contested have ended up as guilty pleas, especially—but by no means exclusively—in relation to road traffic matters. Given the number of court closures and the cost of travel and time off work which will increase as a consequence, and is itself a matter of concern, the inducement to plead guilty to less serious offences becomes even greater. The Howard League cites a case in Mansfield, where a defendant changed his plea at the Crown Court upon being advised that if convicted he would face the higher charge described under the order.

There are other potential difficulties. Where there are a number of charges, to some of which the defendant pleads guilty but not to others, the current practice is to deal with those to which the guilty plea is tendered and set the remainder down for trial. That could mean, in the event of conviction, two criminal court charges; the risk arises that for example the imposition of a probation order, possibly subject to medical treatment, would be delayed. As I have exemplified, some courts have resorted in cases where defendants have limited means to order an absolute discharge which avoids the imposition of the criminal law charge but also nullifies the possibility of a victim compensation order. Such is the concern that at least 50 magistrates are known to have retired from the Bench in protest. Nor can it be assumed that the Ministry of Justice's estimate of the yield from this process—between £65 and £85 million a year—would be easily achieved. After all, earlier this year it was reported that there is £549 million in uncollected fines and that 61% of this amount will be written off. Can the Minister tell us how much of the £700 million contract for court enforcements for which his colleague Mr Vara announced in July that Synnex Concentrix are preferred bidders, related to the collection of this charge?

The financial implications for both defendants and the Government may be somewhat qualified by the curious wording of a four-page guide to the new charge published by HM Courts and Tribunal Service which concludes with the following section under the rubric "What else do I need to know?". It states:

> "If after two years you have made best efforts to keep up with the payment terms of any other financial impositions and the criminal courts charge and you have not been convicted of any other criminal offences during that period you may apply to the magistrates' court for consideration to write off the criminal courts charge".

I am tempted to nominate this remarkable statement, about which nothing is said in the impact assessment, for the Nobel prize for legislative opacity. Perhaps the Minister could enlighten us as to its potential consequences. The House of Lords Secondary Legislation Scrutiny Committee criticised the timing of the implementation of the order, before Parliament had any chance of considering it—because of the pending dissolution—and, tellingly, added that,

> "the lack of an updated estimate of the sum likely to be raised"

made it,

> "impossible to take a clear view of how the regulations will serve their intended purpose".

We are, moreover, very much in the early days. Most cases where the charge has been levied will have been where guilty pleas have been tendered. We are now at the point where trials will be proceeding and the larger charges will be imposed in both magistrates' and crown courts.

It is not surprising that 93% of magistrates surveyed by the Magistrates' Association thought the charge was set at an unreasonable level, and that 83% thought it should be means-tested.

> "The fact that no account is taken of ability to pay and the lack of discretion mean that the charge as currently constituted is not in accordance with the principles of justice."

Those are not my words, but those of the Magistrates' Association in its response to the Justice Select Committee. The Lord Chief Justice was reported last week to have voiced his criticism of this ill-thought-out measure, among others, and a Crown Court judge in Leicester observed that the charge did not have any merit.

It is to be hoped that Mr Gove, who has abandoned one ill-conceived project of Mr Grayling's—the secure college for young offenders—will review and urgently revise these deeply flawed regulations taking into account the concerns of the judiciary at all levels and consulting properly on a revised scheme. The key elements must reflect the concept of totality, have proper regard to the means of the defendant and the nature of the offence and restore judicial discretion. I beg to move.

7.30 pm

Lord Marks of Henley-on-Thames (LD): My Lords, in Committee on the Criminal Justice and Courts Bill, in moving amendments to the Government's proposals, which are now Part II(a) of the Prosecution of Offences Act 1985, I made it clear that our principal purpose in seeking to amend these provisions was to ensure that the criminal courts charge would be charged on a discretionary, and not a mandatory, basis. Our reasons were that a mandatory charge would be unfair, would frequently have to be imposed when there was clearly no chance that it would ever be paid, and that it would damage offenders' chances of rehabilitation because offenders with no money would have an unaffordable financial liability hanging over them, which would in turn hinder their chances of obtaining employment, and all for no sensible or realistic purpose.

We never said that such a charge should not be a tool available for the courts to use in appropriate cases, but we wanted the courts to have the power to use it in appropriate cases only, and to decline to do so where it was simply an empty gesture, but one with

[Lord Marks of Henley-on-Thames]
potentially damaging consequences. We also expressed the view that the retrospective power to remit an unpaid charge would prove to be a useless and cumbersome way of dealing with the many cases in which a charge should never have been imposed in the first place.

On Report, in the hope that the then Secretary of State might have softened his view, we moved similar amendments. Unfortunately, it was quite clear that we had failed to move the then Secretary of State, and the legislation was passed in its present form. The criminal courts charge in practice has been even worse than we feared. The charges introduced by these regulations are very high, so that the overall impact of the penalty may be out of all proportion to the offence, particularly where there is a trial. The examples cited by the noble Lord, Lord Beecham, made that very clear.

The Bar Council, which provided a very helpful briefing for this debate, has pointed out how concerned it is about the impact of these very high charges on the rehabilitation of offenders. It stresses that convicted offenders come largely from among the most vulnerable in society, with the greatest difficulties in finding employment. The council and its member barristers see a risk of offenders committing further offences in order to obtain the funds to pay the charge.

The number of magistrates who have resigned over this single issue passed 50 some time ago, and my understanding is that it may now be even twice that. This country and this House deeply value our tradition of lay magistrates being appointed as volunteers to administer criminal justice in our communities in less serious cases. The Conservative Party has long expressed admiration for our magistracy and many prominent Conservatives have in the past been magistrates. However, we cannot expect members of the community to play their part in a justice system that denies them the power to do justice and forces them to take action which they regard as thoroughly unfair, harmful and unjust.

On issues that concern the magistracy, this House has often been greatly assisted by the experience of the noble Lord, Lord Ponsonby of Shulbrede. I see that he is in his place today and I hope that we may hear from him again. But this is what Richard Monkhouse, chairman of the Magistrates' Association, has said:

> "Our members have expressed concerns about the charge from the outset and it shows the strength of feeling when experienced magistrates resign from the bench because of it. … A six-month review is needed with a view to granting judges and magistrates discretion in applying the charge because we know the majority of offenders will never be able to pay, and worse, that it may influence their pleas".

This last point is particularly important. The regulations stipulate the amounts of the charge, which diverge wildly according to whether a defendant pleads guilty or not guilty. The noble Lord, Lord Beecham, has given the details of the charges. The most serious divergence is in the case of the magistrates' court, where a plea of guilty is met with a charge of £150 or £180, depending on whether the offence is summary only or triable either way. That becomes a very substantial £520 or £1,000 on a plea of not guilty. In the Crown Court the differential is less marked; the charge is £900 for a plea of guilty and £1,200 for a plea of not guilty. However, these differences, particularly in the magistrates' courts, create a serious risk of injustice. It could not be clearer, I suggest, that defendants who are innocent will be driven to plead guilty because of the impact of this non-discretionary charge for pleading not guilty, imposed whether the trial takes an hour or more than a day.

I had an email from a businessman in Shropshire recently. He had served as a magistrate there for 21 years before resigning over this issue. He wrote that with the charge imposed,

> "for simply deciding to go to court to argue your innocence on a trivial offence, the British justice system is in a dire state".

It is not the proper function of the Secretary of State for Justice to bring our system of justice into disrepute, yet that is precisely what this criminal courts charge has done. Imposing unaffordable penalties on offenders who cannot pay commands no respect, just as it brings no real money into the Treasury. Judges feel that this charge is an abuse of their judicial oath, as their promise to do justice clashes with their obligation to enforce the law. This was well expressed by Judge Christopher Harvey Clark, sitting in Truro, when he told a defendant, as he imposed a £900 charge on a guilty plea in the Crown Court:

> "The charge has no bearing on your ability to pay. It is totally inappropriate for people of no means to have to pay this charge. It happens to be current government policy but as an independent judge I regard it as extremely unfair".

The Howard League has pointed out that the non-discretionary nature of the charge has led to courts feeling compelled to manipulate the outcomes of cases to avoid the effect of the charge which is imposed by statute. So fines have been reduced in order to enable the charge to be imposed. Offenders have been given absolute discharges in cases that could not possibly merit them because magistrates are not prepared to impose the charge on the offender concerned. And perhaps worst of all, victims have been denied compensation, which is discretionary, to enable courts to impose the charge, which is compulsory. In west Yorkshire there was the case of a 21 year-old girl, Chloe Knapton, who was left severely scarred as a result of being injured with broken glass in the street. When sentencing the perpetrator, the Recorder did not order him to pay her compensation simply because he had to impose the compulsory £900 charge. That is no justice for her or for society.

I hope we will secure a review at an early stage, far earlier than the three-year review we were promised, and which is enshrined in statute. The evidence is there now on how much damage this charge is doing, and for how little reward. I invite the Minister to say whether an earlier review may be in prospect and whether he is in a position to give the House clear figures on the extent of the criminal courts charges imposed since they came into force, and how much has been collected. That will enable us to see the extent to which the revenue prediction of £80 million a year looks like being met. I suspect that the real collection figure will turn out to be far lower. But even if it is not, I still oppose these charges. For all the reasons that the noble Lord, Lord Beecham, has given, and those I have canvassed, if the noble Lord seeks the opinion of the House this evening, I will support him.

Lord Rooker (Lab): My Lords, I had not intended to speak in this debate, but I have just received an email from a friend who is a magistrate. I shall not say where because these days one cannot do that. It is worth putting on the record. He writes:

"Courts are closing in great numbers with another 90 about to be closed and there will be more after this. Defendants and witnesses now have to travel great distances. Some cannot afford it so plead guilty when they may not be. Also, it has removed the fundamental right of citizens to be tried by their peers as the cost of the criminal court charge is so high and beyond most defendants' means, so they are pleading guilty. It has removed the need of the CPS to prove a case beyond reasonable doubt. Not many well-off people appear in court so it is the poorest who are being hit with a double whammy".

That is the view of a serving magistrate sitting on the Bench today.

Lord Pannick (CB): My Lords, on this subject, I am on the side of the two Jeremys: the noble Lord, Lord Beecham, and Jeremy Bentham. In 1795, Jeremy Bentham wrote:

"The statesman who contributes to put justice out of reach … is an accessary after the fact to every crime".

For Bentham, such a law tax was a denial of justice. These regulations are a denial of justice, and they are a denial of justice for the two reasons given by the noble Lords, Lord Beecham and Lord Marks. First, because the sums involved—£150 up to £1,200—may well encourage innocent people to plead guilty, and, secondly, because the magistrate or judge has no discretion to vary the charge by reference to the circumstances of the offence or the offender—in particular, the offender's means.

I will add a further point. There is a much fairer and more lucrative way forward for a Lord Chancellor who wants to help balance the books by imposing a court charge. Let the Lord Chancellor give the judges and magistrates a discretion to charge much higher court fees to defendants who are convicted of serious crimes and who can afford to pay. The drug dealers, the bank robbers and the fraudsters can be charged the true cost of their occupying the courts for weeks in trials that end in convictions if the judge or magistrate in their discretion thinks that it is appropriate to do so. The regulations could then give the courts a proper discretion not to impose on the small fry charges that may well induce guilty pleas from innocent people and may well result in the imposition of orders for payment from people who cannot afford them. If the noble Lord, Lord Beecham, wishes to test the opinion of the House on these regulations, he will certainly have my support in the Division Lobby.

Lord Brown of Eaton-under-Heywood (CB): My Lords, the points to be made against these regulations are so obvious and so strong that really they do not need to be made yet again in tonight's debate. The problems—the total lack of judicial discretion, the obvious impossibility of recovery in so many cases and the risk of excessive pressure on defendants to plead guilty to avoid the charge escalating from £150 to £520, or, in an each-way case, from £180 to £1,000—were all foreseen by the noble Lords, Lord Beecham and Lord Marks, in Committee in July of last year. They have all since been the subject of widespread criticism by a series of distinguished legal commentators in a succession of legal periodicals such as the *Criminal Law Review*, *Criminal Law and Justice Weekly* and so forth. Professor Nicola Padfield, a most distinguished legal academic and criminologist and now master of Fitzwilliam College, Cambridge, described them as "astonishing" and quoted another commentator as saying that they were the most unworthy provisions on the statute book. The president of the Law Society called them "outrageous".

7.45 pm

What perhaps were not foreseen in Committee were the consequences that have recently been highlighted in the press, notably in the *Times* on Monday of this week and in the *Independent* today: first, the reductions in the awards both of compensation for victims and of prosecution costs in order to be able to accommodate these mandatory costs, both of those being, unlike court charges, within the court's discretion; secondly, the reduction of fines or other penalties, again as compensation for these charges; and, thirdly, the very powerful objections of the magistracy to the point where already, as we have heard, more than 50 magistrates have resigned in protest. These regulations, the very last of the previous Lord Chancellor's series of cost-saving or money-making regulations, are the most objectionable of all and must be not merely regretted but withdrawn.

I will add a point on which I touched in earlier debates that concerned the cutting of legal aid or increases in court fees. If the Lord Chancellor truly needs to achieve significant savings, he should revisit the whole question of jury trials. In particular, does a need remain for juries in all cases where presently there is a right to them—even, for example, in serious and complex fraud cases, and even in comparatively trivial cases where the jurors themselves feel that their time is wasted? In January of this year, Sir Brian Leveson—he of the inquiry into the press, now President of the Queen's Bench Division—produced a comprehensive review of efficiency in criminal proceedings. I commend it to the Lord Chancellor. Pages 87 to 92 discuss these questions. That of course is for the future. For the present, these regulations must indeed be regretted.

Lord Ponsonby of Shulbrede (Lab): My Lords, my contribution concerns both practicalities and the principle of the courts charge. I remind the House that I sit as a lay magistrate in central London. I agree with everything that has been said by the previous speakers. I shall avoid going over examples already given but shall walk through two simple sentencing exercises that illustrate the points with which we are dealing.

If an offender pleads guilty to a summary offence in a magistrates' court, a band A fine is given. If he is on average income, that fine will be £150. That is at the discretion of magistrates. In addition, there are CPS costs of £85, the imposition of which is, again, discretionary. After that, there is the government surcharge or the victim surcharge of £20, which is mandatory. Then there is the new courts charge of £150, which is mandatory. The total is £405. In this example, 37% is the fine and 37% is the courts charge.

[Lord Ponsonby of Shulbrede]

In the same circumstances, if the offender is on benefits the balance changes. The fine is £40, the CPS cost is £85, the government surcharge is £20 and the courts charge is again £150. The total is £295. In this example the fine for an offender on benefits is 14% of the total figure but the courts charge is half. This is a common type of fine given in the magistrates' courts. The courts charge is clearly unjust on this consideration alone.

We have heard how unhappy magistrates are and we have heard about the resignations and retirements—and I personally know a couple of magistrates who have retired. However, it is not unusual for magistrates, and I am sure judges as well, to combine competing principles when they make decisions on sentences. We have the principle of totality when we are making a sentence—that is, what is the bottom line? Of course, we have to come up with a total sentence that is fair in all circumstances. But the competing principle is the advice that we get from our justices' clerks, who are in turn advised by the Justices' Clerks' Society, whose advice to us is that we should sentence and then, after the sentence, add in an administrative charge, which is the courts charge. Clearly those two pieces of advice are in contradiction but, in the privacy of the retiring room, magistrates may look at the matters over which they have discretion. I was disturbed to hear about the case in the *Independent* this morning, where magistrates said that they actually reduced compensation. I believe that that is absolutely wrong, but it is within the power of the magistrates to reduce compensation to reflect the totality of the sentence that they are giving. When the Minister comes to wind up, I am sure that he will remind the House that it is open to magistrates to give an absolute discharge or "one day deemed served". I and all magistrates in exceptional circumstances use those types of sentences, but it is absolutely wrong to use them as a way in which to circumnavigate the courts charge.

Noble Lords have spoken about the possibility of people changing their plea to guilty to avoid the courts charge. I understand that it is early to get a statistical basis for that, even though a number of anecdotes say that that is what defendants are doing. But it is worth reminding the House of the totality of the situation. We have already heard that the sentence itself can be reduced by up to 30% if somebody pleads guilty at the first opportunity. In addition, the costs asked for by the CPS will be much lower if somebody pleads guilty at the first opportunity, rather than going through trial. Admittedly, this is a discretionary amount, but the amount asked for will be much lower on behalf of the CPS. On top of that, you have the mandatory courts charge, which we have heard so much about, of up to £1,000 for a conviction on an either-way matter in a magistrates' court. Putting those elements together could encourage people to plead guilty when they believe that they are not guilty.

On the principle of the courts charge it is worth reflecting that, when we debated this matter on the then Criminal Justice and Courts Bill last year, we did not know the level of the courts charge, and the briefings that we received—from the Magistrates' Association, for example—set the courts charge at the same level as that of the victim surcharge, because they did not know any better at the time. So the debate at that time was on the principle of the courts charge, not the proportionality, because the figure is so much higher than we expected when considering the matter last year.

The Government have always justified this matter by saying that criminals should pay their way, and the previous speakers have accepted that principle, but I am not sure that I do accept it. The court system, right up until last year, was an independent administrator of the law, in which judges, magistrates and jurors had no interest in the outcome of a case, their only duty being to administer the law and come to a just outcome. Surely it is wrong that the court system has a financial interest in the outcome of a trial. I am not for a moment saying that any judge or magistrate would be swayed by that consideration, but from the defendant's point of view and the public perception there is an institutional, built-in benefit to the court system on the result of a trial. On that alone, I oppose the principle of the courts charge.

There is a bit more to it than that—and I refer to some research sent to me about how people perceive how they are treated in court. It is not merely a question of the legal and constitutional rights that they receive but about what they believe to be the fairness of the whole system. There is growing evidence in America and the UK that if people are convicted and believe that they have been fairly treated, they are more likely to comply with the sentence and the sentence itself is likely to have a better outcome. This is a profound observation, which puts an onus on the court system to treat all parties fairly and an onus on treating convicted offenders in such a way that they think they have had a fair crack of the whip, so that they are more likely to comply with the sentence when it is given.

I urge the Government to bring forward a reconsideration of this matter. It is something which, in my 10 years as a magistrate sitting on the Bench, I have found people feel most strongly about.

Lord Woolf (CB): My Lords, what we are discussing concerns what happens in magistrates' courts up and down the country and, from time to time, in the Crown Court, where for reasons that can be good or bad, cases go to be heard. I fear that these regulations indicate that the Government have paid less attention to what they are doing because it concerns magistrates and the cases that come before them, and other cases that are not the most serious. I see no other reason why the Government could come to the conclusion that it is right and proper to do what these regulations seek to do. I suggest that this House should regard justice in the magistrates' courts as every bit as important as every other court in the land. It is a total disgrace that we should put on to the statute book provisions that have the consequence that magistrates are so appalled about what they are required to do that they feel it necessary to resign. I regard that as shocking, and the only explanation that I can suggest is the one I have given: that insufficient consideration was given to what has been done.

Now that the matter has been brought to the attention of a new Minister of Justice and Lord Chancellor, he should look at it very carefully, as quickly as possible and, as he has been shown to have the courage to do, take his own decision and come to the right conclusion. I wish to put it on the record that I have been very pleased by the general approach of our new Minister of Justice and Lord Chancellor. It seems to me that he considers the facts; he may not always come to the decision I would want him to come to, but he comes to a fresh decision, as required by the circumstances as he sees them. I make no objection to the fact that he may take a different view from that which judges and retired judges would have come to. What is wrong here, though—this is the explanation—is that there was no proper consultation. I believe that if there had been proper consultation that had been objectively considered, these regulations would not have seen the light of day.

8 pm

I gratefully adopt what has been said already by previous speakers and I do not wish to repeat what they have said. However, I want to leave a very important message. It is all too easy to chip away at the proud record we have in this country of doing justice regardless of the individual involved. By a little nibble here, and a little nibble there, and sometimes a bite—and this is not a nibble; it is a big bite—real damage is done to the reputation of justice in this country. I urge the Minister to look at this urgently, because it will do real harm, and I hope it will be realised that in haste something was done that should not have been.

Lord Phillips of Worth Matravers (CB): My Lords, in the days when one was allowed to use Latin in court, counsel and judges sometimes delighted in the phrase res ipsa loquitur: the facts speak for themselves, or, the answer is obvious. For the reasons given by every single person who has spoken thus far in this debate, that phrase applies to the Motion. I shall not repeat the reasons, but I shall support the Motion if I have the opportunity.

The Minister of State, Ministry of Justice (Lord Faulks) (Con): My Lords, I thank all noble, and noble and learned, Lords who have spoken in this debate, in which, although it was short, strong feelings have been expressed and cogent arguments advanced about the criminal courts charge. The Secretary of State for Justice has developed a reputation—referred to by the noble and learned Lord, Lord Woolf—for listening to the arguments and approaching with boldness and imagination the often difficult challenges that justice and paying for the cost of justice present. Although I cannot promise the House an immediate review of this matter, I can promise that all the speeches made today will be carefully heeded by the Secretary of State for Justice. He will be considering them extremely carefully.

Let me deal with some of the points that have been made, succinctly but powerfully. First, on judicial discretion, this was one of the arguments that came before both Houses when the Bill was going through Parliament. Indeed, I was the Minister who took the relevant clauses through. The argument—except from the noble Lord, Lord Ponsonby—was not that there are no circumstances in which it is appropriate for a defendant to pay the costs of their appearance in court, but that there should be some discretion. The Government believe that convicted adult offenders should take responsibility and contribute towards the costs they impose. If they do not, of course, the cost is paid by the taxpayer. The criminal courts charge is intended to ensure that offenders take a greater share of the burden, currently borne by taxpayers, of funding the criminal courts.

Imposition of the charge is purely about recovering costs. It is not a punishment and therefore should not be treated as part of the offender's punishment in any way. Therefore, it would not be appropriate for a discretion to be exercised. The noble Lord, Lord Ponsonby—parting company from a number of other noble Lords—said that he did not accept that any cost should be imposed on a defendant for appearing in court. One of the reasons he gave was that in some way, it would be rather invidious, because a judge or magistrate might be perceived as having some form of financial interest in the outcome of a case. Although I think the noble Lord accepted that that would not be much of a factor in reality, he was in a sense making an important point: that judges and magistrates should not be able to choose whether to charge for the use of a court, as it were, and that it would therefore not be appropriate for there to be a discretion.

I understand entirely that it is most important that the courts charge framework means that offenders are given a fair and realistic opportunity to pay the charge. Although a court does not have discretion in terms of the charge itself, it does have discretion to consider an offender's means and set payment terms at affordable rates. Offenders will be able to contact a fines officer at any point to request variations in payment rates if their circumstances change. At such points the courts and fines officer will have an opportunity to take existing debts into account, making sure that repayment is reasonable and affordable, given the offender's individual circumstances.

The criminal courts charge legislation also gives the offender the opportunity to have the charge remitted after two years where the offender takes all reasonable steps to pay it and does not reoffend. It will be for the courts to decide whether all reasonable steps have been taken, having regard to the offender's personal circumstances. Here matters such as unemployment, interruptions to benefits payments or poor health can be taken into account.

Noble Lords were concerned about the possibility of there being an inducement to plead guilty. Of course, that is a highly relevant consideration. Defendants facing trial are not required to pay the criminal courts charge; they will be subject to the charge only if they are convicted following a hearing, or of course if they plead guilty. It is always a delicate matter whether defendants plead guilty to an offence of whatever seriousness. The noble Lord, Lord Beecham, and others have acknowledged the fact that it is well known that a discount—often of a third—will be given to a defendant

[LORD FAULKS]
who pleads guilty, and it will depend on the precise juncture at which that defendant pleads guilty. Pleading guilty at the first possible opportunity will obtain the maximum discount. An experienced legal adviser, such as the noble Lord, Lord Beecham, will approach the question of an appropriate plea with delicacy and will not of course encourage a defendant to plead guilty if there is a defence. Indeed, they will go further than that and tell the defendant that they should not plead guilty to an offence they have not committed. We believe that the delicate matter should not and will not be distorted by the question of a criminal courts charge.

Let me deal with the point that perhaps can be summed up by the principle of totality, which those of us, like me, who have had to sentence defendants have borne very much in mind. It is true that, very often, where there are a number of different sentencing options on the menu and more than one has to be prescribed, a judge will try to make sure that, in the round, the penalty or combination of penalties is meted out that is appropriate to the offence. I understand why certain magistrates have been rather more lenient than they might have been, obviously had there not been the criminal courts charge, but that is not what the legislation provides and is not something that should be done.

The criticism is also advanced that there was a lack of parliamentary oversight in relation to these provisions, and the suggestion is that the statutory instrument severely limited that oversight. There is nothing improper about the time in which the regulations were laid. I can assure noble Lords that the criminal courts charge provisions underwent considerable scrutiny. I can personally testify to the level of scrutiny they underwent in this House. I have looked back at *Hansard* for the House of Commons, and the principle and the appropriateness of a criminal charge were considered in debates. The question of the actual level of the charge is a different matter—I see the noble Lord, Lord Beecham, grimacing. I wholly understand that there is a distinction.

However, the concerns raised in this Motion regarding discretion and the effects on plea decisions are points that were carefully considered and debated at considerable length at the various stages during the consideration of the Bill in both Houses. As to charge levels, draft charge levels were also published to inform parliamentary and public debate, the charge levels set out in the regulations being a slightly adjusted version reflecting up-to-date costing information. I do not consider that the Government at the time behaved improperly by laying the regulations when they did, especially in light of the significant amount of scrutiny that took place generally on the principle. It may be that magistrates expected there to be a greater amount. This was a difficult attempt to try to cost the use of the courts. The victim surcharge is another mandatory charge—there is no discretion—which was introduced in 2007 by the then Labour Government.

On the question of benefits assessment, regarding the suggestion that claims on savings cannot be substantiated, an impact assessment was published when the Act was introduced early last year that was based on indicative charge levels. Significant work was then carried out to assess the costs of running the criminal courts, which resulted in the publication of the draft charge levels I have previously mentioned. This was published as an addendum to the original impact assessment and included an updated analysis of the benefits and costs of the policy. An updated impact assessment was produced to accompany the regulations and has now been published. It includes a considered analysis of the benefits and costs of the provisions, estimating total cash inflows arising from the charge at £95 million from 2019 to 2020.

A number of noble Lords remarked on the unfortunate response of a large number of magistrates. I agree with all noble Lords who have emphasised the importance of magistrates and what a vital task they perform for society in general, and we are of course concerned that any magistrates should not feel confident in the provisions of sentencing and indeed other provisions that they have to administer. Of course I have read about and the Government are well aware of those magistrates—reported in the media to number something like 50—who say that the courts charge was certainly one of the reasons for their resignation. Just for context, I should say that I understand that 350 magistrates have resigned in the relevant period, and of course others will have retired. They may have myriad reasons for doing so. However, I do not want to underestimate the significance of the general discontent referred to by the noble Lords, Lord Rooker and Lord Ponsonby, and others. The Secretary of State and the Ministry of Justice take that matter very seriously.

I also bear very much in mind what a number of noble Lords have said about the importance of rehabilitation. We do not believe that this will be an additional barrier to rehabilitation. The Government are extremely concerned that rehabilitation should be at the heart of reforms to our sentencing provisions and indeed in the way in which the prison service will, we hope, be changed in the following years. I should say that failure to pay the court charge will not extend the time it takes for a conviction to become spent for the purposes of the Rehabilitation of Offenders Act 1974. I take the point made by the noble Lord, Lord Ponsonby, that it is important that defendants feel that they have been dealt with fairly, and that itself can be relevant to their rehabilitation. However, we consider that setting the repayment rate fairly and proportionally according to each offender's individual circumstances, as long as they provide the court with the details, should mitigate any sense they have of unfairness which may follow the criminal courts charge.

8.15 pm

Although the noble Lord, Lord Pannick, may not have extensive experience in the magistrates' court, he is none the less concerned for justice, and as such we benefited from his contribution to the debate. All noble Lords from all sides are of course concerned, as are the Government, that there should be justice and that the criminal courts charge should not impede that. However, I am sure that all noble Lords will also accept that Governments are reasonable in seeking to try to recover some of the costs of defendants appearing in court—the result when they are convicted of their own offences. I take the point made by the noble Lord,

Lord Pannick, that those who have greater means may well be regarded as being better able to contribute to those costs, which is a factor that should be borne in mind.

I will repeat in conclusion what I said at the outset—that we are listening; we have listened to the concern about these charges. The capacity to review is built in to the legislation. I will not give any undertakings or promises from the Dispatch Box or raise expectations, but I can assure the House that the matter is very much on the agenda of the Ministry of Justice.

The House has been greatly assisted by everything that has been said. I hope that the noble Lord, Lord Beecham, will accept from me the seriousness with which the Government take those concerns. This regret Motion has effectively underlined those concerns. I hope that, in that spirit, the noble Lord will feel able—notwithstanding the presence of a number of noble Lords on that side of the House—not to press this regret Motion.

Lord Beecham: My Lords, the Minister can live in hope. I have a certain sense of déjà vu when listening to the elegant defence the Minister makes of the indefensible. I remember the skill with which he sought to defend the previous Lord Chancellor's secure college proposal, which was interred not too long ago by the new Secretary of State, and I rather think he is in the same position tonight—I rather hope that he is.

The Secretary of State the Lord Chancellor is reported today in the press to have made a very significant change in the Government's policy relating to justice by persuading the Government to withdraw from their proposal to offer the service of the splendidly named Just Solutions International to the Government of Saudi Arabia in the light of the dreadful position of a British citizen that, unfortunately, we are all familiar with. The Lord Chancellor may need some support in seeking to change the system and these regulations—which he inherited—in order to promote, let us say, just solutions nationally as opposed to internationally. The opinion of this House may strengthen his hand with regard to discussions with colleagues who in the other context seem to have been somewhat recalcitrant. In those circumstances, therefore, I wish to test the opinion of the House.

8.19 pm

Division on Lord Beecham's Motion

Contents 132; Not-Contents 100.

Motion agreed.

Division No. 4

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House adjourned at 8.30 pm.

Grand Committee

Wednesday, 14 October 2015.

Energy Bill [HL]

Committee (on Recommitment) (in respect of Clauses 65 and 66)

3.45 pm

Relevant documents: 6th and 7th Reports from the Delegated Powers Committee

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

Clause 65 agreed.

Clause 66: Onshore wind power: closure of renewables obligation on 31 March 2016

Amendment 1

Moved by ***Lord Bourne of Aberystwyth***

1: Clause 66, page 38, line 5, leave out subsection (1)

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, I start by speaking to government Amendments 1 to 13, which seek to amend and supplement Clause 66. I thank noble Lords for extending this debate and allowing us the time for a fuller and thorough discussion.

Lord Foulkes of Cumnock (Lab): I am sorry to interrupt but may I put on record in the Grand Committee what I said in the Chamber? It would have been better for all of us if this debate had taken place in the full Chamber rather than in the Grand Committee.

Lord Bourne of Aberystwyth: I thank the noble Lord for his intervention but I make the same response as I gave previously. I know that is the noble Lord's view but I have heard contrary views, and not from the Conservative Benches, that Members prefer this Bill to be in the Moses Room. However, the point is noted.

As previously set out in the Secretary of State's announcement on 18 June regarding the early closure of the renewables obligation, we proposed a grace period to protect investor confidence in the wider renewables sector. A grace period was proposed that would provide for those projects which had, as of 18 June this year, planning consent, grid connection and land rights. The grace period was designed to allow for projects that meet certain criteria to continue to accredit under the renewables obligation until the original closure date of 31 March 2017. Following this announcement, we undertook a significant period of engagement to understand better the views of industry and other stakeholders on our proposals.

I recognise that the Government's amendments, which were tabled last week, are somewhat technical and have the potential to be seen as complex. I reassure noble Lords that, from the outset, the Government have been alive to the issues of investor certainty and clarity, which is why the provisions have been drafted to reflect the approach taken in existing renewables obligation legislation, in particular the Renewables Obligation Closure Order 2014 and the 2015 closure order relating to large-scale solar. This approach aims to ensure consistency and ease of understanding for industry. Following our previous Committee debate on 14 September, we have now carefully reviewed the feedback and evidence provided during the engagement exercise. We have since developed amendments to our original policy to ensure that it strikes the right balance. The amendments aim to protect consumer bills and ensure the right mix of energy, while balancing this against the interests of onshore wind developers and the wider industry.

I am also pleased that the amendments and the revised impact assessment were made available to noble Lords on 8 October in advance of today's debate and as promised at our last sitting. I hope that noble Lords have had time to review the amendments and that they go some way towards addressing concerns raised during the debate in our previous Committee sitting on 14 September.

Amendments 1 to 13 amend the Bill to introduce the proposed grace period criteria for the early closure policy as outlined in the announcement on 18 June and make a number of additional supplementary amendments.

Amendments 1 to 12 make a number of changes to Clause 66, which introduces a new provision into the Electricity Act 1989 to implement the early closure of the schemes to new onshore wind in Great Britain. The amendments seek to remove the delegated power with a view to setting out the terms of the grace period in the Bill. Amendment 13 sets out the detail of the grace period in the Bill. I hope that these amendments will be welcomed by noble Lords, as initial feedback from the industry to the department following the publication of these clauses has indicated.

I again apologise for the delay in bringing these amendments forward, but hope noble Lords understand the complexity of the policy that has been drafted and appreciate that we will now have an appropriate amount of time in which to debate them today.

I turn first to the terms of the initial grace period criteria as outlined in the Secretary of State's announcement in June. The proposal was—and, following detailed industry engagement, remains—to offer a grace period to those projects which, as of 18 June 2015, already have, first, relevant planning consents; secondly, a grid connection offer and acceptance of that offer, or confirmation that no grid connection is required; and thirdly, access to land rights.

In addition to this, in certain circumstances, projects that have been granted planning permission following a successful appeal will also be eligible for the grace period. In particular, those projects which have, via an

[Lord Bourne of Aberystwyth]
appeal or judicial review, had a negative planning decision that was made on or before 18 June overturned, should be eligible for the grace period. This is because had the correct decision been made in the first instance, they would have had planning consent on or prior to the 18 June cut-off date. These key grace period terms are referred to in the amendments as the "approved development condition" and are referred to in proposed new Section 32LJ.

I turn now to investor confidence. At the time of the announcement outlining the initial grace period, the Secretary of State also said that she wanted to hear the views of industry and other stakeholders before framing the terms of the legislation. The department engaged with hundreds of stakeholders, including the devolved Administrations, supply chain, investors and developers, over the summer. The evidence gathered during that engagement exercise demonstrated the views of individual developers and the wider industry. Evidence was collected though online representations, individual meetings, representations from trade bodies and investor round-table sessions.

Following this engagement, we now have evidence that certain projects which already meet the proposed grace period criteria are experiencing difficulty securing finance. Feedback has shown that a number of financiers may be unwilling to lend to projects due to legislative uncertainty created by the parliamentary Bill process. Therefore, to ensure that projects which meet the grace period criteria and would have otherwise been able to commission and accredit under the renewables obligation by 31 March 2017 are not frozen out of the process, we are offering those projects which meet the approved development condition additional time to seek accreditation. The extension available is broadly equivalent to the period between the date of the Secretary of State's announcement—18 June—and likely Royal Assent to the Bill, which is approximately nine months. To be eligible for this extra time, projects must be able to provide evidence that they have been impacted by a lack of investment during the period to Royal Assent.

This investment freeze condition I have just described is intended not to increase the pipeline of onshore wind projects that are able to accredit under the renewables obligation but rather to ensure that those projects which were intended to be protected by the grace period, as proposed on 18 June, are afforded this protection.

To provide a consistent approach to all onshore wind projects eligible to accredit under the renewables obligation, we also ensure through these amendments that a pre-existing grid and radar delay grace period applies here. This entitles projects affected by unforeseen grid and radar delays an additional 12-month period in which to accredit.

We are confident in our amendments and the proposed grace period. We have actively listened to stakeholders and worked to ensure that the final policy strikes the right balance between the interests of onshore wind developers and those of the wider public. I beg to move.

Lord Wallace of Tankerness (LD): My Lords, I thank the Minister for having this session, which is very helpful. I agree that it should be in Grand Committee because as the session unfolds there might be quite a lot of detail and I suspect that it may be easier to tease out some of that detail in this venue.

In these amendments, the Government have addressed a number of the issues that were raised by the industry about the grace period with regard to planning, lack of investor confidence leading to some projects being frozen, the grid and radar and aviation. In speaking to the amendments in my name and those of my noble friends, I shall probe some of them because although when these amendments were announced last Thursday the industry felt that a number of concerns had been addressed, as days have passed more and more anomalies seem to be coming to light. I wish to identify some of these anomalies and get the Government's response to them. The purpose of the amendments we have tabled is to allow an opportunity to tease out some of these anomalies. I am not saying they are all covered but I hope the Minister will be able to respond. I do not think we have covered everything comprehensively with our amendments, but there will be an opportunity to come back on Report in the light of what the Minister says.

As the Minister rightly indicated, the three conditions required for a project to fulfil approved development conditions are planning permission, grid connection agreement and land rights. Proposed new Section 32LJ(4) relates to the date on which planning permission was granted. The date chosen is the date when the Secretary of State made her announcement of the early closure of the renewables obligation for onshore wind projects. To some extent, it is an arbitrary date. No doubt the Downing Street grid said it would be done on that date and not the day before, the day after or the week after. So there is a degree of arbitrariness in all this and, in many cases, that has led to considerable unfairness.

Our first amendment probes whether there is any need for this planning permission rule, given that grid connection agreements and land agreements would already be in place. If the Government insist on having a cut-off date, there is a possibility that that date should be later. We have suggested that it should be the date of the publication of the Government's grace period amendments or that all projects that were already in the planning system should be considered for eligibility. Those in the industry will tell you that submitting a planning application is not something you do on a whim when you wake up one morning. Considerable work goes into the application before then and considerable money has been invested in making it in the first place. In many cases, that investment will be for naught if what is proposed is so rigid.

4 pm

It has also been drawn to my attention—if you think about it, it is probably quite obvious—that there could not possibly be a worse date than 18 June. There was a period of April to May, during purdah, when councils were not processing in the run-up to elections. New planning committees were being formed after the

elections in the first week of May. I have been told that, in some cases, the last thing a new planning committee or planning chair would be given for their first meeting was a complicated wind farm proposal. Therefore, in many cases, there were a number of applications pending, not unreasonably, from the preceding weeks. After 18 June, the Government asked all developers for information about projects in the planning system that would not be eligible under the 18 June 2015 rule. The hopes of many developers were raised as a result of this, but these amendments dash those expectations.

I ask the Minister to consider this: given that Clause 65, which already stands part of the Bill, emphasises the Government's desire for local determination, if in fact a local planning committee has considered and agreed to an application but has not had, because of the cycle of meetings, the approval of a full council, it seems really unfair, given that the planning committee has gone through all this, that that should not also be eligible for accreditation and fall within the grace period. It is the cycle of local government meetings that determines whether a project can go forward.

Another issue that has been raised with me—perhaps the Minister can clarify the position—is that, in many cases, the authority has said that it will consent or has consented to a planning application in respect of onshore wind, but there is a Section 75 agreement in Scotland, or a Section 106 agreement in England, that has still to be concluded. Those who deal with those agreements know that it often takes considerable time to bring them together and put them in place. It would be very helpful for the Minister to indicate whether, if there has been a consent, subject to a Section 75 or Section 106 agreement, before 18 June, the Government would accept that this complies with the grace period; or, if they do not, whether he will consider making a further exception for those who have been given consent subject to those agreements. More often than not, it will not be in the hands of the developer whether these agreements could have been concluded in time; rather, it relates to the nature of the bureaucracy. I do not mean that pejoratively: it is the nature of discussions that have to take place. I know there is a particular concern over the status of agreements with Section 75 or Section 106 requirements.

The Minister also indicated that what the Government have done here, in allowing a period of grace, is that, if a correct decision had been made before 18 June, that should be eligible for the grace period. The two reasons why it might not have been correct were that a wrong decision had been given and was successfully appealed, or that no decision had been given and there was a challenge because it was a deemed refusal. I ask the Minister to consider some of the points that arise from this. First, with regard to a deemed refusal, in many cases that have been represented to me, the good practice was to work alongside the planning department of the local authority, not to rush to flag up a deemed refusal. When you think you are making progress, it is in everyone's interest that this comes out the other end with a grant of planning permission and that it is done co-operatively, involving communities and ensuring that concerns raised were properly taken into account. Very often that will not have been done within the statutory time period, but it is nevertheless good practice. We are in the position whereby those who do not observe good practice, but rush straight away to claim a deemed refusal and put it into the hands of a local public inquiry or a ministerial decision, will benefit from this. However, those developers who have been trying to follow good practice will be penalised by this. Frankly, that does not seem fair. This morning Scottish Renewables sent me the details of a case regarding this matter. It said that its members are happy for their case to be mentioned as an example of the inequity of the current grace period criteria. We are told:

> "The Binn Group initiated the Binn Wind Farm development as an integrated part of their waste and recycling and Binn Eco Park business in 2010 …The Planning Application was submitted to Perth and Kinross Council on 7th November 2014 and validated on 25th November with a statutory determination period of 4 months"—

that is, by 25 March. But in fact planning permission was not granted until after 18 June, and during that time considerable work was done between the developers and the planning department. We are told:

> "None of the four surrounding community councils objected and a community benefit scheme with the full engagement of each of the four community councils has been agreed. The site has a grid connection and land agreement".

The note also states:

> "The energy produced by the wind farm would be used directly on the site to replace diesel generated power, enabling business growth with increased employment. Planning is also underway to develop a co-located hydrogen for transport project as part of the Sustainable Cities initiative and the Tay Eco Valley proposals initiated by the local authority making this a unique application of wind power for the future".

That is all now prejudiced by the fact that the developers worked collaboratively with the planning department and did not seek a deemed refusal. That is the kind of case that seems inequitable. The proposals brought forward by the Government do not address that and I very much hope that the Minister will be willing to accept that some account should be taken of it.

Proposed new Section 32LJ seeks to extend the principle of the planning refusal gateway to the Section 36 process. Under that section, the equivalent of the refusal of a planning permission is the filing of a statutory objection by the local planning authority. Then, as with an appeal, there is an inquiry and a Secretary of State or Scottish Minister's determination. For some reason, the provision as drafted by the Government deals with one approach but not the other. Small extensions of larger sites go through the Section 36 process, while isolated small sites remain with local planning, and it is unclear why extension should have less access to the renewables obligation with grace periods than standalone developments. The company that has raised this with me has 25 megawatts of extension projects in Scotland, which would be able to go ahead if a change were made in that regard.

With regard to the investment freezing conditions and the amendments that we have tabled in relation to those, the Minister accepted that these were complex matters. I want to explore with him the intention of specifying 1 May 2016. It is perfectly fair that he says that he has sought to put in place a period of grace that is roughly equivalent to the period from the Secretary of State's statement to Royal Assent.

[Lord Wallace of Tankerness]

However, the documents sought under proposed new Section 32LK(4)(a) include,

"a declaration by the operator"—

the developer of the station—

"that, to the best of the operator's knowledge and belief, as at 1 May 2016 … the relevant developer required funding from a recognised lender before the station could be commissioned or additional capacity could form part of the station … a recognised lender was not prepared",

and so on. What has to be done as at 1 May 2016? There could have been a delay because of the investment freeze, but if—for the sake of argument—the Bill were to receive Royal Assent on 29 February 2016, in that intervening period funding might have been forthcoming. Does the developer or operator have to wait until 1 May so that the company can declare that on that date these beliefs were outstanding? That could lead to a loss of valuable time. I do not quite understand the importance of "as at 1 May". Our amendments seek a date up to and including 1 May so that if at any time before that—say, at Royal Assent—there has been a delay because of an investment freeze, nevertheless the company can get on with the project by making a declaration.

One of the other concerns that has been raised is whether this is cumulative or separate. Proposed new Section 32LK(4)(a)(ii), which is on page 7 of the Marshalled List, refers to a declaration that,

"a recognised lender was not prepared to provide that funding until enactment of the Energy Act 2016, because of uncertainty over whether the Act would be enacted and its wording if enacted".

Is that cumulative? Does it apply both whether there ever would be an Act and to the wording if it were enacted, or could it be either/or—that there was concern either as to whether the Act would ever get to the statute book or about its wording and meaning? It would seem much fairer if it was either/or rather than "both and", so clarification on that point from the Minister would be welcome.

The other amendment in relation to investment freezing, Amendment 21B, relates to the definition of investors. We are proposing that there should be flexibility in this regard. It should not be banks exclusively but include those which are,

"managed by a Financial Conduct Authority registered manager".

It is my understanding that many smaller projects make great use of equity players. Nevertheless, those equity players have to be managed by the FCA and in these circumstances it is again not clear whether they would qualify. It would seem inequitable if the equity managers are excluded and the funding is required to come from a bank. I ask the Minister to reflect on that because it would affect quite a number of potential projects.

I move on to the grid and/or radar conditions. The proposed new section refers to the,

"grid and radar delay condition".

I know it sometimes seems to be dancing on pinheads to talk about "and/or" but, again, it is not clear whether it has to be cumulative. Does it have to be both grid and radar? What makes this particularly important is that the *Guidance on the Transition Period and Closure of the RO*, published under the previous regime on 16 October 2014—almost exactly a year ago—referred to grace periods in Section 4 and to the,

"'Radar or grid connection delay' grace period".

Lawyers are always keen to jump on the fact that if one government document says "or" and a subsequent one says "and", there was intention to change it from "or" to "and". They are two very separate things and it does not seem relevant to try to link the two together. It may well be that the intention was not to link them but, given how it appears in the government amendments, it would be helpful if the Minister could indicate that these are not to be taken together.

With regard to the grid, again, there is a potential for anomalies. I have been made aware of at least one case where there was a joint venture between an energy company and a private individual. The energy company carried the transmission entry capacity for a substation. What initially happened was that a substation was built for a grid connection of a much larger capacity than was consented to but subsequently there was consent for the additional capacity, for which that grid connection was already in place. But that joint venture ceased earlier this year and the energy company is no longer part of it. The transmission entry capacity was therefore lost and had to be reapplied for. It had had that connection for the past five years but the period of application for it to be renewed for the new, single person covered 18 June. So something that had been in place for five years was not there for about three or four months, including that critical date. That seems to be quite anomalous, especially when the capacity is there.

4.15 pm

It is clear that many projects now have radar delays. Our concern here is that the concession will not work. Most projects with radar delays are dealing with Ministry of Defence radar as opposed to civil civilian airport radar, and getting the MoD to agree to mitigation schemes has been very slow. I ask the Minister to look again at the situation involving the MoD, and to get the MoD to confirm how many projects out of all those blocked or delayed due to radar concerns it now expects to be able to assist or support. These are fully consented projects, they have grid connection agreements and they have land rights that will satisfy all the approved development conditions, but we seek some reassurance that the Minister is aware of these projects and the commitment that has been made to seek to resolve the objections.

The grace period proposals in relation to radar objections seemed reasonable when they were first published a year ago, but since then there has been very slow progress with the MoD and, of the roughly 12 to 14 projects affected, not one has had an agreement to implement a solution, far less any implementation and completion dates for the relevant radar works that might be required. Our "for the avoidance of doubt" amendment would make it clear that the radar works did not have to be completed by 31 March 2017, so long as the works were completed prior to the end of the grace period and so long as an agreement to do the relevant works had been entered into by 31 March.

That seems very fair. We also think it important that there is no expectation from either the Ministry of Defence or the relevant developers in any of the 12 to 14 projects that it would be possible to have the relevant radar works completed before the deadline set out in the Government's amendment. It seems a bit perverse that the Government give with one hand but a different government department stymies it with the other. The Minister's response to that would be welcome.

The other point is that it would appear here that in looking for an outcome—a set of radar works—it may be that, as a result of discussions, the objection is withdrawn. I would like confirmation that if the objection is withdrawn and there is no longer any radar issue, that too would satisfy the condition.

I am sorry that this has taken some time but these issues are complex. I think the Minister said in his opening remarks that they were very complex. I have tried to set out the concerns that have been raised but I am sure that these have not been exhaustive. I very much hope that the Minister will be able to address these issues.

Baroness Quin (Lab): My Lords, I have not spoken before on the Bill but have followed the proceedings closely, particularly as I live in Northumberland, the county that has had more onshore wind farms installed than any other county in England. I know that many people have made the point during debates that Scotland is the part of the UK that feels the major effect of both the previous policy and what is now being proposed, and I accept that completely, but in England Northumberland has a key role and a key interest both in the policy and in the changes that are proposed to it.

I speak as someone who is strongly supportive of the renewable energy sector generally, and indeed I was concerned today at what seems to be the direction that the Government seem to be taking over solar energy. None the less, I have a problem with onshore wind installations in my part of the country, which probably relates more to the planning process than to anything else simply because in Northumberland so many applications were approved in the face of not just the majority of the local people affected opposing them but an overwhelming majority. In many cases it seemed to those residents as though those investing in and pushing for such schemes had little connection with the local area, and little commitment to it other than making a financial gain with generous public support. For that reason, I am glad that the Government started to listen.

I know that comments have been made during the proceedings about the role of Conservative Back-Bench MPs. Having been a long-standing Labour Member in another place over many years, this is perhaps the first time that I might be saying something kind about Conservative Back-Bench MPs. I assume that they were opposing onshore wind not because they suddenly felt like it but in response to constituents' concerns, which is what MPs of all parties can and should do. In my area, plenty of people who are not Conservative supporters were concerned about some of the inappropriate intrusive wind farm schemes that, for example, led to very familiar views of our iconic coastal castles disappearing behind a circle of turbines, or, in another case, threatened to overshadow ancient standing stones that had stood proudly amid beautiful countryside for thousands of years.

Organisations that are normally very concerned about environmental issues and about climate change, such as the Northumberland and Newcastle Society or the Northumberland branch of the Council to Protect Rural England, have expressed their concerns very loudly about this. I should declare a non-financial interest as president of the Northumberland National Park Foundation. I have a lot of links with those who are concerned to protect and enhance the Northumbrian countryside and ensure its continued attraction to tourists and residents alike.

I should like the Government to give us some more information about the effect of what they are now proposing for areas such as Northumberland. A lot of very reasonable questions have just been asked by the noble and learned Lord, Lord Wallace of Tankerness, which obviously need addressing. But a breakdown as to how different parts of the UK will be affected by the changes that the Government are proposing would be welcome to all of us, whatever views we take of onshore wind and its future.

I also understand some of the points about investor confidence that have been made by my noble friends. As I said, I also understand what has been said by my honourable friends about the situation in Scotland and ensuring that there is proper and meaningful consultation with the Scottish devolved authority on these issues. However, I support local people wherever they are in the UK having their strong views taken into account. In many areas and in many cases there is strong public support for the renewable energy sector, whether in onshore or offshore development. I believe that we can meet our targets. But at the same time we need to be determined to conserve and enhance our precious national landscapes and countryside, not least in Northumberland.

Lord Foulkes of Cumnock: My Lords, I understand that we are dealing with all the amendments grouped together, so we can discuss aspects of any of them. Amendment 18, which I tabled, is really a technical amendment given to me as a way of tidying up the amendments that the Government have proposed. I will not speak to it today but I am happy to table it again on Report and speak to it on that occasion if necessary.

I fully understand what my noble friend Lady Quin just said. She and I were together in the other place, along with the noble Lords, Lord Deben and Lord Howell, and others, and we know the importance of representing constituents and making sure that their views are represented in relation to major planning issues such as wind farms. In my old constituency of Carrick, Cumnock and Doon Valley—I never had to explain to anyone that that was in Scotland; they knew straightaway once I had pronounced it—we had a number of wind farms and they were welcomed locally. We did not have the kinds of objections that my noble friend obviously experienced in Northumberland, but I understand that and she made her points very well.

[Lord Foulkes of Cumnock]

I was tremendously impressed by the explanations of the noble and learned Lord, Lord Wallace, of his own amendments—they were detailed and forensic—and by his clear knowledge and understanding of them. I noticed that the noble Baroness, Lady Maddock, was, like me, slightly perplexed on one or two occasions, but he managed to explain them to us. As I whispered to my noble friend Lady Quin at the time, "You can easily tell that he is a very good lawyer by the way he takes a brief and manages to explain it to lesser mortals like me and others". I was very impressed by that.

However, I am not as equable and relaxed about what the Government are proposing as some of my colleagues in this Grand Committee appear to be. People in Whitehall and Westminster sometimes do not understand what is going on in the real world outside. I wish that the Minister had experienced the kind of anger, fury and despair that I have experienced in the representations made to me about what the Government have done and are doing on this. I am astonished that they are pursuing this and treating it with such equanimity.

This has been an exercise of the greatest incredible incompetence and betrayal that I have known for a long time and I have seen some degree of incompetence and a lot of betrayal from time to time. I want to go through that statement and explain it, even in terms of the procedure. I tabled my Amendment 18 with the very helpful clerks in the Public Bill Office upstairs. I asked how frequently Governments have to resort to this astonishing procedure of re-commitment. Apparently, it is a very infrequent procedure and it is astonishing that the department has had to resort to it. It is a procedure where we are dealing with 12 pages of detailed amendments which have a huge effect, as the noble and learned Lord, Lord Wallace, has pointed out, on investors, consumers, producers and everyone, and we are trying to rush them through in this way. Next week, we have two days of Report, when we are supposed to deal with the whole Bill yet again. This is an astonishingly incompetent way of dealing with legislation.

I want to turn to the betrayal and the reneging on promises that have been made. I took part in a referendum in Scotland and went on platforms—much to my disadvantage, I may say—with Conservative spokespersons. It was a bit easier with the Liberal Democrat spokespersons. The SNP and others have taken us to task—to some extent understandably—for appearing shoulder to shoulder with Tory spokespersons. I feel really annoyed now that some of the things that were said on behalf of all of us, but put into government documents, are now being reneged on by the Conservative Government. Perhaps if it had been a coalition, they would not have been reneged on.

I will give two examples of the documents that went out to electors in the referendum. One said:

"The UK Government is now introducing the Contracts for Difference scheme, which will provide long term support for all forms of low-carbon electricity generation. These contracts provide industry with the long-term framework to make further large scale energy investments at least cost to the consumer."

Does not that ring hollow in the light of what the Government are now doing? It continues:

"Whilst the Renewables Obligation has been successful in incentivising renewable electricity deployment, a new market mechanism is now required to provide industry with the framework to make further large scale energy investments at least cost to the consumer. Therefore in its place, the UK Government is introducing the Contracts for Difference mechanism, which will provide long term support for all forms of low-carbon electricity generation—including nuclear, renewables and carbon capture and storage. Such contracts will allow investors to be confident about the returns on their capital in advance of investing billions"—

this is in a government document—

"into new infrastructure, remove exposure to volatile wholesale electricity prices and produce a more competitive market; therefore ensuring electricity remains affordable."

That is really astonishing. This pledge in a government document to electors in the Scottish referendum was totally reneged on by the new Conservative Government.

Let us take the second betrayal by the Government. I will quote the noble Baroness, Lady Verma, who in the Chamber on 4 November 2013 said:

"My Lords, Amendment 66 provides the Government with the power to close the renewables obligation to new capacity. As noble Lords know, this closure is planned for 31 March 2017 as part of the transition to contracts for difference. We had previously considered that the renewables obligation could be closed using existing powers within the Electricity Act 1989. However, we have now concluded that a specific power in this Bill will put the closure arrangements on a more reliable and transparent legislative basis".—[*Official Report*, 4 November 2013; col. 28.]

That enabled the power, which had been devolved to the Scottish Parliament, to be brought back here on the pretence that all this would be done on a proper, comprehensive, United Kingdom basis. The Scottish Government were betrayed on that promise, too, made by the noble Baroness, Lady Verma.

The third betrayal relates to the Conservative Party 2015 manifesto, which, as the noble Baroness, Lady Quin, said, explicitly committed to ensuring that,

"local people have the final say on windfarm applications".

Independent generators, as other Members will have seen from their paper, are concerned that the Government's proposed grace period for the early closure of the RO unfairly excludes projects with democratic local planning consent, contradicting that manifesto commitment to give local people the final say. Like the noble and learned Lord, Lord Wallace, they give examples of that. I will not go into the full details, except to say that the Section 75 agreement was made on 2 July 2015, which of course was after the cut-off date, because of a technical delay. That means that the will of local people, contrary to what the Government say, will not be taken into account. We keep being told that we should all abide by the Salisbury convention, but the Government are betraying their own manifesto. Those are the three betrayals.

We are told that all this is being done to keep prices down, but Bloomberg has just produced a report, which says, according to the *Guardian*—I know that not all Members like the *Guardian*, but I am sure that they like Bloomberg more:

"New onshore windfarms are now the cheapest way for a power company to produce electricity in Britain, according to Bloomberg New Energy Finance … Costs have dropped to

$85 … per megawatt hour … compared with the current costs of about $115 for constructing coal or gas-fired plants".

The costs for nuclear are assessed by Bloomberg at $190. The noble Lord, Lord Howell, said earlier in the Chamber that he was looking forward to the day when we do not have to subsidise renewables such as wind, but he should perhaps think about how much subsidy is going into Hinkley Point and look forward to the day when we do not have to subsidise nuclear.

These matters go beyond the terms of today's debate, of course, but it is clear that, if we are to help consumers and keep our pledge to them to provide the cheapest form of electricity, using onshore windfarms is one way of doing that, according to the Bloomberg report. It is most unfortunate that we are dealing with this matter in this way.

I do not know who is going to the climate change conference in Paris in December. I once went to a climate change meeting that the noble Lord, Lord Deben, in his previous capacity, chaired—in a brilliant way, by the way—with everyone discussing the issues rather than reading out reports prepared by civil servants back home. It was a very good and constructive debate.

4.34 pm

Sitting suspended for a Division in the House.

4.44 pm

Lord Foulkes of Cumnock: I would like to resume. I was thinking ahead to Paris in the week beginning 7 December, wondering which poor Minister—I hope it is not the noble Lord, Lord Bourne—is going to have to go there and explain how we are going to manage to achieve our targets for reducing carbon emissions by the appropriate date, given what we are doing in relation to solar energy, and now in relation to onshore wind. I certainly would not like to be doing that.

In the light of the fact that there has been this betrayal and that the Government are trying to rush us through some very complicated and detailed amendments with serious long-term effects that will affect not just investors, customers and suppliers but many more people, I must give the Minister notice that I am minded to oppose all his amendments in this Grand Committee unless he can give me some very clear assurances. I will be listening very carefully. If we do not agree this today, it will give the Government another week to try to get it right.

I ask the Minister to go back to his Secretary of State and his other Ministers and ask whether it is really worth the candle to push this through the House of Lords and then go to the House of Commons and try to persuade it, with 55 SNP Members of Parliament snapping away at Ministers' heels, just for the relatively small amount that it would cost to go ahead as originally planned, and for the relatively small amount of generation involved? Is it really worth pushing ahead with that?

I wonder whether the Government are now regretting having introduced this Bill into the House of Lords. We are supposed to deal with Bills that are not contentious but this one is proving very contentious indeed. The Minister should go back and explain the problems that he is having getting the Bill through the House of Lords and warn his colleagues that it is going to be not just twice or 10 times as hard but many times more difficult to get it through the House of Commons. The Government have a majority there but there are all sorts of ways that it can be upset. I hope that he will consider changing his mind, withdrawing Clause 66 completely, finding some better arrangement that protects onshore wind schemes and keeping the three promises that I mentioned earlier, which the Government have reneged upon. I give him that very serious warning. Perhaps he will reflect that if he had taken my advice to have this matter dealt with in the Chamber, he might not be in the pickle he is in now.

Lord Howell of Guildford (Con): My Lords, I declare my interests, including as president of the Energy Industries Council, which I cease to be tomorrow evening so I shall not need to declare it after that.

I applaud the very balanced assessment of the situation given by the noble Baroness, Lady Quin. It reflected very sensible views about the way this issue should be handled and approached. As for the noble Lord, Lord Foulkes, perhaps he was not in the Chamber at Second Reading, or if he was he seems to have completely forgotten what I said about Hinkley Point. I am very pro-nuclear indeed, but I do not mind saying in front of my noble friend that I have very serious reservations about whether the Hinkley Point C programme is the right way to get our nuclear renaissance going. I just remind him of that before he makes a further comment.

Lord Foulkes of Cumnock: I apologise for forgetting that. I was only recollecting what he said in the Chamber this afternoon. I accept that he made that point previously.

Lord Howell of Guildford: I thank the noble Lord for that. Turning to the amendments, they are very generous and I congratulate my noble friend on bringing them forward, even though they are rather extensive. They are what we used to call in the other place "liquid legislation"; that is, legislation going through Parliament that all the time is massively amended so that it changes from day to day. The amendments are indeed extensive but also very generous. This is a very exciting industry, part of the great low-carbon renewables transformation in the world that most of us want to see. All around the world, costs not only for solar power, which we were discussing earlier in the Chamber, but for all forms of wind power, onshore and offshore, and all sorts of other associated technologies are coming down dramatically. Really amazing technological advances are being achieved.

I listened to the expert legal commentaries of the noble and learned Lord, Lord Wallace, and I am all for speeding up the planning. However, it has to be remembered that what we are doing here is not legislating to stop all onshore wind. That is a vast industry that will continue and contribute to the energy transformation of the entire planet. What we are legislating for is to

[Lord Howell of Guildford]
bring to a halt, with the various adjustments embodied in the amendments, further subsidy that falls upon consumers. This has to be weighed in the balance. We hear horrid stories about the closure of businesses; the Redcar steelworks is perhaps the most dramatic recent one. When you look at the small print, you find that one of the difficulties is that they are facing much cheaper imports from countries that are not carrying such heavy energy costs. We have to put that in the balance and not just ignore the other side of the argument. There are consumers and taxpayers, often poor households and consumers with very low incomes, at the other end of this process, and we cannot ignore their position.

In addition, it has to be remembered that many of the investors behind the projects we are talking about have not just entered into them entirely from the goodness of their hearts or because they want to save the planet. Investors enter into these great projects because they can make a profit, and I have nothing against that; that is excellent. Less excellent, however, is that they sometimes enter into them because the subsidies seem so juicy and attractive and they think that they are going to make exceptionally large profits. So I just say to my noble friend, and I am sure he would agree, that we should bring to an end—with these many concessions and in a very balanced way—this particular growth of additional subsidies. In future, let us make sure that investors in these industries understand, as I believe the wise ones do, that the projects that they want to go for are the ones that are really likely to be extremely profitable, particularly in Scotland, and very competitive with all other forms of energy. They should be careful if they think that they are just going to ride on an indefinite continuation of very large subsidies because Governments and policies change. Wise advisers to wise investors will always warn them that the best projects are those for which the subsidies are a minimal part of the reward, and the profitable and efficient operation of the industry itself, and the rapid adaption of new technology, are the larger part of the profit generated. In every case, we advise that subsidies can end.

Lord Deben (Con): My Lords, in discussing these amendments, it is worthwhile reminding ourselves of the enormous success of the system which the Government and their predecessor put into place. The fact that these prices have fallen significantly is in part—indeed, in very strong part—due to the encouragement that this Government and the previous Government have brought to play. Sometimes, we talk as if all this technological advantage has just happened because people have been clever. Actually, it has not: a market was created. Certainly, the successes of offshore wind have been achieved because people had a proper market, with a proper continuum, and were therefore able to invest.

I declare an interest as chairman of the Committee on Climate Change. Although I have to sit on one side or the other, that makes me entirely independent on these issues. The fact that we can talk about offshore wind being competitive now, in a way that we had never thought of, is entirely the result of the foresight of all three political parties in various assemblies putting this opportunity in place. Let us not just say that the technology has improved so wonderfully that it is now in this new position; it is actually a very good example of the relationship between government and the provision of opportunity by others. Any new technology has to compete in a world where there are enormous advantages for old technologies, because of the investment they had in the past and a whole range of subsidies that happen throughout the world. That is certainly true of the fossil fuel industries.

I point next to the fact that one of the reasons why the cost has risen is that these technologies are actually more efficient than we ever thought they were going to be. When the Committee on Climate Change proposed that it would cost us some £7.6 billion to ensure that we were on track to decarbonise our electricity supply, and therefore on track for meeting our statutory requirement to reduce our emissions by 80% by the year 2050, the then coalition Government accepted that amount. It is actually costing more than that, partly because of the fall in the gas price. The gas price affects this because of course a contract for difference takes place, so when the price of gas falls the additional cost comes back. However, it is also partly because offshore wind is immensely more efficient than we thought it would be. It is putting more energy into the grid, which costs us more because that is the deal we have done. So the background to these amendments is one of success, not failure. We are not having to do this because it has cost us more by being a failure; it is because it has been a success.

The amendments seem to go a very long way towards meeting the one legitimate argument that needs to be faced: the reasonable expectation on the part of business that if it invests, it will get certain advantages from the Government. The Committee on Climate Change is primarily concerned not with means but with ends. We are concerned with delivering the budgets to which the Government and Parliament are committed. Frankly, Governments have every right to make changes if they want to, as long as the changes end up in such a place that we are able to meet the requirements of the carbon budgets laid down by Parliament as a result of the recommendations of the Committee on Climate Change. So I am very leery of being led into a position of saying that this or that mechanism is the right one. However, I have to say that it is very important that business should not get the impression that promises made are broken.

That does not mean to say that if you subsidise people now, you will always be subsidising them. That is not true. Sometimes, when I listen to some of the green organisations, you would have thought that the moment you promise to do something, you are then going to do it for ever, and that somehow you are letting people down if you do not. That is also not so. All I am saying here is that there are two different issues. On the one hand is the right and ability of the Government to alter, extend or restrict the subsidy that they offer in the light of changed circumstances and, on the other, the duty of the Government to ensure that they meet fully the obligations into which they have entered.

Lord Foulkes of Cumnock: With respect to the noble Lord, Lord Deben, the promise was not that it would continue for ever but just to the end of March 2017. That is the promise that has been reneged upon.

5 pm

Lord Deben: My own view is that there is a significant argument as to whether that was "the promise"; it was the mechanism that was put forward. My concern now is about a perfectly reasonable assumption that the Government, in looking at the circumstances, have decided that the way in which the system works has to be severely altered. In doing that, I am concerned that we do not deal unfairly with companies that have entered into significant costs on the basis of what the law appeared to them to be. Why do I say that? I do not have a position to argue on behalf of the companies but I have a duty to argue on behalf of the future of our policies towards climate change. That means we have to ensure that the British Government are always seen as absolutely dependable. I warn that if we do not get that right, we will find ourselves in the position that some other Governments appear to be in. In general, the Government seem to have done precisely what they ought to in these amendments and I commend the Minister for putting them forward in this way. I speak in support of what he has done here.

However, during the course of the debate and discussions, the Minister will have heard a number of particular examples which sound as if they fall on the wrong side of the lines that have been drawn. My experience from many years as a Minister is that having one occasion which looks pretty unfair causes very considerable angst, not just to those people but much more widely, so that that one occasion begins to undermine the way in which the Government are seen. I want the Minister to look carefully just to make sure that where some of the examples which the noble and learned Lord, Lord Wallace, presented earlier are reasonable, we should find some way through.

Secondly, I do not know how much the Minister has to do with planning permission personally. I declare an interest in the sense that I help people to do planning permission for sustainable development—not anything to do with energy but on other things. Planners can take a very long time and when one is trying to work with them on a joint agreement, all these rules about having to provide an answer in four months can so easily end up as 14 months, and sometimes as 24 months. But you do that because you really want to get an answer which everyone is happy with. I therefore hope the Minister will recognise that if there are circumstances where it appears that another arm of government has made it impossible for people to meet the real and sensible restrictions which he is laying to achieve his ends, he will look particularly carefully at those circumstances. One area where people feel very unhappy is if they feel that one bit of government has made it impossible for them to meet the arrangements which another bit has perfectly properly put forward, so I hope he will look at that.

The third thing I hope the Minister will do is that when he talks about these things he will remind people of the enormous success of the policy, as I mentioned earlier. This policy has achieved a great deal. Britain was hugely at the bottom of the heap in the amount of renewable energy it had. We have done extremely well, which seems something to be very cheered about. I am pleased that my noble friend Lord Howell, as he always does, referred to this great industry. The renewables industry is a great industry and has emerged from circumstances in which it was rather laughed at by many people. It is now a serious industry with serious results and, importantly, providing for the absolute demand that we have to combat climate change—which, as I think almost all of us accept, is the biggest material threat to mankind.

As I have said on earlier occasions, these amendments—although they may not all be right—are important in order to emphasise that the Government have to follow what they have already done with their own amendments. They have to make sure that at no point does it look as though they have let people down, because it is very important for future policies that that does not happen. However, they are also important because they are testament to the fact that this Government have achieved so much, and I think that it is necessary for the wider community to become more interested in ends than in means.

I finish by saying that assessing Governments' commitments on the basis of whether they happen to accept a particular way of doing something rather than on whether they are achieving the end that you want is a great mistake. We ought always to recognise that it is difficult to be government and it is easy to be opposition; it is easier to be green in opposition than it is in government. The judgment must be: have the Government achieved the end to which they have committed themselves? At the moment, the jury is out because we do not know the alternative ways of proceeding. However, it is perfectly reasonable for a Government to decide that it is no longer sensible to subsidise in one way rather than another or to subsidise in one way rather than have no subsidy. All that matters is that the Government can stand with their head held high and say, "We have met our obligations". There are some examples here which I think it would be a mistake not to look at very carefully; otherwise, all the good intentions of these amendments might be much undermined.

Baroness Worthington (Lab): My Lords, I am grateful to the Minister for introducing this session of the Committee. I should start by declaring an additional future relevant interest. I am in negotiations about taking up a position with an American charity that will be working on climate change and energy. I have not signed anything yet, but I think that it is material and that therefore I should declare a potential future interest.

I am grateful for all the contributions to this debate and, again, to the Minister for his introduction to these clauses. I am particularly grateful to the noble and learned Lord, Lord Wallace, for—as has been said before—his forensic description and critique of the amendments as we see them today. I say at the outset that we are, as I am sure are the Government, committed fully to decarbonising the UK energy system at least cost in a way that ensures that we maintain security of

[Baroness Worthington]
supply and, one hopes, engenders an industrial revolution that we can be proud of and export to the rest of the world. Within that, people will know that I have no particular love of any particular technology. I take a very broad view towards the groups of technologies that should be considered as we go forward in this endeavour.

In that spirit, I want to ask the Minister some specific questions relating to the amendments but also to a wider context. I am sure he appreciates that we are dealing with a somewhat febrile environment. There is now sufficient investor disquiet that people are watching very carefully for signals from the Government that this is not about the wholesale disruption of the renewables industry, and we must do everything that we can to reassure the industry that that is not the case.

I shall start with the more specific questions relating to the amendments. As was raised earlier, there are some anomalies. They may arise from the fact that it feels, in the words of the noble Lord, Lord Howell, as if we are in a liquid legislation situation, where we seem to be getting rather large chunks of detailed and complex legislation with relatively little time to assess it. I am therefore genuinely looking forward to the Minister's responses because some of these anomalies seem to be substantial and we need a response.

The Government made this announcement on 18 June, in the first few weeks of government after the election, and then set about consulting. That is not normally the way around that we would expect a Government to behave, but there we are. We are where we are. Then, in the Minister's own words, they consulted industry and hundreds of stakeholders. To my knowledge, however, although maybe I have missed it, we have not seen the synthesis of the results of that consultation. In normal proceedings, the Government would conduct a consultation and get the results back, and we would all be able to look at what everyone had said. As far as I am aware, we have not had that. That puts us at a great disadvantage. There is distinct informational asymmetry since the Government have been involved in all these conversations but Members of Parliament from other parties have not had that luxury. We have therefore found ourselves, in the past few days since these rather detailed amendments came forward, having to consult a large number of people to absorb their concerns, even though we have very little to go on in terms of being able to place them in context. Noble Lords will have noticed that we have not tabled any amendments to the amendments. This is because until this morning we have been receiving people's feedback on these complex issues.

As the Minister said, this is a complex issue. Had the draftspeople who were writing the manifesto in April and May before the election realised quite the implication of those few words in the manifesto, would we have seen them appear? Regrettably, they have led to this huge amount of complexity and disquiet and a feeling among some investors that they have not been handled with due respect. They have seen what they thought were very sensible investment decisions being completely undermined by what to them was a very sudden and surprising announcement with very little signalling that it would take place.

The government amendments are intended to clarify, but unfortunately they just raise more anomalies. This has been raised already, but it might just be worth reiterating a couple of points. We have a situation now where the grace periods will apply to projects that have had a negative decision in planning overturned at appeal. That seems to fly in the face of Clause 65, which says that local people should have the final say. Here we have a situation where a project that clearly was not very popular has been appealed and is now going forward. Such projects will continue to be eligible. However, where we have the reverse—an approval by local planning but no written documents, so we have gone through the democratic process and had approval but have not yet received the written information—the guillotine comes down and you cannot go forward. That seems to be a very odd situation. Similarly, you may have got your approval, but if you have asked for a variation and are waiting for clarity on it, that too falls foul of this artificial 18 June deadline. I would like the Minister to respond to those concerns and explain why the guillotine is being interpreted in this way, which seems to conflict with the overall desire of the Government to keep local government and local decision-making at the heart of this.

Then we move on to the issue of whether investment has been frozen out by the uncertainty created by bringing forward this clause. Again, as a general point, this could have been so different had we not embarked on this endeavour, but there we are. We are where we are. I am repeating some of the technical questions that have already been asked so eloquently by the noble and learned Lord, Lord Wallace. We question why only lenders who have investor-grade credit ratings qualify. That seems quite restrictive and could freeze out very good potential creditworthy lenders who happen not to meet that particular criterion.

We would like to know exactly how the investment freezing will be interpreted. Do you have to prove that you have been frozen out for the entire time of the legislation from the start to Royal Assent, or just a part of that? How much of the delay counts and what does not count?

My final point has already been raised. Once you have proof that you have been frozen out, you have to show this by a certain date—I think it is March 31 2016. How long will it take before you get a reply? You have to have already built your project by December 2017. There is nothing in here to say that there must be a time limit by which any final decision is made. It could drag on. It has been said before that some of these things drag on for reasons outside government control. We need more clarity on how that will work practically. I know that it seems slightly odd to be arguing over and/or, but it is material about whether we are talking about a grace period for grid and radar delays or whether it is just grid as one category and radar as another. We need clarity on that.

5.15 pm

From what I and others have said, it is quite clear that these amendments are not yet fit for purpose. We have had very little time to consider them. Indeed, it

feels very much like liquid legislation. It feels slightly as though we are making this up as we go along. It is a regrettable situation.

I want to pause and reflect on why we are doing this. What is the reason behind it? It has been stated that it is to save consumers money. Actually, that is not true. It is more to do with how the levy control framework has been interpreted. The impact assessment makes rather a lame attempt to explain some options that were considered. The only options that were really considered in the impact assessment were do nothing or do this, but that is not a great set of options. There is a far wider range of things that could have been considered to stay within the levy control framework budgets, as imagined by the Government—not least simply reopening the levels of CFD allocations to onshore wind, leaving the ERO as it is, because that has already been debated. We have had a closure date and we know what is happening there: there is certainty. Why not look at the CFD regime instead? That option was not considered in the impact assessment and not brought forward.

Reading the impact assessment, we now find that we are in a curious position where we make an announcement, and it is not thought through. We then consult. We then find that everyone is very unhappy so we bring in grace periods to make everyone happy. That almost completely undermines the purpose of the intervention in the first place, since we are now looking, in the central scenario, at avoiding 200 megawatts of extra onshore wind, which probably has local approval and is probably in Scotland. Would it really have killed us to allow those to go forward and keep investor confidence? Instead, we could have focused our collective efforts, in much more of a spirit of collaboration, on the bigger picture, which is what are we going to do going forward on contracts for difference. That is by far and away the biggest issue. How will we apply those to onshore wind?

That leads me to another serious question. I have asked it before and I have not had a direct answer. When will we hear about the next auctions for contracts for difference, and, most importantly, will onshore wind be given an allocation within that? We have had no categorical statement from the Government, but I can read between the lines. If the Government insist on staying within their rigid view of how they will meet the renewables targets that were set for us by Brussels, they will have to set a zero quota for onshore wind. In their mind, they think that we are on track and ahead of schedule and we will make it. But we are not on track and what we should be looking at in the entirety of this is the cost of renewable energy across the board. Is it not more sensible to pursue lower-cost technologies that are proven, that are generating jobs and putting investment into parts of the world that need it? Mostly that is in Scotland, where we see unemployment rising and we need to see inward investment. We could perhaps look again at some of the more expensive and less proven things that we are trying to do at the same time.

It is simply a question of prudence. We should do the things that are delivering and do them well, and do not use the promise of some fictional future that we have very little confidence will be delivered as an excuse to cut off at the knees the technologies that we know are delivering.

As I said at the outset, I am not a particular fan of any one technology. I abide by all of the above and I want to see least-cost decarbonisation. But every time I come to this subject, I keep returning to the question of why. Why have we singled out onshore wind in the way that we have? I do not have a good answer and I would like the Minister to answer that question. It should not be because the department says that we have overspent a particular bit of budget, because that is not going to cut it, I am afraid. We know that that is not how targets have been set by Europe and we know that it is within the Government's discretion to move things around.

Many more points could be delved into in the detail, but one of our greatest concerns is that there is an information asymmetry here. We are still processing a large part of information. I am almost certain that we will return to this on Report next week with amendments. In the mean time, I very much look forward to hearing the Minister's response.

Baroness Maddock (LD): My Lords, I wish to add my voice to some of the points that have been made this afternoon. I particularly want to talk about parliamentary process. I have done this before. For the duration of the coalition Government, I was a party Whip and I am still a party Whip. We have never had to deal with the situation that we had with this Bill where we had the Second Reading on the last day of business. We had the first day of Committee when we came back for two weeks. We then went away for two weeks. We were promised that we would have the amendments to the Bill on 7 October. We got them on 8 October. They were several pages of very technical amendments.

I feel a great deal of sympathy for the Minister because it is probably not his fault that this has happened. But to have to deal with this Bill in this way? This is his first Energy Bill and I have great sympathy for him, so I am not necessarily having a go at the Minister, but at the process. We really need to get our act together.

We have heard today about how this is affecting people outside; about how important it is and how people want to talk to us. I made the point before that we are now a very big House. If we make technical changes like these at the very last minute, it is very difficult for Back-Benchers to get involved. A lot of us get bombarded by people from outside who are worried about what is going on, and what time have we had to deal with that? I would like to send the message—I am very pleased the government Chief Whip is in his place—that we try to avoid this in the future. It is not a good, efficient way to work and it is not the way the House of Lords has worked in the past.

The other point that I want to support is the issue of certainty. In the last Parliament, we had the promise made by the noble Baroness, Lady Verma—I was there, working on that Bill. We again spent hours on technical stuff, going through an Energy Bill, trying to make sure that in the future people who invest in energy across the board would have certainty about

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what was happening. We are already into the uncertainty around this Bill. I read with horror in one of the newspapers—I am afraid I cannot find the article again—that the funding for one of the gas turbines had been withdrawn because of the uncertainty about what the Government were doing in the whole of the energy sector. This is an important point that the noble Lords, Lord Deben and Lord Foulkes, have also talked about.

We are where we are and the uncertainty is very difficult for industry. We have heard about businesses going under and so on. We are between a rock and a hard place on these Benches because in some ways we do not particularly like the way in which the Government have carried on, but we want to try to make sure that the amendments are as good as we can get them. My noble and learned friend, Lord Wallace, is much more able than I am and has explained them all beautifully to the Committee. I hope that the Government can respond to these, because it is important that the uncertainty does not go on any longer if we can possibly help it. I thought that the noble Lord, Lord Deben, had a wonderful phrase for the things that we are trying to sort out—examples falling the wrong side of the lines. I think that is the sort of thing that we are trying to put right. I hope that between us we can reach a reasonable conclusion and we do not have uncertainty any longer in this industry.

Lord Bourne of Aberystwyth: My Lords, I thank noble Lords who have participated in this debate and raised some salient points. I congratulate the noble Baroness, Lady Worthington, who was good enough to take me into her confidence some time ago. I am delighted about her prospect, and we all wish her well in that new role. She will bring considerable knowledge and massive commitment to that task. We share objectives, and I wish her every success in that role. I know that she will continue to have a vital part to play in the House of Lords.

I also pay tribute to the noble Lord, Lord Purvis, who is not in his place. He handled part of the Bill as well as leading for the Liberal Democrats on some of these issues. That role has been taken over, but he had tremendous brio and contributed massively to some early consideration of the Bill.

I shall deal with the point about the recommital before I move on to say something about the amendments. I listened very carefully to what the Labour Front Bench, the Liberal Democrat Front Bench and some Cross-Benchers were saying. I went to considerable lengths to get this recommital organised. The only option for doing the recommital was in the Moses Room, otherwise it would have disrupted business elsewhere in a way that noble Lords would not have wanted. There was little option for recommital other than to have it in the Moses Room. It was a genuine and considerable effort to get organised.

There is obviously a difference of opinion over the amendments that have been put forward. There is clearly a difference between noble Lords about the desirability of what we are doing. I point to the manifesto. We may have different views about whether this is desirable but there is a commitment in the manifesto in relation to onshore wind, and that is why we are pursuing it. I understand that other parties would deal with it in a different way, but there is a democratic process and there has been a general election.

In view of what has been said today in this Committee, I am minded to withdraw these amendments to represent them next week, having considered very carefully some good points, particularly from the noble and learned Lord, Lord Wallace, which were echoed by the noble Baroness, Lady Worthington. There are some very serious points that I would like to look at. Some of them clearly merit looking at in the way that the noble and learned Lord, Lord Wallace, approached them in terms of improving what the Government are committed to doing. Others do not like what we are doing. As far as I am concerned, that matter was settled in broad terms by the general election. There are going to be democratic differences between the parties. This is the way things happen. However, I am very happy to go away and reflect on the points that have been made. We have come a long way and I thank the noble Baroness, Lady Quin, and my noble friends Lord Howell and Lord Deben for what they said about the amendments. I agree with the commitment to renewables that was put very forcefully by my noble friend Lord Deben. They are vital and are something we are pledged to, as we are pledged to the climate change negotiations that are going on in Paris and are moving at great speed, with 149 countries yesterday, and probably more now, having made commitments regarding their contribution. There is a great prize there internationally.

I will reflect on what was said today and, having considered the points that have been made, will bring these amendments back on Report. I hope that in the light of what was said by some noble Lords that that is considered a reasonable approach.

Amendment 1 withdrawn.

Amendments 2 to 12 not moved.

Clause 66 agreed.

Amendment 13 not moved.

The Deputy Chairman (Lord Geddes) (Con): My Lords, I am unable to call Amendments 14 to 22C since they were amendments to Amendment 13 which has not been moved.

Committee adjourned at 5.29 pm.

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