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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

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

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House of Lords

Monday, 26 October 2015.

2.30 pm

Prayers—read by the Lord Bishop of Portsmouth.

Introduction: Lord Lansley

2.38 pm

The right honourable Andrew David Lansley, CBE, having been created Baron Lansley, of Orwell in the County of Cambridgeshire, was introduced and took the oath, supported by Lord Dobbs and Lord Ribeiro, and signed an undertaking to abide by the Code of Conduct.

Introduction: Baroness Sheehan

2.45 pm

Shaista Ahmad Sheehan, having been created Baroness Sheehan, of Wimbledon in the London Borough of Merton and of Tooting in the London Borough of Wandsworth, was introduced and took the oath, supported by Baroness Barker and Baroness Kramer, and signed an undertaking to abide by the Code of Conduct.

Introduction: The Lord Bishop of Gloucester

2.49 pm

Rachel, Lord Bishop of Gloucester, was introduced and took the oath, supported by the Archbishop of Canterbury and the Bishop of London, and signed an undertaking to abide by the Code of Conduct.

Health: Global Health

Question

2.53 pm

Asked by ***Lord Crisp***

To ask Her Majesty's Government what is their assessment of the report *The UK's Contribution to Health Globally*, published by the All-Party Parliamentary Group on Global Health in June.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, I congratulate the all-party parliamentary group on producing its report. The Government are determined to maintain Britain's strong global role and welcome the report's suggestions as to where we can continue to play a leading role in health globally. The United Nation's sustainable development goals provide added incentive to look critically at where we can add maximum value in improving health systems overseas.

Lord Crisp (CB): I thank the Minister for that very encouraging reply. The UK is a world leader in health. This report, produced by researchers from the London School of Hygiene & Tropical Medicine, shows that we have extraordinary strength in research, education, commerce, development, the NHS and the NGO sector. Given that, does the Minister agree that it is time for the UK to develop a new global health strategy to use that all-round strength to help to improve health globally—but, at the same time, to strengthen the UK's health, science and technology base? More specifically, does the Minister agree that the UK's medical, nursing and healthcare schools could be supported to play an even larger role in training health workers in low and middle-income countries?

Lord Prior of Brampton: My Lords, I agree with all the sentiments that the noble Lord mentioned—and, perhaps, one other, which is that in a number of other pioneering areas, such as genomics, dementia and antimicrobial resistance, the UK is very much at the forefront. The Government are following up the "Health is global" strategy that was initiated back in 2008 and will be reporting back in detail in 2016. I assure the noble Lord that we will take fully into account the findings of the all-party parliamentary group.

Baroness Gardner of Parkes (Con): My Lords, does the Minister think it would be wise for us still to be learning from other countries, instead of learning only globally? For example, we have an appalling record on pancreatic cancer compared with many other countries. Is it not time for us to improve those things, and then we will be better able again to help others?

Lord Prior of Brampton: I agree with the noble Baroness that there is always plenty that we can learn from other countries. She cited one example, and I am sure there are many others. There is never any room for complacency. Other parts of the world are also making huge advances. One of the findings of the all-party parliamentary group's report is that we face increasing competition not just from countries such as America, but from South Korea and Singapore, for example. The noble Baroness is right: we must always learn from others.

Lord Hunt of Kings Heath (Lab): My Lords, the report is abundantly clear that the UK gains enormously from its work in other countries but it is also clear that, taking the point of the noble Lord, Lord Crisp, many of our universities are very inhibited in recruiting the overseas talent that reinforces the UK as a global leader because of Home Office policies restricting entry to work in our universities and other institutions. One of the report's recommendations is that the Home Office review immigration policy in this area. Can the Minister confirm that his department is urging the Home Office to get on with it?

Lord Prior of Brampton: I understand that the Home Office is in the middle of this review and is due to report back later this year or early in 2016. It is also worth noting that this important report said we are No. 2 in attracting overseas students to come to England to train as doctors. I think America is No. 1.

Baroness Northover (LD): My Lords, the life sciences are indeed an area in which the United Kingdom leads, as we have just heard. Will this Government be continuing the previous Government's work in underpinning that lead through long-term investment? In particular, can the Minister assure me that the Newton Fund, which links research scientists in the United Kingdom with those in developing countries, will not be scaled back?

Lord Prior of Brampton: I can assure the noble Baroness that this Government are fully committed to supporting our life sciences industry. I will look into her specific question on the Newton Fund and write to her directly.

Lord Patel (CB): Following on from the Question from the noble Lord, Lord Crisp, does the Minister agree that, given the predicted growth of about 15% in the healthcare needs of countries such as India and China, we have a great opportunity not only to promote education but to develop health expertise? Does he agree that we need to have a stronger relationship with these countries in health?

Lord Prior of Brampton: I completely agree with the noble Lord. According to the report, health spending is likely to increase by 8% per annum in Asia for the foreseeable future and by some 5% in the rest of the world. This is a huge opportunity. The NHS is arguably the best-value healthcare system in the world, and the many lessons we have learnt since 1948 will be valuable when we go overseas.

Lord Judd (Lab): Does the noble Lord agree that as part of carrying forward the excellent report to which the noble Lord, Lord Crisp, has referred, it is essential to take into account the lessons learnt from the Ebola episode in Sierra Leone, and to ensure that the World Health Organization has adequate resources to give muscle to its work, and to co-ordinate the work of other departments and aspects of government that are essential in preparing for such epidemics?

Lord Prior of Brampton: The Ebola crisis was indeed a wake-up call. There is no doubt that the leading role we play in the WHO is hugely important, so I agree fully with the noble Lord. The work we are doing on antimicrobial resistance is another example of the very important role the WHO can play, as does our Chief Medical Officer, Sally Davies.

Lord Kakkar (CB): My Lords, I declare my interest as chair of University College London Partners and an officer of the all-party group. This report identifies that our country is No. 1 among the G7 nations in terms of the impact of its medical research, as judged by citation impact. How do Her Majesty's Government propose to ensure that the NHS continues to develop the foundation for that medical research impact?

Lord Prior of Brampton: The noble Lord raises an interesting point. Not only are there more citations of research conducted in Britain, but we co-operate with other countries far more than any other country. We also have in the *BMJ*, the *Lancet* and *Nature* the three leading medical and science magazines. The Government are determined to maintain Britain's position as one of the leading medical research and life sciences nations in the world, and will carry on supporting that industry.

Schools: Free Schools

Question

3.01 pm

Asked by ***Baroness Massey of Darwen***

To ask Her Majesty's Government how many free schools at primary and secondary levels were open at the beginning of this school year, how many are expected to open during the 2015-16 school year, and how free schools will be monitored and evaluated.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, there are 304 open free schools, including 118 primaries, 123 secondaries, 19 special schools and 32 alternative-provision free schools. This figure includes 52 free schools that have opened so far this academic year, incorporating 23 primaries, 15 secondaries, seven special schools and four alternative provision schools. In addition, we expect one further all-through alternative provision school to open this academic year. Free schools are inspected by Ofsted and monitored by departmental educational advisers, the Education Funding Agency and regional schools commissioners.

Baroness Massey of Darwen (Lab): I thank the Minister for that comprehensive response. I return to the issue of monitoring. Will the Minister comment on the recent tables which show that this year the number of year 11 pupils in free schools achieving five A to C grades in GCSE, including English and maths, lagged behind the number in local authority schools by 5%? Would the Minister class those schools as "coasting"?

Lord Nash: I would not class them as coasting. It is a very small sample. They are a long way short of coasting. Twenty-six per cent of free schools have been judged outstanding, which makes them by far our highest performing group of non-selective state schools. Free schools are monitored by Ofsted, like all other schools, and the EFA. They have much tighter financial oversight than local authority-maintained schools because they have annually to publish audited independent accounts, and regional schools commissioners also monitor them.

Baroness Sharples (Con): Can my noble friend say what percentage of children entering school have English as their second language?

Lord Nash: Across the entire estate, I think the figure is in the teens, but I will write to my noble friend about that.

Lord Storey (LD): My Lords, of free schools that provide alternative provision, five have funding of £100,000 per pupil and 18 have £59,000 per pupil. That contrasts with local authority schools, which have only £22,000 per pupil. Has any analysis or evaluation been done about the different provision? Does the Minister think we are getting value for money in the funding of special education and alternative education?

Lord Nash: I assure the noble Lord that we are very focused on value for money. Those figures are very deceptive because quite a few pupils in alternative provision are on the register of the school, so it appears as though there are fewer pupils in the alternative provision school. Pupils in alternative provision get much higher funding, as they do in pupil referral units run by local authorities, so the figures are quite confusing.

Lord Watson of Invergowrie (Lab): My Lords, it has been decided that new free schools will now be inspected in their third year of operation rather than in their second, although it is not clear whether that is due to funding cuts to Ofsted or perhaps, given that around 25% of them are deemed to be underperforming, it is to save the DfE from further embarrassment. Will the Minister explain how this new decision will help to ensure that underperforming free schools are identified and their failings addressed as soon as possible?

Lord Nash: This is to bring free schools in line with all other new schools, which are inspected in their third year in the same way. Of course, free schools are monitored closely by education advisers in their early years and, as I already said, by the regional schools commissioners.

Lord Lexden (Con): Is the free schools programme helping to improve social justice and boost social mobility in our most deprived areas?

Lord Nash: There is no question that that is the case. About half of free schools are in the most deprived areas in the country. In the last five rounds, 93% of them have been in areas where there was a forecast shortage of places and a large number of our top academy sponsors, who are particularly focused on underprivileged children, have entered the free school movement.

Baroness McIntosh of Hudnall (Lab): My Lords, the term "free school" obviously implies freedoms that do not apply to other kinds of school. Can the Minister assure the House that free schools do not have the liberty to withhold from their pupils in any circumstances a range of options in the curriculum that would be expected to be offered to children in other types of school? I think, for example, of subjects such as arts and music.

Lord Nash: I assure the noble Baroness that all schools are expected to have a broad and balanced curriculum. Certainly on my visits around free schools I see a very wide curriculum. If the noble Baroness would care to accompany me on a number, I am sure I could satisfy her on this point.

Lord Foulkes of Cumnock (Lab): My Lords, will the Minister declare whether he has any interests in this matter?

Lord Nash: I have great interest. It is my job and I am also chairman of an academy chain which has sponsored a free school.

Housing: London

Question

3.07 pm

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government what action they are taking to address the shortage of housing in London.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford) (Con): My Lords, responsibility for housing in London has been devolved to the Mayor and the GLA, in line with this Government's commitment to give local areas control over their development and growth. We work closely with London Councils and the GLA on increasing housing supply in London. Total funding to the GLA for affordable housing in London across 2015 to 2018 is nearly £1.5 billion, delivering 43,000 affordable homes under the programme.

Lord Kennedy of Southwark (Lab): My Lords, in the last five years the Government have failed to tackle the housing crisis in London: the number of people owning their own home in the capital is now below 50%; the number of private renters has gone up by 800,000; and there are the lowest levels of peacetime housebuilding since the 1920s and a 79% increase in rough sleepers. When are the Government going to take some real action to deal with the crisis? They have had five years to deal with it so far. Their record is poor. Urgent action is needed.

Baroness Williams of Trafford: My Lords, I cannot agree with that statement. More council housing has been built since 2010 than in the 13 years of the last Labour Government. There have been more council housing starts in London than in the 13 years of a Labour Government, and there have been 800,000 more homes built in England since 2009—260,000 affordable homes delivered since 2010.

Lord Tope (LD): My Lords, given that average earnings in the capital now are just under £28,000 a year and given that research shows that in order just to get a foot in the property market in London needs an annual income of somewhere around £77,000 a year, what is the Government's estimate of the number of people who will access starter homes in the capital?

Baroness Williams of Trafford: My Lords, there will be 200,000 starter homes in total built. That is our aim. Of course the answer to demand in the capital is to provide supply.

Lord McKenzie of Luton (Lab): My Lords, how do the Government view the fact that one impact of the housing shortage in London is that London boroughs are relocating families away from London and away from the communities and services they know, which puts pressure on receiving authorities in respect of their housing provision and services? I refer to places such as Stevenage, Milton Keynes and, of course, Luton.

Baroness Williams of Trafford: My Lords, the noble Lord brings up a very important point, but of course London authorities have always done that. The important thing is to make sure that fewer families have to reside in temporary accommodation, and we have made sure that that is the case.

Baroness Meacher (CB): My Lords, will the Minister accept that one of the biggest problems relating to the welfare bill is the huge cost of housing benefit? This country will never get that cost down until we tackle the terrible shortage of land for housebuilding. We have vast areas of green belt. Will the Minister consider allocating 10% of the green belt to housebuilding in order to rack down rents and reduce the housing benefit bill?

Baroness Williams of Trafford: My Lords, the Government are very clear that the green belt should be protected. However, as the noble Baroness will know, this Government are very committed to right to buy and to unlocking brownfield sites, with the brownfield register being available from councils, and we will put £1 billion into the brownfield fund. I have talked about starter homes and other affordable homes.

Lord Campbell-Savours (Lab): My Lords, why are the Government supporting a reduction in the percentage of the social housing contribution in London planning permissions?

Baroness Williams of Trafford: My Lords, I think it is up to local authorities to decide what types of tenure they provide for the people who live in their localities.

Lord Elton (Con): My Lords, I understand that developers have a very large amount of buildable-on land held, as it were, in a land bank and awaiting changes in the economic climate. What consideration is given by the Government to bringing pressure to bear and getting this land released so that the price of housing goes down?

Baroness Williams of Trafford: My Lords, the problem of land banking and not building on land that has permission is very serious and, yes, the Government are putting on pressure to get those starts moving.

Baroness Lister of Burtersett (Lab): My Lords, further to the question from my noble friend Lord McKenzie, what steps are the Government taking to monitor the numbers who have to leave London because they can no longer meet the cost of housing there, as well as monitoring the impact on families who are uprooted into new communities?

Baroness Williams of Trafford: My Lords, I cannot answer that question at this point but I can provide a note for the noble Baroness.

Lord Green of Deddington (CB): My Lords, does the Minister agree that it is high time that we paid as much attention to demand for housing in London and Britain as to supply? Can she say when the Government will publish an estimate of the increase in households without immigration—something that has not been done for five years?

Baroness Williams of Trafford: I cannot answer the former part of that question but, in terms of the latter part, the Government are certainly keen to ensure that landlords know that their tenants have a right to be in the houses that they are renting. Therefore, we are cracking down on this and obliging landlords to ensure that the person tenanted in their house has a right to be in this country.

Baroness Hussein-Ece (LD): My Lords, does the noble Baroness accept that the Government's policy of selling off social housing held by housing associations will further diminish the level of affordable and social housing? Does she not think that selling off housing association properties is, in effect, nationalising charitable assets?

Baroness Williams of Trafford: My Lords, housing associations that have a charitable purpose will be exempt from that policy. However, under our new, invigorated right to buy policy, we intend to replace every house sold with a new home.

Baroness McIntosh of Hudnall (Lab): My Lords, would the noble Baroness care to reconsider the answer that she gave my noble friend Lord Campbell-Savours? Viewed from some perspectives, there is no housing shortage in London: flats are being thrown up all over the city. However, they are being sold off at enormous prices and then left empty. Does she really think that in these circumstances it is appropriate to give—if I may say so without offence—what is more of a shrug-of-the-shoulders response on the subject of planning permission?

Baroness Williams of Trafford: My Lords, I hope that I did not give the impression of a shrug of the shoulder. If one were to walk around certain parts of London, one may well be forgiven for thinking that many of the houses—certainly in certain parts of central London—were bought but not lived in. In fact, I understand that that rate has gone down; about 2% of all housing in London is not lived in. However, affordable starter homes, particularly for those in the age group that has found it difficult to get on the housing ladder, are a very good way forward.

Lord Forsyth of Drumlean (Con): My Lords, could my noble friend take account of the question that was asked by the noble Lord, Lord Green, on the need for statistics to be published that give us an indication of the increased demand arising from immigration? Is this not something that the Government should tackle?

Baroness Williams of Trafford: I certainly do take note of it and will take that back and see whether any such figures are available.

Lord Spicer (Con): My Lords, do we still have a million empty dwellings?

Baroness Williams of Trafford: My noble friend has foxed me: I do not know whether we have a million empty dwellings. What I do know is that the empty dwelling rate has gone down.

Modern Slavery Act 2015

Question

3.16 pm

Asked by ***Baroness Kennedy of Cradley***

To ask Her Majesty's Government what is their assessment of the readiness of companies and other organisations for the coming into force of the Modern Slavery Act 2015.

The Minister of State, Home Office (Lord Bates) (Con): My Lords, we will be bringing Section 54 of the Modern Slavery Act into force later this week. Many businesses called for this provision, and we consulted on a turnover threshold and involved business in drafting associated guidance. The Government are confident that businesses will be ready. We have included a transition provision so that organisations will have time to digest the guidance before the first statements are due on 31 March 2016.

Baroness Kennedy of Cradley (Lab): I thank the Minister for that reply. It was disappointing to read in last week's debate that the Government now have no intention of launching an online central repository for the annual slavery and human trafficking statements but are hoping that an external provider will fulfil this role. Can the Minister confirm that this is the case and, if so, outline what the Government are doing to encourage an external provider to come forward, what guidelines and assistance will be provided to the external provider and whether, in the future, the Government plan to analyse on an annual basis information submitted via these statements?

Lord Bates: When we had the debate on the regulations, the noble Lord, Lord Alton, raised this issue. I am confident that we will have an online repository in place. I totally agree with the noble Baroness that it is very important. Following the consultation, one of the consequences of setting the threshold at the lower end of the spectrum—at £36 million turnover—was to capture more companies in that. Therefore, it is a bit more of a challenge. However, we are considering a number of proposals that have been brought forward. I very much believe that, by the time this comes into force, we will have such a repository.

Baroness Afshar (CB): My Lords, are the Government aware that the majority of those who are working under slave conditions are working for private, family companies? It is essential that there is a way of finding out how young women in particular are driven into slavery without any human rights being respected.

Lord Bates: I think that is right. There are two measures involved here. First, the new Immigration Bill will have a big focus on labour market enforcement, which will help in that regard. Also, if a private, family business has a turnover above £36 million, they will have to produce a statement saying what steps they are taking to eradicate modern-day slavery from their supply chain. These are all steps down the line. However, essentially, we need to also encourage more people who are victims to come forward and identify those employers so that they can be prosecuted.

Baroness Doocey (LD): My Lords, do the Government share my concern that, despite the Modern Slavery Act, Eurostar has still not put in place a system which ensures that unaccompanied children are escorted to and from their trains and are supervised during the journey? Is not the absence of such basic safeguards putting children at unnecessary risk from child trafficking?

Lord Bates: I am certainly very happy to look into that further, if that is the case. Additional guidance has now been provided to Border Force enforcement officers to spot children coming into the country unaccompanied, or, for that matter, leaving the country. This is something that we need to look at very carefully. I will look into it and get back to her.

Lord Rosser (Lab): My Lords, last Monday, the Minister said that he believed that "imminently, if not already" a question relating to the compliance of supply chains under the Act in respect of its modern slavery conditions was being inserted into the cross-government procurement policy. Could the Minister now say definitely what the position is in this regard? Could he say whether the Government will produce regular statements, in line with the requirements for the private sector, on the steps they have taken to ensure that their own business and supply chains are slavery-free, and, if so, will it be a cross-government statement or will there be separate departmental statements?

Lord Bates: There is an interdepartmental ministerial group on modern slavery, which meets and publishes quarterly reports—it published one just last week on its work on supply chains. The Home Office as it should, is ensuring that we lead by example across government in respect of supply chains. Of course, that question is going to be there in the checklist. It is there in a lot of cases already in departments, where they have obligations under human rights legislation to ensure that they check the status of people who are in their supply chain. We will continue to monitor that, and we will certainly continue to report on it.

Baroness Manzoor (LD): My Lords, there is some research saying that nearly 50% of children who are going on to detention centres go missing within their first 48 hours within Europe. What are the Government doing to ensure that these children are not being trafficked?

Lord Bates: I had not seen a report of that, but if the noble Baroness would draw it to my attention, I will certainly make sure that we follow up on it, because that is a crucial gap in the system if that is happening. I am sure that that is not happening in UK detention centres, but if she shares the information, I will ensure that it is thoroughly investigated.

Lord Harris of Haringey (Lab): The noble Lord's own department has produced figures estimating that there are up to 13,000 victims of modern slavery in the country. Given the enormous workload in terms of enforcement, in terms of the work with private businesses and in terms of the work internationally in trying to reduce the flow of trafficked people into this country, is the Minister satisfied that, with a team of staff that is only going to reach seven, the Anti-slavery Commissioner has the resources necessary to carry out this important work?

Lord Bates: The noble Lord will be aware that, last week, the Anti-slavery Commissioner produced his report—his strategy document—as he was required to do under the Act. He has set a very clear measure as to where he is focusing: the identification of victims, and the need to encourage prosecutions. As a former police officer, he is well placed to do that. In a lot of cases, it is not a resource question; it is an issue of will and intelligence to identify those people who are at risk to ensure that the perpetrators are tackled and those who are victims are helped.

Lord Kennedy of Southwark (Lab): My Lords, I just want to say that I should have declared that I am a local councillor when I asked my Question earlier on. I apologise and declare it now.

European Union Referendum Bill

Order of Consideration Motion

3.23 pm

Moved by ***Baroness Anelay of St Johns***

That it be an instruction to the Committee of the Whole House to which the European Union Referendum Bill has been committed that they consider the bill in the following order:

Clauses 1 and 2, Clause 5, Clause 3, Schedules 1 to 3, Clause 4, Clauses 6 to 12, Title.

Motion agreed.

Childcare Bill [HL]

Third Reading

3.23 pm

A privilege amendment was made.

Motion

Moved by ***Lord Nash***

That the Bill do now pass.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, I would like to take this opportunity to express my thanks to noble Lords for their support, challenge and dedication throughout the passage of this Bill. I very much appreciate the expertise that Peers have brought to the House on the complex subject of childcare, and I hope noble Lords feel that I have listened to concerns raised and addressed them appropriately. I particularly would like to thank the noble Baroness, Lady Jones, who has provided strong and heartfelt opposition on this Bill, and I greatly appreciated working with her on the education brief over the last Parliament. I will miss her on the education brief, and I wish her well with her new one. I will, of course, be keeping noble Lords up to date with the progress of the Bill, and am committed to holding a meeting on the funding review following the spending review. I look forward to working with noble Lords on the Education and Adoption Bill.

Baroness Jones of Whitchurch (Lab): My Lords, I thank the Minister for making time available during the passage of the Bill and outside of the official process to meet with noble Lords on a number of occasions. It was very much appreciated and helped to clarify a great many issues. I also thank the Bill team for their sterling efforts in producing a Bill at short notice and in difficult circumstances. The Bill is leaving this place in a better shape than when it arrived, suitably amended but with many questions still unanswered, so I look forward to hearing about further positive progress when the Bill is considered in the Commons and in other meetings that the Minister may be organising, so that we can achieve our shared and important goal of increasing free childcare for working parents.

Bill passed and sent to the Commons.

Tax Credits (Income Thresholds and Determination of Rates) (Amendment) Regulations 2015

Motion to Approve

3.25 pm

Moved by ***Baroness Stowell of Beeston***

That the draft regulations laid before the House on 7 September be approved.

Relevant documents: 4th Report from the Joint Committee on Statutory Instruments, 9th Report from the Secondary Legislation Scrutiny Committee

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, I will come shortly to the Motion before the House today, but before I do, I should briefly address why the Motion is standing my name. In the past few days, we have seen unprecedented focus on the passage of secondary legislation through this House. The further the debate has evolved, the more it has taken on a new dimension—a debate concerning our responsibilities as a House and how we want to discharge them. While I will now turn to the substance of the instrument before us, I will later come on to the context for the decisions before us today.

The regulations before the House cannot be viewed in isolation. They were part of the Chancellor's Budget in July and form part of our wider economic strategy and vision for the future of our country. In the last

Parliament, we made significant progress: through a combination of savings and growth, the deficit halved as a share of GDP, investment in our schools and the NHS increased and more than 2 million jobs were created. But our deficit is still too high and our debt, as a share of GDP, is at the highest level since the late 1960s.

In the months leading up to the general election and in our manifesto, my party made it clear that reducing the deficit would involve difficult decisions, including finding savings of £12 billion from the welfare budget. The regulations that we debate today deliver no less than £4.4 billion of those savings next year alone. But these reforms are about more than just savings; they are about delivering a new settlement for working Britain—more people in work, with better wages, keeping more of the money that they earn. The quickest and surest way for people to feel secure and able to succeed is a good job that pays well.

This Government have created 1,000 jobs every single day since 2010—1,000 more people each day with the security of a job and a wage. We have raised the personal allowance so that people keep more of what they earn. By next April, more than 27 million basic rate taxpayers will be paying less tax, with a typical taxpayer benefiting by £825 per year. We will go on raising the personal allowance until it reaches £12,500, so that those on the national minimum wage will pay no income tax at all. We will introduce a national living wage, raising the minimum pay for a full-time worker by £900 from next April and by nearly £5,000 by 2020, benefiting 6 million people with the upward pressure that it will apply on wages. I am glad to say that more than 200 firms, including some of our biggest employers, have announced that they intend to pay staff at or above the national living wage before it comes into effect.

We are supporting working families with their childcare needs, too, as we have just heard. We have already brought in 15 hours of care for the most disadvantaged two year-olds and we are doubling free childcare for working families for three and four year-olds— worth around £5,000 per child per year. But if we are to deliver that settlement in a way that is sustainable, reform to our system of tax credits must play its part. We have a situation where too many families are on low pay, and so, to make ends meet, the state has had to top up those wages with tax credits.

3.30 pm

Noble Lords should be aware that spending on tax credits has increased from £4 billion to £30 billion this year, trebling in real terms, while in-work poverty has risen by 20%. That cannot be the right long-term solution for the country. Change was necessary, and we began to do just that in the last Parliament. As a coalition Government, we started to bring the system back under control, reducing the number of families with children eligible for tax credits from nine out of 10 to six out of 10. If we are to meet our commitment to a new deal for working people, we must continue that process of reform.

Tax credits will remain an important part of our support for those on the lowest incomes. Five out of 10 families with children will still be eligible to receive them and we will still be spending the same amount on tax credits in real terms as the last Labour Government did in 2007-08. But the SI before us today will change their operation in several respects. First, it will reduce the threshold at which working tax credits begin to be withdrawn from £6,420 to £3,850. As we do so, we will protect those on the very lowest incomes, while continuing to bring the overall Bill down.

Lord Campbell-Savours (Lab): My Lords, I ask the noble Baroness to answer my question directly, and not give me a tangential answer. When the Prime Minister said at the last general election that an incoming Conservative Government would not cut tax credits—child tax credits—was he telling the truth or was he deliberately misleading the British people? Let me have a direct answer to my question.

Baroness Stowell of Beeston: My Lords, we were very clear in the general election and in our manifesto that we would be introducing welfare savings of £12 billion and that these would be directed at working-age benefits. What we also did at the same time was promise a package of measures to support working families—a new settlement for the people of this country, so that they would continue to be better off in work and would continue to prosper. That is what we were very clear about in the general election campaign. That is what we were elected to deliver for the people of this country.

Secondly, the SI before us will increase the taper rate from 41% to 48%. This will mean that the rate at which tax credits are withdrawn will increase, but we will do so in a measured way with a gradual taper, which will still ensure that those on tax credits who work more will always take more pay home. Finally, it will reduce the income rise disregard, the in-year increase to an individual's pay that can take place before their tax credit reward is recalculated, from £5,000 to £2,500—bringing it to a 10th of the rate it stood at when we came to power in 2010.

A sustainable economy which reduces inequality and provides opportunity for all means making choices. There are no easy options, but what we try to do is carefully balance spending and taxation decisions so that the richest pay the most towards services that are so vital to everyone, and the climate is right for everyone to seize opportunities to get on and to be successful. The Government's job is to manage that in the fairest way while delivering the most important thing of all for working people: economic security and sound public finances.

The Government believe that as part of the overall package of measures that support working people, these changes to tax credits are right. If we want people to earn more and to keep more of their own money, we simply cannot keep recycling their money through a system that subsidises low pay. That is the Government's case for these changes. But with the amendments we are due to consider, there are broader questions at stake, too, about our role in scrutinising secondary legislation and about the financial primacy of the other place.

I know that Members of this House on all Benches take their responsibilities very seriously and are committed

[Baroness Stowell of Beeston]
to ensuring that the House fulfils its proper role, so let me be very clear. We as a Government do not support any of the amendments tabled to the Motion in my name, but I am also clear that the approach the right reverend Prelate takes in his amendment, by inviting the House to put on the record its concerns about our policy and calling on the Government to address them without challenging the clear and unequivocal decision made in the other place, is entirely in line with the long-standing traditions of your Lordships' House.

The other three amendments take us into quite different and uncharted territory. All three, in the names of the noble Baronesses, Lady Manzoor, Lady Meacher and Lady Hollis, if agreed to, would mean that this House has withheld its approval of the statutory instrument. That would stand in direct contrast to the elected House of Commons, which has not only approved the instrument but reaffirmed its view on Division only last week. It would have the practical effect of preventing the implementation of a policy that will deliver £4.4 billion of savings to the Exchequer next year—a central plank of the Government's fiscal policy as well as its welfare policy. It is a step that would challenge the primacy of the other place on financial matters.

I have been to see the Chancellor this morning at No. 11, and I can confirm that he will listen very carefully were the House to express its concern in the way that it is precedented for us to do so, and that is on the right reverend Prelate's amendment. But this House will be able to express a view on that amendment only if the other three amendments on the Order Paper are rejected or withdrawn.

Lord Tyler (LD): My Lords, the Leader of the House has given us the impression that there is some convention that prevents your Lordships' House from voting on these amendments. I would ask her to look again at the report of the Joint Committee on Conventions entitled *Conventions of the UK Parliament*, which states clearly in paragraphs 227 and 228 that it is perfectly in order for your Lordships' House to take a view on a statutory instrument of this nature and so,

"we conclude that the House of Lords should not regularly reject Statutory Instruments, but that in exceptional circumstances it may be appropriate for it to do so … The Government appear to consider that any defeat of an SI by the Lords is a breach of convention. We disagree".

Your Lordships' House and the other place approved the recommendations of the Joint Committee. If the Chancellor had wished to introduce a tax credit amendment Bill, he could of course have used the usual procedure and avoided the embarrassing situation that the Leader of the House is now outlining. He took a short cut to avoid debate, and he has now got the consequences.

Noble Lords: Hear, hear!

Baroness Stowell of Beeston: My Lords, let me be absolutely clear. Any of the amendments that have been put down today, with the exception of that in the name of the right reverend Prelate, would mean that this House has not approved a statutory instrument which the House of Commons has approved and voted on three times. As I have already said, we would be challenging the primacy of the House of Commons on financial matters.

The right reverend Prelate's amendment gives this House the opportunity to express its view in a way that accords with our conventions. The noble Lord, Lord Tyler, made various specific references. I say to him and to the House as a whole that the parent Act from which this statutory instrument is derived, which was brought forward by the Labour Government, made clear that amendments to tax credits should be introduced via secondary legislation. We are following that procedure. Indeed, after the Tax Credits Act was passed, other amendments to it were brought forward in the last Parliament, while we were in coalition government, exactly in the way that was expected.

The key fact is that there are conventions that apply to secondary legislation. The noble Lord, Lord Tyler, is right to refer to the Joint Committee's report. But in addition to what he quotes, that report also made it clear that,

"opposition parties should not use their numbers in the House of Lords to defeat an SI simply because they disagree with it".

The key point I make to the noble Lord is that we are in an unprecedented situation, because the kind of primary legislation conventions that he refers to that allow the other House to enter into a dialogue with us just do not occur in secondary legislation.

We have a choice. We must choose whether to accept or reject this statutory instrument. Right now, it is absolutely clear that if we withhold our approval for this statutory instrument, we will be in direct conflict with the House of Commons.

Lord Richard (Lab): With respect to the amendments in the names of my noble friend Lady Hollis and the noble Baroness, Lady Meacher, does the Leader accept that neither of them is fatal to the resolution? Does she accept that?

Baroness Stowell of Beeston: No, I do not accept what the noble Lord says. As I have already said, those amendments withhold this House's agreement—its approval—from a statutory instrument that has already been approved by the House of Commons. They withhold this House's approval from something that has already been approved by the other place. The noble Lord makes the perfectly fair point that this House has the power to defeat secondary legislation, but it does so very rarely. It has done so only five times since the Second World War, and it has never done so on financial secondary legislation. Although noble Lords have been able to table today's amendments, it is up to us as a House to consider whether we regard the financial primacy of the House of Commons as vital to the continuing constitution of this country and the way in which Parliament operates. That is the important point here.

3.45 pm

Lord Forsyth of Drumlean (Con): The leader of the Liberal party described this House as,

"a system which is rotten to the core and allows unelected, unaccountable people to think they are above the law".

Does my noble friend think that the Liberals wish us to vote for their Motion in order to prove their leader right?

Baroness Stowell of Beeston: What I do know, and I really feel this sincerely, is that noble Lords take their responsibilities very seriously. We are in an unprecedented situation. We either believe in the financial primacy of the other place, as has been in place for well over 300 years, or we do not.

There is a way for this House to express its view on the policy. It would be absolutely within this House's proper function and responsibility to do that by supporting the right reverend Prelate's amendment should it choose to. However, if the House decides to accept any of the other amendments we will be withholding this House's approval for something that the other place has already approved.

Lord Wills (Lab): I think I understood the noble Baroness correctly when she said a few moments ago that she accepted that there were circumstances in which this House could withhold approval of a statutory instrument. However, she said that that should not be on the grounds simply because this House disagrees with it—I think I am quoting her directly. Can she therefore say in what circumstances she thinks it appropriate for this House to withhold such approval?

Baroness Stowell of Beeston: When I quoted that from the Joint Committee on Conventions' report, the point I tried to emphasise was that it is rare for this House to disagree to any piece of secondary legislation. The Joint Committee made it clear that, because it is very rare and because the Government are rarely in a majority in this House, it would be inappropriate for this House to vote down a piece of secondary legislation just because the opposition parties have the numbers to do so and do not approve of that measure. My point is that this situation invokes something that we have not seen before: noble Lords have tabled amendments that would prevent this piece of secondary legislation leaving this House and being approved. If the House were to do that—if it were to completely reject it outright or to withhold it—we would be challenging the financial primacy of the other place.

Noble Lords: Hear, hear!

Lord Pearson of Rannoch (UKIP): My Lords, would the noble Baroness answer the question asked by the noble Lord, Lord Richard? Does she agree that the Motions in the names of the noble Baronesses, Lady Meacher and Lady Hollis of Heigham, are not fatal Motions?

Baroness Stowell of Beeston: I am not defining them in such a way because they have not been defined in such a way by this House. They are amendments that are quite unique. They mean that this House will start setting conditions and making demands on the Government, and acquiring for itself powers as far as how it considers a matter that has already been decided and approved by the other place—a statutory instrument to the value of £4.4 billion. That is what makes this situation so different: we are challenging the primacy of the other place on a matter of finance.

Amendment to the Motion

Moved by ***Baroness Manzoor***

As an amendment to the above Motion, to leave out all the words after "that" and insert "this House declines to approve the draft regulations laid before the House on 7 September".

Baroness Manzoor (LD): My Lords, there has been a lot of discussion in the run-up to this debate about the role of this House in debating statutory instruments. I know that many noble Lords will wish to pick up on the constitutional role of the House. We have already started to see some of those points being made.

I do not discount the strength of feeling on the issue of whether this House should seek to reject the views of the elected Commons, but I want to be clear about what we are talking about today. We are talking about a measure that, according to the expert analysis of the Institute of Fiscal Studies, will hit 3 million low-income working families. These are people doing the right thing: going out to work and trying to make ends meet. They are exactly the kind of people whom the Government have said they want to help. Yet this change will have a seriously damaging impact on their ability to keep their heads above water. These families will, according to the IFS, lose an average of around £1,000 a year. For many people on low incomes, that will mean the difference between being able to continue to pay to heat their homes, pay their rent and feed their families and not being able to do so. In total, 4.9 million children will be directly affected by the change. Almost a quarter of single parents living in the UK will see their incomes cut.

Yet the Government continue to ignore the overwhelming consensus among charities such as the Children's Society and Gingerbread—I could name many others, including taxation experts and even their own Children's Commissioner—that these changes need to be reconsidered. It is no surprise that the Low Incomes Tax Reform Group—by no means a leftie organisation—has said that the impact of these changes, "on the majority of tax credit claimants will be devastating".

The problems with the Government's proposals go far wider than those directly affected. They will also have a huge impact on the important principle—that this Government claim to support—that work should always pay more than a life on benefits. Evidence from the Social Market Foundation suggests that someone earning the average wage for those living in social housing of £8.08 an hour will see the benefits of earning wiped out almost entirely. Because of the way the so-called taper rate interacts with taper rates applied to other benefits including local Council Tax benefit, the marginal deduction rate—the rate at which benefits are withdrawn—will be 93%. That means that for every pound a person earns by going out to work—by taking on extra hours in order to improve their lives—they will keep only 7p.

Liberal Democrats in the coalition Government fought for universal credit. We fought alongside the Conservatives for the "make work pay" agenda. The Government's proposals run utterly counter to this

[Baroness Manzoor]
philosophy. Such a fundamental change in the Government's approach should be challenged every step of the way.

Lord Cormack (Con): My Lords, 104 years ago, a Liberal Government decided that this House should not have jurisdiction in budgetary matters. The noble Baroness speaks for a party which has a disproportionate strength in this House. She and her party believe in proportion. They also believe in the supremacy of the House of Commons. How does she square the various points I have just made with the speech that she is making and the vote that she is seeking tonight?

Baroness Manzoor: I thank the noble Lord for that intervention. I will come to that point and address it in the best way that I can.

I will pick up briefly on the speech made in moving the Government's Motion by the Leader of the House. I do not discount her views but the overwhelming evidence is that these measures will do real damage.

However, I want to express my disappointment that this debate is not being led by the noble Lord, Lord O'Neill. This set of regulations relates to measures brought forward by the Treasury. It is right that such regulations should be promoted and defended by the Minister from the department responsible, whenever possible. As I said at the start of my speech, while much has been made of the constitutional issues surrounding the Motion, it is ultimately about the impact of the measures on the families affected. The Leader of the House does an excellent job in representing this House outside the Chamber, and in defending the Government's position on the role of the House inside it, but this Motion is not about those things. It is about tax credit changes and it is reasonable for the House to expect the Treasury Minister to answer its concerns.

Fatal Motions on regulations should be used incredibly sparingly. I wish that we were not in this position but I cannot think of a better reason for this House to use such an option than the lives of 4.9 million children and the parents who go out to work to support them. I have tabled this fatal Motion for a simple reason: when all is said and done, and when the constitutional debate about the role of this House is over, I want to be able to go home this evening knowing that I have done everything I could to stop this wrong-headed and ill-thought through legislation, which will have such a damaging and devastating impact on millions of people's lives.

We have a duty in this House to consider our constitutional role but we also have a duty to consider those affected by the decisions we make and the votes we cast. Were there another way for this House to reject this proposal and send it back to the Commons to reconsider, I would be all for doing so. Some people have said to me that this is a budgetary measure—indeed, the Leader of the House said so, too—and therefore not within our competence. Were that true, the Government had an opportunity to put these changes into the Finance Bill rather than to use an affirmative statutory instrument, a measure that this House is explicitly asked to consider and approve by the primary legislation from which it stems.

I have been told by many that a fatal Motion is too blunt an instrument. If that were the case then the Government could have placed this measure in the Welfare Reform and Work Bill, which is coming to your Lordships' House in due course, giving this House the opportunity to amend the proposal and suggest alternatives, but they have chosen not to pursue that course either. So we are left with a statutory instrument, a tool designed for minor changes to processes and administration, being used to implement a substantial change in policy that will affect millions of people's livelihoods. That is not my decision but I hope that we will do everything we can to stop it.

I want to turn briefly to the other Motions in the names of the noble Baronesses, Lady Meacher and Lady Hollis, and the right reverend Prelate. I am sure that they will speak on their own Motions in detail, so I do not want to dwell on them. However, to be clear, I support all those proposals. It is right that the Government should delay these measures to properly respond to the serious challenges put by the IFS, as the noble Baroness, Lady Meacher, suggests. It is also right that the Government should not make these changes unless there is transitional protection, as the noble Baroness, Lady Hollis, proposes. Fundamentally, however, these are sticking plasters on the wound. Transitional protection will help many of those who will see an immediate cut to their tax credits next April but would do nothing for those who become eligible for tax credits this time next year. If the Government succeed in meeting their employment target then we will see more people in part-time work, which is a great thing, but these people will need tax credits. If they meet their noble and worthy aim of increasing the number of disabled people in employment, that is likely to mean more people in flexible working arrangements whose income may need to be supplemented by tax credits. These people would not be protected by transitional protection. That is why, although I support and will vote for the amendment in the name of the noble Baroness, Lady Hollis, I believe that we need to go further.

I have no doubt that this House could spend many hours debating our constitutional role. I and all those on these Benches—

4 pm

Lord Grocott (Lab): Does the noble Baroness not acknowledge that there is at least a certain irony in that, for five of the last five and a half years, her party gave strong support to the Cameron-Osborne Government? Now that Messrs Cameron and Osborne come forward with a proposal that they do not like, they are suggesting that the right course of action is a somersault. Would it not have been a lot easier, and maybe a lot more principled, if she and her colleagues had decided to bring down this Government a lot earlier?

Baroness Manzoor: I thank the noble Lord for his intervention. He is right to raise that point and quite right to ask that question. As I understand it very clearly, we did veto these proposals.

I have no doubt that this House could spend many hours debating our constitutional role. I, and all those on these Benches, take our role very seriously and will

continue to push for reform that means that this House has real accountability to the electorate. But this debate is not about that. This is about putting to rest an issue which is of immense—

Baroness Browning (Con): Will the noble Baroness just reflect on the fact that, in terms of accountability to the electorate on this matter, people who have stood for public office and have been accepted and elected to another place have the mandate? They, and only they, have that mandate on this subject. Although we in this House work very hard in order to reflect our views, so that the other place can take advantage of them, the noble Baroness is going just a bit too far in assuming that she has a mandate.

Baroness Manzoor: I do assume that this House has a mandate. We are back to the constitutional role of this House.

I will continue, because some answers have been given to that, and more will be given as we talk more about the role of this House. We want to put to rest an issue that is of immense concern to millions of people up and down the country. If the Government wish to withdraw their regulations, we can avoid this impasse. Sadly, I do not think that the Minister—for whom I have the utmost respect—is empowered to make such a choice. It is therefore right that this House perform its duty and stand up against a poor decision made in the Commons. What the Government do after that is up to them. But I and my colleagues are clear: it is time for this Government to think again. I beg to move.

The Lord Speaker (Baroness D'Souza): I should inform the House that if this amendment is agreed to, I cannot call any of the other amendments to the Motion on the Order Paper by reason of pre-emption.

Baroness Meacher (CB): My Lords, I rise to speak to the amendment that stands in my name on the Order Paper, which would defer consideration of the tax credit regulations. I pay tribute to other noble Lords who have tabled amendments to these regulations today, but I should explain to the House that I told the noble Baroness, Lady Manzoor, that I had come to a settled view that tabling a fatal amendment in this House was a step too far. The purpose of this amendment is to support the democratic process and to avoid impeding it.

The House of Commons will have a cross-party debate and a vote on these issues on Thursday. I understand that at least eight Conservative MPs have put their names to Thursday's Motion. It seems, therefore, that the Government no longer have a majority in the House of Commons for the planned cuts as they stand. If we approve the Regulations today, the Commons debate will have been pre-empted. This would undermine the democratic process. If, however, the elected House supports the Government—contrary to my expectations, I have to say—and the Government present a report to your Lordships' House responding to the Institute for Fiscal Studies analysis, I am sure that I and others will support these Regulations. This will not necessarily be because we agree with them—I most certainly do not—but because we respect the democratic process and the limits of the duties of this wonderful House.

Lord Forsyth of Drumlean (Con): If the noble Baroness is right that the Government do not have a majority in the other place, why can we not respect the democratic process and leave it to them?

Baroness Meacher: I will attempt to answer that question.

Lord Snape (Lab): Before she does, may I just ask the noble Baroness a question arising from her amendment? Does she agree that if the Government had, as they should have done, tabled these proposals as part of the Finance Bill, they would have been amendable in the other place and we would not be having this discussion today? Does she agree that the reason the Government are indulging in this sharp practice is that they know full well that, for any reasonable person in either House, these proposals are unacceptable and they would have been defeated in the other place because quite a few Conservative Members of Parliament would have voted against them?

Baroness Meacher: I was talking to Jacob Rees-Mogg MP the other day and he said to me that the trouble is that the House of Commons deals with Statutory Instruments extremely badly. Our difficulty is that, that being the case, they depend on this House to do this very detailed work, on which your Lordships do an extremely good job. In response to the noble Lord, Lord Forsyth, the point is that the cross-party debate on Thursday is not a legislative debate. It would have been right for these matters to have been incorporated in full in a piece of legislation, which would then have been open to proper debate and amendment in the normal way.

To go back to my point, if we approve the Regulations today we are actually undermining the democratic process. If, however, the elected House supports the Government, as I said before, I know that this House will abide by our conventions and vote these Regulations through whatever our personal views of them. I do not personally approve of them, but I would be in the Lobby with the Government. The duty of your Lordships' House, as we know, is to enable Governments to think again if, in our professional judgment, they are making a grave mistake, and to allow the elected House to hold the Government to account. Noble Lords can imagine that I do not take this action lightly. I am acutely conscious of the threats made by the Government to destroy this House, one way or another, if we proceed. I do not enjoy that kind of pressure.

I will come back to the constitutional issue, but at this point I want to thank the IFS, the Children's Society and others for their valuable help. Why are these Regulations so serious? The Leader of the House has already made the point that tax credits will be withdrawn from an income of £74 a week, £3 above the jobseeker's allowance level, whereas in the past the withdrawal has occurred from a weekly income of £123 a week, which is very different. Also, of course, the taper rate—the percentage of every pound earned that will be withdrawn from tax credits— is going up from 41% to 48%. Very low-income working families—the lowest-income families, as I understand it—stand to lose more than £20 a week. For one of us, this can mean a meal in a restaurant. For a poor working

[Baroness Meacher]
family it can mean a pair of shoes for a child who comes home from school crying because their toes are hurting in shoes that are too small, or money to feed the meter to keep the family warm.

The Government plan a four-year freeze on the private rent level covered by housing benefit, so as rents soar—and we know that, day by day, they soar—working families will have to pay more of their rent from a shrinking income. Damian Hinds, Treasury Minister, told me in person that he hopes that families will work more hours to compensate for the cuts they are facing, but many people cannot work more hours. A lady who has cancer and who is working all the hours she can contacted me—the treatment and her exhaustion mean that she cannot do more. The parent of a disabled child, who probably actually needs to be at home all the time, is working as many hours as possible but can earn very little. Indeed, our angelic army of carers of elderly and disabled relatives across our land will be penalised. Some of them will lose more than £40 a week. People with long-term conditions or in constant pain will be devastated by the waves of cuts, of which these regulations are just one. Self-employed people who voted Conservative in May, hoping for protection, but who may earn little or nothing for weeks at a time, will be among the biggest losers. The StepChange Debt Charity says that its clients on average will lose £139 a week, a staggering sum.

All those people have been supported by what I regard as the one-nation Tories of the past. The Prime Minister said in his speech to the Conservative conference:

"The British people … want a government that supports the vulnerable",

and, he said,

"we will deliver".

This amendment provides an opportunity for the Prime Minister to honour that pledge. He went on to say that the Conservatives are the, "party of working people". No wonder dozens of Conservative Back-Benchers—perhaps most of them, in fact—want the Government to think again. They do not want the Prime Minister to have misled the people of Britain. It is this House's duty to provide that time for a rethink by this Government.

I turn to the idea that the amendment is unconstitutional—and I shall keep this brief. The Cunningham joint committee, as has already been mentioned, made very clear the responsibilities of this House and that we should have unfettered freedom to vote on any subordinate legislation submitted for its consideration. The Motion was carried without a vote and is recorded in the *Companion*. In 1999, the former Conservative Leader of your Lordships' House referred to a convention that the Opposition should not vote against the Government's secondary legislation. The noble Lord, Lord Strathclyde, added:

"I declare this convention dead".

Finally, I quote our highly esteemed Clerk of the Parliaments, who wrote a clarifying guidance note for the Cross-Benchers at my request. He said: "Procedurally, the Meacher-put Motion is entirely in order under the rules of the House. It is not a fatal Motion because it does not require a new statutory instrument to be laid and taken through both Houses. However, it does delay the approval of the statutory instrument, unlike an amendment which simply expresses regret while allowing the statutory instrument to be approved".

I hope that the noble Lord, the Chief Whip, will forgive me for quoting him here. He urged me to exchange my amendment for a regret Motion. I said, "Oh, come on—that will have no effect at all". He said, "Well, yes". My apologies to the Chief Whip.

Lord Taylor of Holbeach (Con): I am sorry that my conversation with the noble Baroness, Lady Meacher, has been quoted. That is not what I said. I made it quite clear to all who came to see me—they included all three protagonists in these debates—that the risk to this House was a constitutional one and that they ought to be aware that in my view to delay this Motion, as well as to vote it down, which is what the amendment proposed by the noble Baroness, Lady Manzoor, seeks to do, amounts to the same thing, and that the proper way in which to deal with something with which this House disagrees is to move a regret Motion. It was that to which I referred when I spoke to the noble Baroness, Lady Meacher.

4.15 pm

Baroness Meacher: I think I owe my apologies to the noble Lord. According to the Library just over two fatal and three non-fatal Motions were voted on in each year between 1999 and 2012, resulting in 17 defeats. There is nothing odd or unconstitutional about this Motion. According to the Clerk's office there is no reason why we should not table a delaying amendment.

Lord Lawson of Blaby (Con): Can the noble Baroness say how many of her so-called precedents were budgetary matters?

Baroness Meacher: As I understand it, this House has every right to place amendments to statutory instruments on any subject—that was the conclusion of the Cunningham Joint Committee.

Lord Deben (Con): Will the noble Baroness answer the very simple question? How many of those Motions were on budgetary matters?

Baroness Meacher: None of those Motions was on the Budget. That is the constraint on this House as I understand it. Had these provisions been in the Budget they would have gone through the normal procedures and this House would have had a different role. That is the crucial point—here we are dealing with a statutory instrument.

There are four Motions on the Order Paper today. My Motion clearly leaves the matter in the hands of the elected House. The justification for a delay is that the House of Commons will have a full-day debate and a vote on these issues on Thursday. I understand that dozens of Conservative Back-Benchers are urging the Chancellor to adjust the tax credit reforms to protect the most vulnerable. Yes, there have been three votes on tax credits in the House of Commons, won by the Government. However, Conservative MPs—not

me—say they did not have the information they needed when they voted for the cuts. I hear that many of them are now livid about this. The third vote was last Tuesday. Conservative MPs made it clear they wanted adjustments to the tax credit cuts but they kept their voting powder dry anticipating the vote next Thursday.

It is extraordinary that at least eight Conservative MPs—

Lord Cormack: My Lords, this just is not the case. The fact is that there was a vote in the other place last week. There was a clear majority and not a single Conservative Member voted in the sense the noble Baroness is indicating.

Baroness Meacher: I apologise to the noble Lord, whom I greatly respect, but I did not imply that the Conservative MPs had voted against the Government. I was saying quite clearly that they had not voted for an Opposition Motion; they kept their voting powder dry because they knew that a cross-party Motion was being considered on Thursday with a full day for debate and a vote. Even with a majority of 13 after the death of my former husband last week, this wipes out that majority.

Lord Tebbit (Con): I am a little puzzled about the powers the noble Baroness has to understand what Members of Parliament might do next week as opposed to what they did do last week. Are we to guess? I might say that I understand that the Labour Party in the other place is going to vote for the regulations next week. I do not know that, of course, and she does not know what she has just said.

Baroness Meacher: My Lords, eight Conservative MPs—some of them senior MPs; former Cabinet Ministers, indeed—have put their names to a cross-party Motion disagreeing with the Government or seeking information that the Government will oppose. The Government majority is 13, following the death of my former husband last week. I am quoting only what I know. I am not quoting what I do not know. I agree that that is extremely important.

I emphasise again that the justification for this amendment is that there will be an opportunity for the elected House to hold the Government to account. It will not be a legislative vote, and that is why this vote is very important. By supporting the Motion this House will support the democratic process. It will leave the situation open. It will leave this set of regulations on the Order Paper—unlike a fatal Motion—and then the Government can listen to the elected House. I am not asking the Government to listen to this House.

Lord Trimble (Con): If I understand her correctly, the noble Baroness is saying that a significant number of Conservative people might support this Motion. This Motion will have no legislative effect and the legislation will continue. What is happening here is of a different order.

Baroness Meacher: That is exactly the point I just made. The important point is that if we pass these regulations the debate in the House of Commons—the elected House—will be an irrelevance. The Government can say, "We have got our regulations. We can press ahead with our cuts. The elected House can say what it likes, we will not have to listen to it". I am not saying they will say that, but they certainly could say that. The important point is that we need to protect the democratic process. The only hope for the Government is that the bullying tactics may persuade Conservative MPs and our colleagues to avoid defeat. At the moment, the situation in the elected House is that eight Conservative MPs have put their names to a Motion which means that the Conservative Government do not have a majority in the other House.

The Earl of Listowel (CB): My Lords, does my noble friend not find it interesting that the Government are currently taking a Bill through this House that will remove the democratic choice of local people about whether their local school should become an academy? Indeed, during the introduction of academies, academies were taken out of the responsibility of local authorities and placed with the Secretary of State. In this Bill, in future local people will not be able to vote on whether they wish to have their local school turned into an academy. This is a very substantial change because, as I understand it, they are so concerned that the education of our children is so important that no coasting school should be allowed to continue. Therefore, they will take all means possible to ensure that our children get the best education possible. In this case, my noble friend is not asking for that change. She is asking merely for a delay so that the other House can think again. That is a much more minor change to make. Does she agree?

Baroness Meacher: I thank my noble friend Lord Listowel. I should mention that a petition signed by 270,000 members of the public over the weekend was handed to me this morning. There is huge fear and anger about these cuts. I am very grateful for the support of the public and the media—believe it or not—and their appreciation of the efforts in this House, although I personally never sought any of it. That is a rather important point to make: I am really not here to grandstand.

I support the Government's raising of the tax threshold, the increase in the minimum wage and free childcare for three and four year-olds, but those measures will not protect the most vulnerable. The Institute for Fiscal Studies makes clear in its analysis that the biggest losers from the 2015-16 tax and benefit changes, even by 2020, will be the poorest working families. The very poor will hardly gain at all from the increase in the minimum wage or the national living wage. Very poor self-employed people will not gain at all from the increase in the minimum wage. I have had a pile of emails from self-employed very poor people. The biggest gainers from the increase in the income tax threshold and the higher rate threshold will be those earning £43,000 to £121,000 per year. We seem to have a massive redistribution of income here, but it seems to be going the wrong way.

The Government have for five years urged unemployed people to take a job. The sanctions regime has been extremely brutal, but having said that, it is, of course, much better for people to work, if they can, than to remain unemployed. The main justification for the Government's policy has been that work pays. Yes,

[Baroness Meacher]
and working tax credits achieved that objective. Working tax credits prevented unemployment soaring in the recent recession.

Finally, I repeat that the aim of this amendment is to support the democratic process to enable the elected House to hold the Government to account. That is the duty of this House. If we cannot do that, we might as well not exist.

Baroness Hollis of Heigham (Lab): My Lords, on the amendment standing in my name, two issues concern this House. The first is whether this amendment improperly challenges Commons financial privilege—a constitutional issue. The second is whether this amendment improperly challenges Government cuts to welfare—the policy issue.

Let me address the first, on constitutional propriety. As the noble Baroness, Lady Stowell, said, when we have framework Bills on childcare and social security, all the serious detailed work is done, rightly, by regulations—that is, SIs. We can amend Bills; we cannot amend SIs, yet often we do not know the Government's intent until we see the SI itself. We then face either a draconian fatal Motion or a lamenting regret Motion that changes nothing, so instead this is a delaying amendment. It is not fatal, as the Government know. It was drafted with the help of the clerks and it calls for a scheme of transitional protection before the House further considers the SI. Essentially, the cuts would apply to new claimants only. Frankly, that new SI could be drafted in a week and implemented next April exactly as planned.

However, does it none the less break convention by trespassing on Commons financial privilege? No. The advice from the Clerk of the Parliaments—and he has seen and confirmed my words on the specific issue—is that Commons financial privilege is exercised in two ways. We can amend an education Bill, say, but the Commons can reject our amendment if the Speaker certifies that the Commons has financial privilege on this issue. Secondly, says the Clerk, the Commons can pass a supply or money Bill, which we cannot amend. He goes on: financial privilege does not extend to statutory instruments—it simply does not. Nor are statutory instruments covered by the Salisbury/Addison convention. The more so, I would add, because the Prime Minister ruled them out himself, and he did because these layered elements to tax credits are all affected by the taper and the cuts.

As has been said, if the Government wanted financial privilege, these cuts should be in a money Bill; they are not. If they wanted the right to overturn them on the grounds of financial privilege, they could be introduced in the welfare reform Bill on its way here; they did not. So why now should we be expected to treat this SI as financially privileged when the Government, who could have made it so, chose not to do so? It is not a constitutional crisis. That is a fig-leaf possibly disguising tensions in the Commons between members of the Government. We can be supportive of the Government and give them what they did not ask for—financial privilege—or we can be supportive instead of those 3 million families facing letters at Christmas telling them that on average they will lose up to around £1,300 a year, a letter that will take away 10% of their income on average. That is our choice. Those families believed us when we all said that work was the best route out of poverty and that work would always pay. They believed the Prime Minister when he promised that tax credits—and they are one package—would not be touched.

But why do people need tax credits? There is a lot of misunderstanding about this. If the House will allow me, consider two women in a call centre: one is single, working 35 hours a week, who from April earns £13,000 a year for herself, and the other, a deserted mother with two young children, managing 25 hours a week, earns £9,000 a year for the three of them. The Government are completely right that we should certainly not subsidise employers' low pay, but no employer could pay the deserted mother twice as much per hour as the single woman on the next phone in the call centre to make up for her family's circumstances. The employer cannot do that and it is not reasonable to ask it to do so. That is the job of tax credits. They reflect family circumstances, which an employer cannot reasonably do.

4.30 pm

In 1997, some 43% of single parents worked. That figure is now 65%—a 50% increase—partly because tax credits made work pay. That was our contract with the working mother, and she has done everything that we asked. Now, we will send her a letter at Christmas telling her that we are taking away some £1,300. Her life is hard. She needs financial stability in which to bring up her children. She needs transitional protection, so that the cuts affect only new claimants who have not built their lives around the protection that tax credits currently offer.

National newspapers from the *Daily Telegraph* to the *Sun* are asking the Government to think again before those letters arrive at Christmas, as are the think tanks. The IFS says that the Treasury's claims are "arithmetically impossible", yet those letters will still arrive at Christmas. Members of the Conservative Party, including Members of this House, have expressed their disquiet as the cuts are too hard and being made too fast, yet those letters will still arrive at Christmas. We may be told—perhaps, among others, by the noble Lord, Lord Butler, who has gone on record as saying this—that the Commons has made its position clear three times: when it passed the Budget, then with this statutory instrument, and again in last week's general debate on tax credits. However, is that right? What happens when the Commons has, in my view, made its decision based on incomplete information, some of which is only now becoming available?

The Government insist that there is no alternative to these cuts, which on average will take £1,300 from 3 million poor families. However, there is an alternative. We can and should offer transitional protection to families who currently count on tax credits. They include single parents, the self-employed—whose median wage, incidentally, is £10,000 a year—families with disabled children and carers. We could protect them but not new claimants and those newly on universal credit.

You would not know this from the impact analysis—which, I have to say, contains elements of neither

impact nor analysis—but I am confident that the Government do not need to make these specific cuts to make their welfare savings, which they have authority to do. Why is that and how would that be? I have two major points to make. The first is that they will make their savings from the additional revenues that return to government from the very welcome rise in the national living wage. The Library has calculated for me that an increase of three-quarters of a billion pounds—£763 million—for every 50p rise will go back to the Government, plus of course there will be the ratchet effect of differentials, which we cannot calculate. By year two, the Government will make savings on that alone of £2 billion; by year three, it will probably be £3 billion.

Secondly—I do not think that this was mentioned at any point in the Commons debates, although, to me, it is crucial—those cuts will also kick in as families move over to universal credit, as I am sure the noble Lord, Lord Freud, will confirm. The National Audit Office says that by the end of 2019 only 9%—fewer than one in 10—of existing tax credit recipients will still be on tax credits. Some will no longer need them, because, say, they may have a son who has left home; the rest of the claimants should be on universal credit and the Government will get their full savings from them. The impact analysis chirrups happily that its statutory instrument cuts will put tax credits on a "more sustainable footing". Quite, as tax credits will have largely disappeared.

Some of these data that I would like to have used more robustly the Government do not collect, but over the next four years these savings to government from the rise in wages, the move to universal credit and the natural churn of claimants should, I estimate, more than match the savings that HMT claims it needs from these specific tax credit cuts to work thresholds and the taper. If so, the Government can get their welfare savings. I am not talking about tax rates, pension relief or inheritance tax—the Government can get their welfare savings without these specific cuts.

I ask the House this: should not the Commons even have discussed this? Might it have made a difference to its position? Its Members have not discussed it so far, and so we do not know. They did not have that information. The impact analysis did not give them that information; some of it is only now coming out. It is reasonable that, as information comes through that challenges the original assertions, the Commons should be given a chance to think again in the light of that.

My amendment to the Motion is not fatal. It does not challenge the financial privilege of the Commons and it does not deny the Government their welfare savings. Instead, it delays this SI to ask the Government to provide transitional protection for existing families who are doing everything that we asked of them, who trusted the Prime Minister's word that tax credits would not be cut and who trusted Parliament—us—when we said that we would make work pay.

What happens next? If the House were to support my amendment, the Government could come back quite quickly—I estimate within a week—with a new SI, if they chose, in which these regulations and cuts would apply only to new claimants. That is all. It is very simple: if the House agreed to that new SI, it would then go to the Commons, where it would be accepted or rejected. Theirs would, quite properly, be the final word, as our conventions demand. The Commons would have kept its supremacy, and that is right, but we would have kept faith with struggling families and perhaps restored some faith in Parliament.

Let the final words rest with what families themselves say as they face those Christmas letters. Angela from Stevenage says: "I already work 40 hours a week on minimum wage doing two jobs around my children. I cannot believe that this is actually going to happen. I am terrified. We are not scroungers. We work unbelievably hard just to keep going and, once again, we are being punished for trying to earn a living wage". She will lose £1,643 a year after she gets that Christmas letter. Sian from Basingstoke writes: "My husband works full time as a firefighter. We have four children. We won't survive". In her Christmas letter, she stands to lose £2,914. Rachel, from Milton Keynes, says: "It probably means that, as parents, we will skip a few extra meals to ensure our children eat". In her Christmas letter, she stands to lose £2,005.

Finally, we have Tony and Jacinta Goode, from my city of Norwich. He is in full-time work, earning above the living wage, and she is the carer of two substantially disabled children. They are exhausted. Their Christmas letter will tell them that they will lose £60 a week, or £3,120 a year. That is £3,120 from a family where he is in full-time work and she is caring for two disabled children. We do not need to do this to them.

Last Wednesday, at PMQs, the Prime Minister said:

"Let us make work pay".—*[Official Report, Commons,* 21/10/15; col. 948.]

He is absolutely right, and my amendment to the Motion is in that spirit. It will protect deserted mothers and lone parents who want their children to grow up in a household where their parent works; carers who live out their lives in service to others and struggle to maintain a foothold in the labour market; working families—such as the Goodes, whom I mentioned—who exhaust themselves caring for disabled children; or the self-employed, who will, I really hope, help us build a more productive and entrepreneurial economy.

If we do not pass my amendment today, or even if we pass the Bishop's regret Motion, this SI will become law tonight. Whatever the Commons decides on Thursday, the Chancellor then need do nothing at all, because the SI will have been banked as law. Is that what we want, or do we want to give the Commons a pause to think about this additional information on where the savings could fall, about the additional information that is coming through from the think tanks and so on and about the additional thoughts that members of the Conservative Party might now have in the light of their correspondence with their constituents?

I hope that I do not sound pious, but I think that this is about honouring our word—the Prime Minister's word—that work must always pay. It is surely about respect for those who strive to do everything we ask of them, and now find themselves punished for doing what is right. It is about trust between Parliament and the people we serve.

Lord King of Bridgwater (Con): My Lords, I echo the last words of the noble Baroness—

Noble Lords: Bishop!

The Lord Bishop of Portsmouth: My Lords, I deeply regret that the Government's regulations lead me, and others in this House for whom politics is not a vocation, to be part of a debate with constitutional and political implications. I am of course aware of Her Majesty's Government's manifesto commitment to eradicate the deficit, including through reduced welfare payments, and of the studied lack of detail about how this was to be achieved. It is impossible to claim now that we should somehow have anticipated these proposals when they were not detailed. Indeed, we were assured that a sharing of the burden was appropriate and that work should pay.

My primary concern with these regulations is with their short-term impact on some of our poorest families. We have been encouraged to consider these measures as part of a package that includes increases in the minimum wage towards the national living wage, childcare provision and raising the income tax threshold. We are told that this is a five-year programme on a journey towards a higher-pay, lower-tax and lower-welfare economy. This argument will be scant consolation to the 3 million and more low and moderate-income working families who will see a very large reduction, as we have heard, in their tax credits from next April. To be assured that you will be better off in five years' time will not help these families to pay the rent, or gas and electricity bills. The Government are boldly confident that this will be so within five years. Their confidence for the future sounds like extraordinary optimism today for the working families, including 4 million children who will pay such a huge price and bear such a heavy burden immediately on the introduction of these changes.

Of course, I welcome the pledge incrementally to increase the minimum wage, which will benefit some next year and might give small amelioration to those on the minimum wage, but only for them unless and until, as time passes, there might just be some knock-on, rollover impact on wage levels for those on a very modest wage, just above the present minimum. The likeliest knock-on effect in the short term will be indebtedness, which will have a negative effect on parents' mental health and children's education and future life chances.

4.45 pm

In addition then to a sudden drop in income of up to 10%, many will face a marginal 80% hit on income whether from increased hours or a rise in wages; it will be even higher in some instances when other benefits are factored in. If that were a marginal tax rate, there would be howls of protest. What reward is that for those willing to work hard? It is all so grossly insensitive to the many parents who already work full-time or struggle to balance their work with childcare and other responsibilities in order to provide for their families' financial and other needs.

While the increase in the minimum wage and the rise in the income tax threshold are being phased in over the years, the changes to the income thresholds for tax credit and the increase in the taper rate take immediate effect. Of course, employers should pay decently and not rely on the rest of us to subsidise their low rates of pay, but while they may expect to be rewarded for better practice with changes in company taxation, those receiving tax credits will bear the impact immediately—a carrot for some, a stick for others.

I say to the Government that these proposals are morally indefensible. It is clear to me and, I believe, many others, that these proposals blatantly threaten damage to the lives of millions of our fellow citizens. This must not be the way to achieve the Government's goals at a cost to those who, if we believe the rhetoric, the Government intend to encourage and support. To many in my diocese and beyond, this seems punishing rather than encouragement. I hope that we can hear this afternoon an assurance, a commitment to consult and to listen and a willingness to revisit these proposals in the coming weeks.

Lord Davies of Stamford (Lab): The right reverend Prelate is speaking very movingly and rightly about the injustice and suffering caused by the passage of this statutory instrument unamended, but does he not feel in those circumstances that it is our duty not just to talk about it or even record our objections to it, but actually to do something to stop it?

The Lord Bishop of Portsmouth: I am grateful for that intervention. I believe that our first duty is to speak and in a variety of ways to act. That will involve, as many noble Lords know, the very many who participate in charitable organisations and support on the ground. I commit that those in my diocese will do our very best. I myself shall be listening to the rest of this debate before I determine how I shall vote on the amendments before us.

I return to those commitments that I asked the Government to make over the coming weeks. I ask the noble Baroness if she can make those commitments on behalf of the Government. During the past few days, I have wrestled long and hard with the question of how to vote and speak today. Partly the dilemma has been because of the anger, the party-political point scoring and the raising of the issues around constitutional matters. That has obscured what ought to be a measured and careful consideration as to the best interests of the poorest workers in our society.

I am appalled by the Government's proposals. I emphatically did not table this amendment because of party-political pressures. I am aware of the conflicting views on constitutional matters. This amendment offers an alternative and an opportunity—whatever happens with the other three amendments—for this House clearly to register its disapproval of these proposals and its expectation that our reservations will be addressed. Your Lordships' House must, in my judgment, make that clear. I will listen carefully to further contributions this afternoon and intend to vote with, at my heart, the interests of those who have most to lose through these regulations. Should other amendments fail or fall, then I present mine as a respectful but firm message to the Government that the regulations are not acceptable in their current form, and that significant work is required for us to be satisfied that the needs of those working for the lowest incomes will be met.

Lord Mackay of Clashfern (Con): My Lords, we have just heard some very moving speeches on this matter. I have no doubt that, as the Leader of the House has said, the Chancellor of the Exchequer will consider these matters very carefully. I know that it is extremely difficult to analyse the precise effect of income tax or tax credit changes in individual circumstances. Your Lordships will remember that when Mr Gordon Brown, as Chancellor, thought to take out of the tax system the 10% tax band that had previously existed, finding out precisely who was affected and how they were affected turned out to be extremely difficult. I believe that there are difficulties in this connection also. It may well be that the information that arises in the course of the attempt to deliver this will show what in detail is required if changes should be made.

I am intending to deal only with the constitutional question as I see it. These draft regulations are made under the Tax Credits Act, which sets up mechanisms for the payment of tax credits of two types: children's tax credits and working tax credits. The arrangements were under the control of the Board of Inland Revenue which was entitled under Section 2 to deduct the sums paid for tax credits from the income of the board raised by taxation. So it is perfectly clear that these tax credits are a charge on the taxes raised by the Board of Inland Revenue, as it was then. The details of the credits and the machinery necessary for their administration were set out in the later sections of the Act. Section 66 of the Act provides:

"1) No regulations to which this subsection applies may be made unless a draft of the instrument containing them (whether or not together with other provisions) has been laid before, and approved by a resolution of, each House of Parliament.

(2) Subsection (1) applies to … (a) regulations prescribing monetary amounts that are required to be reviewed under section 41".

That is the system under which this statutory instrument has been made. Accordingly the statutory instrument before the House requires to be approved by each House of Parliament before it can be made. The instrument, as we know, was approved by the other place and a Motion to reverse it was defeated in the other place. So it has come to us as a matter which has been fully considered so far as the other place is concerned until now.

In considering this, regard must be had to the financial privileges of the other place. It is not a question of the conventions of this House, it has nothing to do with them; it is to do with the financial privileges that belong to the House of Commons. So far as I understand it, there is nothing to prevent a Motion along the lines proposed here being considered by this House, but the question is whether that consideration can properly interfere with the financial primacy of the elected Chamber. *Erskine May* says that the practice is ruled today by resolutions which were made in the 1670s. The last one of these, the clearest and fullest, states that,

"all aids and supplies and aids to his majesty in Parliament, are the sole gift of the commons; and all bills for the granting of any such aids and supplies ought to begin with the commons: and that it is the undoubted and sole right of the commons to direct, limit, and appoint in such bills the ends, purposes, considerations, conditions, limitations, and qualifications of such grants; which ought not to be changed or altered by the House of Lords".

It is clear that these tax credit payments are made out of the supply raised by taxation and that the other place has decided that the Tax Credits Act 2002 should be amended in terms of the approved draft. I am clearly of the opinion that a failure on the part of this House to approve the draft of this instrument would be a breach of the fundamental privileges of the elected Chamber.

It may be asked why the approval of this House is required. I believe that it is as a courtesy to the House, just as it is asked to agree to the passing of money Bills on their way to becoming Acts of Parliament. The House never seeks to delay them as it is obliged to respect the financial privileges of the elected Chamber and how it deals with those matters; it should deal with this matter in the same way. To decline to approve these draft regulations or to decline to deal with them until certain conditions are met is a refusal to accept that the decision of the elected House on a matter of financial privilege is the final authority for it. It has to be noted that this is a matter of the privilege of the elected Chamber, not of the Government. The Motions other than that in the name of the right reverend Primate—

A noble Lord: The right reverend Prelate.

Lord Mackay of Clashfern: I am sorry, the right reverend Prelate. That was a bit of a promotion because we are in the presence of the two Primates. The Motions mark a refusal to accept a decision of the elected House on a matter of financial privilege as the final authority for it. That is what they amount to. It has to be noted, as I have said, that this is the privilege of the elected Chamber, not of the Government.

The amendment proposed by the right reverend Prelate—I shall try to get it right this time—is entirely in accordance with the arrangements of this House and with the financial privileges of the House of Commons. Therefore from the point of view of the powers of this House, it is by far the safest of the Motions that have been put forward. In light of what the Leader of the House said in opening, I believe that the Chancellor of the Exchequer is very open to considering the detail—

Lord Thomas of Gresford (LD): My Lords, does the noble and learned Lord not agree that the conventions to which he has referred, going back to the 17th century, were so uncertain that in 1908 the Conservative Party defeated Lloyd George's People's Budget in which he sought to give money to the poor people of this country? Does he also not agree that the 1911 Act set out a mechanism whereby the Speaker would certify that a money Bill was a money Bill, and that would remove from us our powers of consideration? Is he not going back to an argument that failed more than 100 years ago?

Lord Mackay of Clashfern: Not at all. I am stating the present practice, according to *Erskine May*, in relation to matters of financial privilege. As I said, it is not a matter of the conventions of this House, but of the rights of the other place in this matter. My clear submission to your Lordships is that these amendments challenge the final authority of the elected House on a

[Lord Mackay of Clashfern]
matter of financial privilege. It is true that the Liberal Democrats—I suppose they were the Liberal Party then, but the succession is probably allowable—found it necessary to take further action to ensure that the practice that had been built up in the 17th century applied in the 20th century and beyond. They put mechanisms in place to prevent financial privileges being in any way transgressed again.

5 pm

Lord Snape: Does the noble and learned Lord think that a statutory instrument that cannot be amended is a suitable vehicle for passing legislation that will adversely affect hundreds of thousands of people?

Lord Mackay of Clashfern: That is the arrangement that was proposed in the Tax Credits Act, which was passed by the Labour Government in 2002. It was thought to be the right way to do this particular thing, and the Chancellor of the Exchequer and the Government have followed that. It is not a necessary consequence that the Commons or the Government should use a different procedure in order to secure the financial privilege of the House of Commons. The procedure was laid down in the Tax Credits Act, which is the main statute on this matter. For the Government to do anything other than use that course would be offensive to the way in which the system was set up.

The Leader of the House mentioned the Chancellor of the Exchequer's attitude to considering more detailed material when it becomes available. That is a considerable consolation to me in light of what the right reverend Prelate said. I believe the right reverend Prelate's approach to be the safest way to secure what a number of your Lordships have asked for.

Baroness Lister of Burtersett (Lab): My Lords, I have several points to make about the substance of these regulations. First, this represents a lamentable example of non-evidence-based policy-making, the victims of which are going to suffer greatly. Secondly, the arguments used to justify the policy—by reference to other policy changes and to how people could or even should work harder—betray a lack of understanding of policy and of people's lives.

In its letter to the Financial Secretary to the Treasury, the Social Security Advisory Committee criticised the "scant" evidence to support the policy changes. It thus encouraged the Government to make available to Parliament,

"more detailed information that clearly explains the changes and potential impacts to ensure that they can be subject to effective scrutiny".

With due respect to the noble and learned Lord, Lord Mackay, SSAC clearly believed it possible to provide such information. Its advice was ignored, leading the Secondary Legislation Scrutiny Committee to observe that the explanatory memorandum laid in September "contained minimal information".

Getting an impact assessment out of the Government has been like pulling teeth. That which finally emerged is a travesty; much of it simply reiterates repetitively the rationale behind the policy. It certainly does not provide the information about potential impacts that SSAC sought. There is no information on the impact on different groups affected, including the self-employed, who, as we have heard, cannot benefit from an increase in the minimum wage. The information about the impact on protected groups is simply laughable. When I asked in a Written Question,

"how many people in receipt of Carer's Allowance are also in receipt of Working Tax Credit",

and are therefore vulnerable, I was told that the information,

"could only be provided at disproportionate cost".

I know that Carers UK is very worried about the likely impact on all carers receiving working tax credit.

In the letter accompanying the impact assessment the Chancellor excused the delay on the grounds that the Government do not usually publish an IA for statutory instruments of this kind. I found this statement very revealing. It suggests that the Government made no attempt to assess the impact for themselves before going ahead with such significant cuts and that they see an IA simply as a tick-box exercise to pacify pesky parliamentary committees. Surely, given the Prime Minister's pledge at his party conference of an "all-out assault on poverty", the Government would want to know the impact on poverty. But no: it was left to the Resolution Foundation to point out that it could mean an additional 200,000 children falling into poverty next year, rising to 600,000 by 2020 when other summer Budget measures have taken effect.

Surely a Government who have promised to apply the family test to every measure would want to know the impact on low-income families—a point made by Heidi Allen MP in her passionate maiden speech demolishing her own Government's policy. Surely a Government who go on constantly about making work pay would want to know the impact on low-paid workers. But we had to look to the IFS for that. In effect, the Government appear to be contracting out to the voluntary sector genuine assessment of impact. Of course, that is assessment after, rather than as part of, the policy-making process. That is one reason why it is so important that your Lordships' House asks the Government to think again in the light of the evidence that has emerged of the damaging impact that the cuts will have.

I am grateful to all organisations that have exposed how the overall policy package that the Government constantly cite does not amount to an adequate defence of the policy, particularly in the case of lone parents, who will be disproportionately affected, according to Gingerbread. A key reason why the overall policy package does not provide adequate protection is that with the exception of childcare, which applies to only a very limited age range, the other policies—the increase in the minimum wage, welcome as it is, and in personal tax allowances, which is less welcome because it is wasteful and poorly targeted—cannot take account of the presence of children, a point made by my noble friend Lady Hollis. All the talk about tax credits subsidising low pay ignores the fact that child tax credits were introduced primarily as a child poverty measure. Wages cannot take account of the presence of children. That was one reason why family allowances were originally introduced and why an increase in child benefit, which also helps families

below the tax threshold and is currently frozen, would provide more effective mitigation than further increases in tax allowances.

Finally, according to the Health Secretary, the cuts are intended to send a "very important cultural signal" about hard work. Leaving aside his denigrating suggestion that receipt of tax credits is somehow incompatible with "independence, self-respect and dignity", he does not appear to understand that reducing the income threshold and the universal credit work allowances while increasing the taper rate penalises what he calls "hard work". Likewise, the Work and Pensions Secretary suggested that the problem can be solved if those hardest hit are encouraged to work a few extra hours. Even if extra hours were feasible and available, the gain from doing so will be reduced by the very changes that they are supposed to mitigate. As the Children's Society points out, every extra £1 in wages will provide a net income increase of only 3p for those also in receipt of housing benefit and only 20p for those not. What about those with family responsibilities, particularly lone parents and carers, for whom working extra hours could impact negatively on their and their families' lives?

It is our job to scrutinise legislation. This legislation does not stand up to scrutiny. The policy-making process from which it has emerged does not stand up to scrutiny. It is not noble Lords, or Government Ministers, who will bear the cost of this. It will be people like the low-paid worker who emailed me to say that he was very scared about how he will manage next year. Hundreds of thousands of children will be pushed into poverty. We have a duty to defend them, our fellow citizens.

Baroness Campbell of Surbiton (CB): My Lords—

The Lord Bishop of Southwark: My Lords—

Lord Taylor of Holbeach: My Lords, perhaps I may suggest, given the very large number of noble Lords who want to speak, that for the benefit of the House they keep their contributions brief and to the point, so that we can get as many people in as possible. Furthermore, if we can go around the House, as we do at Question Time, it will help create a sense of balance in our debate, which I am sure noble Lords will appreciate. I hope the right reverend Prelate will excuse me—because normally he would take precedence—but I have indicated to the noble Baroness, Lady Campbell of Surbiton, that she might speak next. I hope that he will understand why I wish to do so.

Baroness Campbell of Surbiton: My Lords, as a Cross-Bencher in this House, I see it as my job to offer my best expertise and knowledge to help the Government understand the consequences of some of their legislation and statutory instruments. That is what I will now offer.

Working tax credits have provided an unprecedented and effective pathway into employment for disabled people who faced the greatest barriers to employment. Proposals to lower the threshold for working tax credits and accelerate the taper rate to 48p will dramatically reduce the incomes of disabled people in low-paid employment who, for reasons directly linked to their impairment, do not have the option to increase their working hours or to offset their losses. Disabled people—especially those with learning disabilities—are more likely to be in low-paid employment than non-disabled people.

I am not aware of an impact assessment that has evaluated this specific disability element. I fear that this cut will also disincentivise disabled people from taking the very difficult step off benefits and into work. There is little doubt that it will negatively impact on the Government's other policy, which is to halve the disability employment gap. It does not make sense. Do not forget, either, that that gap is currently running at over 30%. Higher costs in health and social care are the inevitable result of unemployment among disabled people.

Furthermore, we cannot look at working tax credits in isolation. We are promised joined-up government but I am not aware of any cross-government analysis of the cumulative impact of this regulation on working disabled people or families with a disabled member. Where is the Department of Health? Many working disabled people affected by cuts to working tax credits are also suffering because of cuts to their social care support, the closure of the Independent Living Fund and the changes to Access to Work. In effect, the Government are making employment less likely for people with these support needs. I know that this is not their intention.

I hope that this little detail—this bit of reality and evidence—will help us to reflect. Maybe the Government will change their mind; I do not know. But I am deeply worried about the number of people who will effectively be hit by this provision, which will not deliver the Government's own policy.

5.15 pm

The Lord Bishop of Southwark: My Lords, I support the amendment to the Motion as tabled by the right reverend Prelate the Lord Bishop of Portsmouth, in the hope that it will indeed give space for further reflection and reconsideration of the tax credit proposals. I believe that it has the potential to do that.

First, I want to record my appreciation for the welcome rhetoric in recent months from members of the Government saying that employment, not least hard work, merits fair pay and some recognition in the national minimum wage. It is this, rather than buttressing from the state, that should provide the income of working people. It follows from this that rising wages and salaries will, of their own accord, not least from the Government's own national living wage proposals, reduce the use of tax credits in due course without the introduction of the draft regulations before us.

The diocese which it is my calling and privilege to serve covers most of south London and east Surrey—I have the honour of several of your Lordships living within it. It is a large and populous area, encompassing significant pockets of urban deprivation alongside considerable wealth. The unsustainable cost pressures in the property rental market, as well as rapidly rising house prices, already threaten the balance of many communities. I fear that the introduction of these regulations will push a significant number of hard-working although low-earning families to breaking point.

[The Lord Bishop of Southwark]
A reduction in the threshold for families' earnings before credits are withdrawn from £6,420 to £3,850 is a very dramatic change, which will adversely affect all but the poorest members of the communities we serve. Families that strive, struggle, aspire and hope to advance their well-being will be thrown back, since few have the sort of margin between income and expenditure to cushion them from the blow that is coming. In the London Borough of Southwark alone, whose 50th anniversary was commemorated in my cathedral this past weekend, it is estimated that some 20,000 families are in receipt of tax credits and, further, that even making allowance for the mitigating factors being introduced by the Government, some 4,000 will remain worse off by these changes. That is in just one London borough.

The sort of wage rises that would mitigate this and the extra hours worked to catch up will be taken away by the loss in other benefits, even if there were enough hours in the day. The rise in personal allowances which benefits a far wider group of people, including Members in this Chamber, will not compensate for this shortfall. By these regulations, we are in fact asking parents to make their children bear a significant adjustment in their economic circumstances—an adjustment that some children will not understand, which in itself will be an added stress to their families. We risk stripping our fellow citizens of their dignity by these provisions, even though the Government's stated intention with a whole range of economic and fiscal measures is to do the opposite. We should take this opportunity to counsel Her Majesty's Government not to seek to add to the burdens of those working hard for their families, and to reconsider in detail the impact of these regulations and the need for more fully worked-out transitional arrangements. I therefore support the regret Motion as tabled by the right reverend Prelate.

Baroness O'Loan (CB): Before right reverend Prelate sits down, could I just ask him why, if he believes that this will cause such difficulty, harm and distress to so many children and their parents in our community, he is telling us to vote for this Motion?

The Lord Bishop of Southwark: I was persuaded by listening to the noble Lord, Lord Butler of Brockwell, explaining the other day the constitutional differences that exist between the two Chambers .

Baroness Thomas of Winchester (LD): My Lords, there seem to be two strands to this emotive phrase "constitutional crisis", which is what I would like to address. The first is that this House should not vote down a statutory instrument—certainly not one that has been through the House of Commons. But there is no Standing Order which lays this down, and the Parliament Acts are silent on the primacy of the Commons over statutory instruments. Yes, it is taking a very rare step, but the footpath is there, even if it is rather overgrown. In this House, we do not look to *Erskine May* so much as the *Companion to the Standing Orders*, which is where we find that this House has an unfettered right over statutory instruments. If an instrument is not approved by this House, there is nothing to stop the Government immediately bringing another instrument to both Houses with a minor change. It is time we stopped being bullied over how we consider statutory instruments.

The other strand of the so-called constitutional crisis involves the primacy of the House of Commons over financial matters. Here, I echo what the noble Baroness, Lady Hollis, said. The parent Act from which this instrument comes was not certified by the Speaker as a money Bill, and if this House is entitled to debate the statutory instrument at all—which it is—then it is entitled to approve or to decline to approve it. It is not a question of courtesy; this is what we do and what Parliament has decreed. We would be failing all those affected by this measure if we simply pulled a duvet over our faces and turned our backs to the wall while saying it was none of our business.

If the Government had wanted to avoid this situation, why on earth did they not introduce a very short tax credits amendment Bill? Then we could have debated it in the usual way, with none of this intolerable pressure. If this House had sent back an unacceptable amendment, the Commons could have invoked financial privilege and that would have been that, but we might have found a way to tweak such a Bill that would have found favour with all those Conservative Members who have been calling for just that.

If the Bill route had been taken, we might have had a much more informative impact assessment, which could have told us what was likely to happen to those low-paid workers affected when the tax credit changes happen next April, instead of being told that by 2020 there may not be quite so many losers. We surely know that not all the thousands of employers up and down the country will pay the new living wage immediately to all part-time workers for the same number of hours to make up the shortfall. As it is, for the Government to decide to make a very controversial change by way of an unamendable statutory instrument, and then to bully members of this House into passing it by telling us that we are provoking a constitutional crisis if we do not agree to it, is surely quite unacceptable. We should stand up for what we believe to be morally right. The spirit of 1911 is being invoked, but at least Lloyd George wanted to take from the rich to pay the poor. George Osborne seems to want to do the opposite.

Lord Lawson of Blaby (Con): I suspect that I am not the only one on this side of the House who feels torn on this issue. The constitutional position, which I will refer to first, has been set out admirably by the noble and learned Lord, Lord Mackay, and it is very clear: budgetary matters are the prerogative of the other place—of the elected Chamber—and this is undoubtedly a budgetary matter, however it is dressed up. What is the purpose of the measure? The purpose of it is to help reduce the budget deficit, and everybody is agreed that it should be—

Baroness Smith of Basildon: The noble Lord seems to imply that because this is a tax credits issue, as was said by the noble and learned Lord, Lord Mackay, for whom the House holds enormous respect, it would be subject to financial privilege. Is he aware that the legislation in 2002 was not subject to financial privilege? It is hard to argue, then, that a statutory instrument from that legislation should be.

Lord Lawson of Blaby: With respect to the noble Baroness, the constitution is more important than nitpicking. This is a budgetary matter.

Baroness Symons of Vernham Dean (Lab): Does the noble Lord, Lord Lawson, think that the Clerk of the Parliaments was nitpicking when he told my noble friend that statutory instruments were not covered by financial privilege? That was said unequivocally by the Clerk of the Parliaments.

Lord Lawson of Blaby: The point is that this is a budgetary matter and budgetary matters are the prerogative of the elected House. That is the most important constitutional principle. This was designed to reduce the budget deficit, which everybody on all sides agrees has to be eliminated, by something like £4.5 billion. It is quite clear that this is the Chancellor of the Exchequer's measure, in effect, whosever name may be on the statutory instrument. That is the constitutional position. I said I would be brief, so I will not elaborate, but that is clear.

On the other hand, I also said I am torn, because I believe that there are aspects of this measure which need to be reconsidered and, indeed, changed. The right honourable George Osborne, the Chancellor of the Exchequer, made it clear that he was going to get a lot of his savings, probably the greater part, from the welfare budget, and tax credit, which has ballooned enormously in recent years, is a large part of the welfare budget. I think that is absolutely fair, but the question is the particular incidence of this package in the regulations. What concerns me is not that there are high implicit marginal rates of tax—which are transient, incidentally. That is the case with all means-tested benefits and it is absurd to say that means-tested benefits can never be reduced. Nevertheless the tax credits system—the in-work benefits—rise surprisingly high up the income scale, but here the great harm, or a great deal of the harm, is at the lowest end. That is what needs to be looked at again; that is what concerns me. It is perfectly possible to tweak it to take more from the upper end of the tax credit scale and less from the lower end.

I heard my noble friend the Leader of the House say that the Chancellor would listen to this debate. I would have been surprised if she had said that the Chancellor would not listen to this debate. Of course he will listen to this debate, but it is not just listening that is required. Change is required. I very much hope that my noble friend Lord Howe, when he winds up, will indicate that there will be change, though he cannot indicate what, but I must say that my present intention is to support the amendment in the name of the right reverend Prelate the Bishop of Portsmouth.

Lord Campbell-Savours: I hope that the Chancellor of the Exchequer listens very carefully to the contribution of the former Chancellor of the Exchequer the noble Lord, Lord Lawson of Blaby, because his support for what appears to be the Frank Field amendment should be taken seriously. The Leader can call on all the constitutional arguments she can muster in support of the Government, as indeed can the noble and learned Lord, Lord Mackay of Clashfern, on the issue of financial privilege, but all those arguments pale into insignificance when compared with the greater argument that the general public, millions of people outside this House, are considering today—that being statements given during the course of the general election, solemn undertakings given by Cabinet Ministers to the British people, on what their attitudes would be to tax credits.

Mr Gove gave the undertaking that there would be no cut in tax credits, which he was unable to substantiate by way of any agreement, but that is what he said on television, in an interview. Mr Cameron deliberately misled the British public, who would regard what he said now as a lie to win a general election. The British public are fed up with politicians who tell lies on that scale. It exceeded the misleading of the public in the case of the Liberal Democrats over tuition fees; at least they did not know what was going to come after the election when they misled the public. In this case, Mr Cameron did know, and the Government set out to avoid revealing the facts by hiding behind the statement that they would have to make substantial cuts without going into details. Those lies trump all the constitutional niceties, whether they be financial privilege or the fatality of amendments, and it is on that basis that I intend to support the amendment tabled by my noble friend Lady Hollis this evening. The public cannot take this scale of lying.

5.30 pm

Lord Butler of Brockwell (CB): My Lords, I shall try to put my points briefly. I do not want anything that I say to be taken as implying a lack of sympathy with the concerns of those who have spoken about the effects of the Government's policy. Like other Peers, I have had moving emails from many such people who expect to lose benefits through the statutory instrument. However, I want to confine myself to the constitutional issue. I usually agree with the noble Baroness, Lady Thomas, about statutory instruments. As has been pointed out, it is a very rare event that the Government are defeated on a statutory instrument; it has happened only five times since the war, but that does not mean that the House could not do it. But there is a combination here, because this is a statutory instrument about a budgetary matter central to the Government's fiscal policy; it is that combination that is unprecedented, which is why it would be beyond the House's constitutional powers to defeat the Government today.

Lord Thomas of Gresford (LD): Would the noble Lord wish to amend the *Companion to the Standing Orders and guide to the Proceedings of the House of Lords*? It states:

> "The House has resolved 'That this House affirms its unfettered freedom to vote on any subordinate legislation submitted for its consideration'".

Is this not subordinate legislation submitted for our consideration?

Lord Butler of Brockwell: What I am saying is that the combination of the convention about statutory instruments and the fiscal significance of this one is what makes it special.

Lord Thomas of Gresford: Any!

Lord Butler of Brockwell: Any—but not since 1911 have a Government been challenged on a matter of this sort, which establishes what the constitutional conventions of the House of Lords are. In that respect—

Lord Richard: The noble Lord says that no Government have been challenged on a matter of this sort since 1911. However, in July 2008 there was a debate in this House on a statutory instrument, in which, after a discussion, the House came to a conclusion and voted down the Government's suggestion, insisting that any attempt by the Government to raise national insurance had to be done by way of primary and not statutory legislation. Was that not also an example of a Government trying to pursue their financial and fiscal policies and the Opposition voting them down, saying that it had to be done not by statutory instrument but by primary legislation?

Lord Butler of Brockwell: I shall not contest the precedent given by the noble Lord, which I have not myself considered. The amendment proposed by the noble Baroness, Lady Manzoor, is, transparently, a fatal one; she agrees with that—and, in my view, it is outside your Lordships' constitutional role. I note that my noble friend Lady Meacher agrees with that view. The amendments proposed by the noble Baroness, Lady Hollis, and my noble friend Lady Meacher, raise a more subtle issue. They are not fatal, but they seek to defer our consideration of the statutory instrument until the Government have done certain things specified in the amendment, including, in the case of the noble Baroness, Lady Hollis, surrendering some of the savings that would be achieved by this measure. But they are still blocking amendments. I can best demonstrate that by the following question. What happens if the Government refuse to do what the amendments demand? Will your Lordships then refuse to consider the statutory instruments for ever and a day? In that case, these amendments would block the statutory instrument indefinitely, which in my view is not within the—

Baroness Meacher: I point out to my noble friend Lord Butler that the House of Commons has a very similar request for Thursday: that House also wants more information, because Conservative MPs even now do not feel they have enough information to understand the full implications of these regulations. If the House of Commons votes for more information—in other words, says not to go ahead until we know what on earth is going on—would my noble friend then agree that that should be provided not only to the House of Lords but to the House of Commons?

Lord Butler of Brockwell: If the House of Commons asks for more information, it should be provided. But the constitutional position is that the House of Commons has passed this statutory instrument, and it cannot go back on that. Now what is at issue is whether the House of Lords should pass it, and however much sympathy the House may have for the objectives of those who have moved these amendments, it would be a constitutional infringement of great gravity to pass the first three of them. It would be wrong on three counts. First, this is a budgetary matter. It may be a welfare matter as well, but it is certainly a budgetary matter. Secondly, it is crucial to the fiscal policy that was explicit in the manifesto on which the Government were elected only a short time ago. Thirdly, the statutory instrument has been passed by the House of Commons, which has that responsibility in our constitutional arrangements. It has been passed not once but three times. I am afraid that I cannot find myself persuaded—

Lord Hughes of Woodside (Lab): Would the noble Lord realise that he is turning his back and not addressing the House, and he should learn the procedures, given his experience?

Lord Butler of Brockwell: I am sorry, my Lords, and I apologise if I have committed a constitutional impropriety, but I still do not understand quite the point that the noble Lord makes.

I am afraid that I am not persuaded by the argument made by the noble Baroness that this House—

Baroness Farrington of Ribbleton (Lab): I have worked in many roles, and I have listened to the noble Lord giving advice. I know that after this debate many members of the public will ask what an earth was going on in the House of Lords. Could the noble Lord answer the question: if the House of Lords today amended or voted down this statutory instrument, could the Government in the Commons bring back a one-word-change statutory instrument within the next few days? Secondly, would he care to comment on the following? I listened very respectfully to the noble and learned Lord, Lord Mackay, who used an expression that I could not understand. Could the noble Lord explain why the noble and learned Lord thought that it would be offensive for the Government just to choose to bring this item forward in primary legislation? I did not understand the reasoning, but I am sure the noble Lord does.

Lord Butler of Brockwell: My Lords, I think it is a little unfair of the noble Baroness to ask me to interpret the statements of the noble and learned Lord, Lord Mackay. They were perfectly clear. Can I just give the answers I was going to give about the point made by my noble friend Lady Meacher? I cannot be persuaded that this House would be failing in its democratic duty if we did not block this statutory instrument so that the House of Commons could have yet one more debate on it. It has had three already.

Baroness Manzoor: I am so sorry to intervene on the noble Lord. I have an observation. The director of the Institute for Government, Peter Riddell, who is greatly respected in Whitehall and Westminster makes the following point. Forgive me, it is rather long but I want to read it.

Noble Lords: Oh!

Baroness Manzoor: I shall give a short version then:

"The Parliament Acts of 1911 and 1949, establishing the ultimate supremacy of the Commons, do not apply to secondary legislation".

Lord Greaves (LD): My Lords—

Lord Pearson of Rannoch: My Lords—

Lord Taylor of Holbeach: The House was listening to the noble Lord, Lord Butler.

Lord Butler of Brockwell: My Lords, I am afraid I have been rather frustrated in trying to put my points as briefly as I could, so let me put one final point. There have been many times in the past when there has been an opposition majority in your Lordships' House, particularly when there has been a Labour Government. There have been many occasions when the Opposition have wanted to overturn the Government on a fiscal matter. It has not happened and in these cases the Opposition, recognising the conventions, have exercised self-restraint, bitten their lip and stayed within the constitutional conventions. I believe that the House should do that today.

Lord Richard: My Lords, in response immediately to what the noble Lord, Lord Butler, has just said, there was no doubt that the occasion in July 2008—I will go into it in a little more detail further on—was a fiscal matter. There was no doubt it was government policy and this House demanded that the Government should give it up and insisted that what the Government wanted to do could be done only by primary legislation and not by a statutory instrument. This has been before the House before and the House has done it before.

There are three major issues this House has to consider today. The first is whether financial privilege attaches to this proposition. The second is the effect of the way in which it proceeded through Parliament, and the third is whether any of the amendments is a fatal one.

Let us deal with the constitutional one because we have heard quite a lot about it this afternoon. I totally reject the suggestion made by the Chancellor that somehow or other a vote to postpone the operation of this resolution would be contrary to the financial understandings and conventions that exist between the two Houses. I do not think that is justified. The Government could have avoided these constitutional problems if they had wanted to, had they chosen to legislate for this matter by primary rather than secondary legislation. It would have been open to them to have included these proposals in the Finance Bill. Alternatively, they could have legislated by way of a short and separate Bill. Instead, they chose—it is a government choice, not an opposition choice or anyone else's—to do it by secondary legislation. That inevitably curtailed debate both here and in the House of Commons and particularly in the country. Of course I accept that it has been dealt with in another place, but inevitably the national discussion has been truncated—to the point almost of extinction. There has been no consultation on transitional measures, nor on measures to alleviate the burden on the poorest—quite the contrary. None of these issues has been even discussed, let alone agreed. We do not know what, if any, transitional measures the Government might have in mind. The Government do not even have the excuse that it was all put before the country at the general election. It most certainly was not—quite the contrary. Considerable efforts were made to conceal the fact that this was the Government's intention if they were re-elected. From the Prime Minister down we had Minister after Minister appearing in front of the television cameras and in the press saying it was nothing to do with tax credits and they would tell us what it was eventually. There was not a word in the Conservative manifesto about it. We are now told that in that situation this House willy-nilly has to accept what the Government say. What the Government are asking us to do is not acceptable.

5.45 pm

Lord Tebbit: The noble Lord has set out an alternative policy which the Government might have followed, but they did not. We are not dealing with the alternative policy but with what actually happened. He is saying that the Government have seen a way of doing things that he does not like. It does not alter the fact that this is a money matter and he wants this House to overturn a majority decision in the Commons on a money matter.

Lord Kakkar (CB): My Lords, can I ask the noble Lord how your Lordships' House should interpret the point of order made by Sir Edward Leigh on 21 October in the other place? He said:

"On a point of order, Mr Speaker. Generations of your predecessors defended the privileges of this House, and the greatest privilege of all is the principle of no taxation without representation …We had a lively debate yesterday on tax credits, and many of us would like to see some movement from the Government, but surely it is the elected representatives of the people who decide on tax and spending".

The Speaker responded:

"I understand entirely what the hon. Gentleman is saying. My own feeling from the Chair is that the other place can look after itself; but we also can and will look after ourselves. I think it would be much more dignified for the Chair not to become drawn into what might be a public spat between the two Houses. In the final analysis, each House knows what the factual constitutional position is, and that position is what it is of long standing".—[*Official Report*, Commons, 21/10/15; col. 959.]

Lord Richard: My Lords, I am bound to say to the noble Lord that I am not sufficiently qualified medically, politically or personally to know what is in the mind of Mr Leigh when he gets up in the House of Commons. To expect me to be able to do that is, frankly, unrealistic.

The answer to the noble Lord, Lord Tebbit, again is very simple. Of course the Government chose to do it. Why? Because it cut off discussion. It meant that they were not accountable on the Floor of the House of Commons. They knew when they did it that there was a convention here that we did not vote against statutory instruments; we did not turn them down. By doing it that way the Government thought they were impregnable in their approach. I do not think they are.

Lord Deben: Could it not have been that they did it that way because that is what the Act said they had to do? Would that not be a more proper judgment of what the Government did?

Lord Richard: The Act gave the Government the power to do it. It did not compel them to do it. If they wanted to do it by way of an Act of Parliament it

[LORD RICHARD]
could have been done that way. They could have added it to the Finance Bill and it would have come up here and in the normal way financial privilege would have applied and none of this nonsense would have been created. Perhaps the reason the Government chose to legislate in this way was because it was bound to create political controversy. Perhaps that was the object of the exercise.

I want to say a word about the debate in 2008. It was when this House limited the power of a Labour Government to raise the national insurance upper threshold so that it could be done only through primary legislation. The two cases are almost identical. In each case, the Government were trying to alter tax provisions by a statutory regulation. In each case, this House was standing in their way. The only real difference is that in 2008—

Baroness Stowell of Beeston: I am so sorry to interrupt the noble Lord, but he is referring to a previous case in a way which I do not believe is accurate. The example he is citing relates to primary legislation, not to a statutory instrument. An amendment was properly tabled in this House to that primary legislation, and this House voted on it. This House sent the Bill back to the other place in the normal way. The House of Commons decided that it would invoke financial privilege, and that was the end of the matter, so it is wrong for the noble Lord to draw direct comparisons in the way that he is doing.

The reason why the 1911 Act is relevant is that is quite clear that secondary legislation is not covered by some of the conventions that have been raised in debate in this House. What is at risk here is the financial primacy of the Commons.

Lord Richard: I hear what the noble Baroness says but, as far as the financial privilege of the House of Commons is concerned, if this House decides to vote for my noble friend Lady Hollis's amendment—as I hope it will—it would not kill the statutory instrument. It would not mean that it was dead. It would mean that its implementation was delayed. According to the clerks—and I understand it is broadly accepted by most people—that is not a fatal attack upon these regulations. If the House were to do that, we would get the best of both worlds. I am not in favour of voting for the Liberal Democrat amendment because I do not, on the whole, think that voting for fatal amendments on statutory instruments is a good thing for this House to do, and I do not think I have ever done it. However, an amendment to postpone the statutory instrument until the other House has a chance to look at the evidence that has now arisen makes a great deal of sense. I hope that, when it comes to a vote, that is what will happen.

The Archbishop of York: My Lords, I want to a repeat a few words of the noble Lord, Lord Richard. I, too, have been listening to this debate, and I listened to the argument made by the noble and learned Lord, Lord Mackay. He persuaded me that the amendment moved by the noble Baroness, Lady Manzoor, to decline to approve the regulations is fatal and perilously would raise all kinds of constitutional matters.

The amendments moved by the noble Baronesses, Lady Meacher and Lady Hollis, simply decline to consider the draft regulations. They do not say that the regulations will not be approved. In fact, they tie our hands because when the regulations are produced, we will have no choice but then to approve them. If the Chancellor is being very mindful, as we have been hearing from the Lord Privy Seal, and is willing to negotiate and to listen to our advice, well, we are giving him our advice, so why does he not take it? I think that the amendments moved by the noble Baronesses, Lady Meacher and Lady Hollis, are not fatal. They are simply delaying, and we can do something about it.

My right reverend friend called on the Government to further consult on the draft regulations and revisit their impact. It is a question of trust. If you are legislators and do not have the facts before you before you finally approve these draft regulations, you are abrogating your legislative responsibilities. If you are a revising and scrutinising Chamber, surely you must do it. If you do not, who else is going to do it? They may even be glad that some people are planning; it will become very clear that some were probably not all that important. The noble Baroness, Lady Hollis of Heigham, in her moving speech, outlined clearly the unintended consequences of this hasty way of reducing and cutting tax credits because the people who are going to suffer most are those who up to now have been relying on them. They are in work, and they are managing to get their things in order, and then suddenly the Government say they are going to take it away. That is not good. The Chancellor of the Exchequer is more likely to meet his target reduction of the budget deficit of up to £4.2 billion a year by introducing the real living wage first, which I trust will be calibrated soon by the Living Wage Foundation.

What is my basis for saying this? Two years ago, I chaired the Living Wage Commission which brought together people from business, the trade unions, industry and civil society to look at how we could inspire and create a brilliant way of dealing with this difficulty. How can we tackle the blight of low pay? We looked closely and objectively at the case for the living wage, and we were sure about what should be done. Let me give the House the evidence. It is in the report. The evidence pointed to the living wage being good for employees, good for business, good for the economy, good for society and good for low-paid people. Employers who have already adopted a living wage policy have lifted thousands of people out of working poverty. They are not claiming tax credits because they have been lifted out. The Exchequer could gain up to £4.2 billion a year in increased tax revenues and reduced expenditure on tax credits. That is a much neater way of doing it. Businesses are reporting increases in productivity and improved morale. The truth is that you and I lose out on poverty wages. Billions of pounds are being spent every year on topping up the incomes of low-paid workers at a time when private finances are very tight. Demand is sucked out of the economy by the lack of spending power of a fifth of our workforce—about 5 million people—and where inequality grows, all of us end up diminished.

Economics was not always divorced from moral and ethical considerations. Adam Smith, the father of modern economics, had been professor of moral philosophy at the University of Glasgow before he wrote *The Wealth of Nations*. To him and later classical economists such as Ricardo, Mill and Henry George, ethical considerations were of prime importance. Economic justice on a global scale is the only way we are going to deal with this. The issue we are facing here is not just economics divorced from morals and ethics. The decisions we take will affect a lot of men and women throughout the country who want to get out of poverty and out of depending on tax credits, and we should consider them properly and fairly.

Britain has struggled through very challenging times. I hope that the work being done by government, business and the people of the United Kingdom will enable us to take a huge step forward. The minimum wage, when introduced, went some way, but it did not go far enough. Let me give some recent research which seems to suggest that the legislature has considered the possibility of delaying in order that further facts may be brought out. What are they? There has been a rise in demand for unsecured credit, with many people reporting an increase in their need to borrow. This is likely only to get worse in the winter months. Do you want people who have hitherto been dependent on work and tax credits to be driven to the loan sharks of this country? That would be quite unhelpful. What about UNICEF saying that a quarter of children in Britain are living in poverty? Britain is at risk of becoming a place where the haves and the have nots live in parallel worlds, where the common good, or the big society, has been a pious platitude rather than genuine. I want to listen more, and I hope the decision to delay the draft regulations until further facts ties our hands and allows the Chancellor, who is willing to listen to our advice, to come back with all that information. We are almost saying that we will pass it, we will agree with it.

Finally, a wonderful report by the Joseph Rowntree Foundation, *Will the 2015 Summer Budget Improve Living Standards in 2020?*, states that over seven years there has been a decline in living standards. It is pausing for the moment, but many low-income households are still much worse off than in 2008, leaving them struggling to make ends meet and reliant on benefits to top up their finances. Today, we want to say to hard-pressed families on poverty wages that the Government are serious about deficit reduction, but they want to do it in an orderly fashion that will not leave men and women in the hands of loan sharks.

6 pm

Lord Fowler (Con): My Lords, I have two claims to briefly intervene in the debate. First, it was my proposals in the social security legislation of 1986 that led to the introduction of family credit, which was a successor to Keith Joseph's family income supplement and, of course, the forerunner of tax credits. It then became a Treasury matter when it went to tax credits. Obviously, I have considerable sympathy with the general case being put in this debate. Secondly, I was for six years the Secretary of State for Health and Social Security and, as such, no one's idea of a natural supporter of the Treasury and all its schemes.

Lord Lawson of Blaby (Con): You can say that again.

Lord Fowler: Various Chancellors and Chief Secretaries might put it more strongly, and a former one just has. Perhaps I can add in parenthesis in this heated debate that throughout my time doing social security my shadow Minister was Michael Meacher, who died last week. We did not agree on very much but he was a very honourable and totally sincere man and he will be much missed.

Noble Lords: Hear, hear!

Lord Fowler: My Lords, I spent three months every year debating with the Treasury the proposals that it put forward to cut my budget. One counterargument I never used was that the specific cost-cutting measure was not in the party's manifesto. Frankly, I had quite enough trouble getting the Treasury to recognise the measures that were in the manifesto. Every Government introduce measures not contained in the manifesto. The last thing I did was to introduce the dock labour scheme—there was not a word about that in the manifesto. Back in my old social security days, Barbara Castle, under pressure from the Treasury, altered the whole basis of measuring inflation at a cost and a saving of well over £1 billion.

The truth about reduction in benefit spending is that it is always going to be unpopular. I found that in Cabinet everyone was in favour of doing it in general but when it came to the specifics they always said, "Please, not that way". Frankly, I think that the Conservative manifesto in 2015 spelled out what was intended with more clarity in this area than any manifesto I can remember on either side. The Government said in words that they would have to find £12 billion from welfare savings. That is a good deal more specific than any manifesto I had anything to do with myself and, indeed, any manifesto which ever came up on the other side.

Lord Campbell-Savours (Lab): My Lords, in light of what the noble Lord just said, does he think that it was right for Mr Cameron to rule out cuts to tax credits at the time of the general election?

Lord Fowler: We have been round this particular point because the noble Lord has made it several times. More to the point, it has been considered now three times in the House of Commons and has been rejected. In fact, I think he was talking about considering child tax credits and not the whole ball game.

The manifesto also made it clear in words that pension upratings would be protected. In other words, that area of retirement would be ring-fenced. I do not think there was any great controversy about that. By ring-fencing pensioner benefits the Government narrowed the field very substantially from where the £12 billion cuts could come. It follows as night follows day. Not everyone will agree with that diagnosis. Indeed, my major reason for introducing family credit was my concern for low-income working families with children.

[LORD FOWLER]
Even then it was clear that pensioner earnings were improving and increasing and that was not being followed by the low-income families.

I do not think that anyone can have imagined how spending on tax credits was to escalate in the way that it did. Tax credit spending trebled in the 10 years up to 2010 and by the Budget of this year was estimated to be about £30 billion a year. That was a long way from the original aim. However, I accept that none of this was the fault of the families who are struggling to make ends meet, often in very difficult circumstances. I totally accept and agree with that. I therefore welcomed the assurance of the Leader of the House when she said that these matters would now be considered again. I hope that when they are we can find room to look particularly at families with children. That is a priority, and Frank Field has a Motion down on this. That argument is particularly strong. Whether the Government do this or not—and this is the point—is frankly a matter for the Chancellor of the Exchequer, who is answerable on this and other financial matters to the House of Commons and not to us. It is a common-sense position—

Baroness McIntosh of Hudnall (Lab): My Lords, I hate to interrupt the noble Lord, for whom I have the greatest respect, but he said that the Leader had told the House that these measures would be reconsidered. I listened quite carefully to what the Leader said and I am not sure I heard that, but if I am wrong I am very happy to be corrected.

Lord Fowler: I leave it to the Leader of the House and the noble Earl who will be winding up to put it in specific words, but I think that not an unfair representation of what she said. We are the unelected House. The other place is the elected one. The measure has already been voted on twice, if not three times in the Commons. We cannot have the unelected House trying to impose its will on £5 billion of savings. I say one thing to the ex-Members of the House of Commons who are here: I do not remember their saying when we were in the House of Commons together, "We must give more financial power over what happens to the House of Lords". I do not remember at any stage that point being made by anyone in any party on this particular position. I think a certain degree of humility might therefore be in order.

Lord Rooker (Lab): I agree entirely with the point made by the noble Lord. Does this not show, though, that our powers on statutory instruments are far too drastic, as was pointed out in the report on conventions? It would be better if we gave up the power to accept or reject a statutory instrument in exchange for maybe two amendments, which would deal with the point made by the noble Lord, Lord Lawson—we could have tweaked it but we could not have opposed it anyway. There may be a lifeboat in this, if we could get something out of it in the way we deal with secondary legislation and avoid all this in future.

Lord Fowler: That is obviously something we can consider for the future, and on first hearing sounds an attractive proposition. However, we are considering what we are doing now and not in the future.

I make a last point. In spite of some of the criticism—no, the attack—now being directed at this House, it is my view that it carries out a very valuable series of functions. The Members I meet here day by day are hard-working, not just on the Floor of the House but in Select Committees. However, we need to recognise one common-sense thing: that as long as this is an appointed House, we must accept the limitations on our powers, particularly in financial matters. To ignore those limitations is not in the interests of Parliament, it is certainly not in the interests of the House of Lords and it is not in the interests of the public. It cannot be justified and that is why I will be voting against these amendments.

Lord Low of Dalston (CB): My Lords, we have been going at this now for well over two and a half hours. Strong points have been made on each side of the argument and many points have been made in speeches that have been not only lengthy but weighty. I find it difficult to conceive that any more arguments can be deployed on either side. I submit that we need to make up our minds on the basis of what we have heard and that it is time to come to a conclusion.

Baroness Hayman (CB): My Lords, I accept what the noble Lord, Lord Low, says but I want to make one or two points that have perhaps not been made before and, if the House will indulge me, I would be grateful for the opportunity so to do.

I shall not go over the case against the regulations in their current form. That has been argued powerfully tonight from all Benches, and I think that we could pass almost nem con that we feel there is a need for reconsideration. The issue before us is whether it is constitutionally appropriate for the House of Lords to use its most potent and well-known weapon—the weapon of delay—in respect of these regulations.

Very powerful speeches were made from the Bishops' Benches. I am delighted that the right reverend Prelate the Bishop of Gloucester is here for today's debate. I should warn her—or console her—that it is not always like this. However, I hope that those Benches and others will consider that it might be appropriate for the House to use its powers of delay tonight. I favour the amendment in the name of the noble Baroness, Lady Meacher, because it gives us an alternative to a fatal amendment on a matter which is, I agree, of high political import. It gives us the opportunity to delay the regulations and to ask the Commons—and, through it, the Government—to think again.

In introducing the debate, the noble Baroness the Leader of the House said that she had seen the Chancellor of the Exchequer today. I think that the words used were that he would "listen very carefully" to what was said in the House today. I accept that. However, having had the privilege of being a Member of both Houses, I think he will listen even more carefully to what is said in the House of Commons on Thursday, and I would like him to have the opportunity to do that.

Delaying an SI rather than killing it is innovative, and I have asked myself over time whether it is something we should therefore abjure. My answer is no. If we have the power to kill a statutory instrument and send it back to base, surely we have the power to delay it and wait for reconsideration.

I absolutely accept that this matter has been discussed in another place three times. Does it need further consideration? I think the evidence is that it does. Every time we discuss an amendment to a Bill that has gone through the House of Commons, it has probably been voted on three times: at Second Reading, in Committee and on Report. That does not inhibit us from saying first time round, "Please will you look again?".

Therefore, for me, the only question that remains is that of financial privilege. I hesitate to cross swords with either the noble and learned Lord, Lord Mackay, or my noble friend Lord Butler, but the situation is not as clear-cut as they have set out. If this were a Finance Bill we would have no part in it, and if it were a taxation SI we would have no part in it. In fact, it would never come here: it would go through only the House of Commons. But it is not. This is an SI under "ordinary legislation"—under a welfare Bill. Under that legislation, this House considers amendments and sends them to the House of Commons. The House of Commons can then do what it likes with them: it can accept them; it can offer a compromise; it can reject them; or it can invoke financial privilege. However, that is after this House has asked it to think again. That is a better analogy than the analogy of a Finance Bill. This statutory instrument comes under welfare legislation, not a Finance Bill.

6.15 pm

Lord Butler of Brockwell: Surely there is an analogy with Finance Bills. They come to your Lordships' House but we pass them without amendment because that is the constitutional convention, and that is similar to what we are being asked to do on this statutory instrument.

Baroness Hayman: I say to the noble Lord, Lord Butler, that the financial convention has not stayed absolutely the same for 300 years. The convention was that this House did nothing about the Finance Bill or, indeed, other economic measures. In 2000, we set up an Economic Affairs Committee. The House of Commons went into free-fall about encroachment on financial privilege. In fact, we were told that Gordon Brown, the Prime Minister at the time—I see the noble Lord, Lord Lisvane, nodding—was incandescent at the idea that there should be a sub-committee looking at the Finance Bill. However, those things happened and the world did not collapse. Financial privilege and the right of the Commons to have the final say was not impeded.

To my mind, this is a matter of very high and clear-cut politics, and of highly nuanced constitutional significance. Overall, I believe that the most important power of this House, while leaving the last word to the other place, is to ask it to think again, and I urge the House to use that power this evening.

Baroness Smith of Basildon: My Lords, this has been a quite extraordinary debate. It is unusual for your Lordships' House to find itself at the centre of such a ferocious policy and constitutional debate as it does today. It is also extraordinary and unusual that, on a matter that affects the Department for Work and Pensions and the Treasury, we have no Treasury or DWP Minister addressing your Lordships' House today. I can understand why: the Government feel more comfortable talking about constitutional issues in this regard than they do about the impact of this policy. We all understand that. Again, it was extraordinary that the noble Baroness the Leader of the House supported an amendment to her policy by supporting the right reverend Prelate's amendment. So there have been some quite extraordinary scenes and what we are seeing today is unprecedented. It is good to see the noble Earl, Lord Howe—

Baroness Stowell of Beeston: I thank the noble Baroness for giving way. It is important that she does so because she has incorrectly interpreted what I said. I was very clear that the Government do not support any amendment to their Motion. I said that the right reverend Prelate had brought forward his concerns in a way that was consistent with the conventions and the proper role of this House.

Baroness Smith of Basildon: I think that that is a bit of an angels-on-pinheads defence, but I take the point that she makes.

I suspect that when the noble Earl, Lord Howe, took on the role of defence Minister, he did not think that his job would be defending all government policies across the House, as he is being asked to do today.

We have been asked to approve the Government's tax credit order, and we are unable to do so. The reasons for that have been very carefully laid out. Our view is that these are pernicious regulations that do enormous damage. Overnight, at a sweep, they would dramatically cut the income of some of the poorest in society: those who are working hard and doing what the Government say is the "right thing". About 3 million people will be affected by these cuts. Like many other noble Lords, I have had emails and letters from those who are likely to be affected: from nurses, teachers, cleaners and firefighters—people working hard, trying to raise a family. They are terrified by what lies before them; they do not know how they are going to cope. The noble Baroness, Lady Campbell, echoed some of the emails that I have received when she talked about those who have disabilities being moved into work and finding it so much better for them.

When my noble friend Lady Hollis spoke to her amendment, the House was silent. We could have heard a pin drop as we listened to what these cuts will really mean and the impact that they will have on people across this country. I think that the House was shocked and upset by the information that she provided today. However, she also provided a way through.

The noble Lord, Lord Lawson, said that tax credits have increased to £30 billion. They have; that is part of their success. In almost equal measure, we have seen income support reduce as people went into work. Therefore, they were no longer on income support but were receiving tax credits—that was the success of the measure. Income support went down as people moved into work and received tax credits to reflect their circumstances and help them to work. We have always been told that the way out of poverty is work, and that is what those people on tax credits have done; they have moved into work.

[Baroness Smith of Basildon]

It may be that some people cannot imagine what it is like to lose £25 or £30 a week from their income. For a lot of people out there, the loss of that £25 or £30 a week—in some cases much more—would be devastating. It would mean not putting in the money for heating this winter when it gets colder; it would mean not getting the kids new school shoes; it would mean making the kinds of choices that we should never place on families.

This is a highly contentious area, but it is the policy that is important. Having said that, there are conventional and constitutional issues, which noble Lords have raised, that have given some concern. It would, as we have heard, normally be expected for a measure of this nature and magnitude to be introduced by primary legislation. Thus, a government Bill would go through all the stages that such a Bill goes through and there would be the opportunity to debate it, put amendments to it and vote on those amendments. There would be opportunity to make revisions and to listen to the concerns that were raised. One has to wonder why the Government did not take that route. They could have applied financial privilege, which would have stopped all this, but they have chosen to deal with this measure through a statutory instrument.

Baroness Butler-Sloss (CB): I am sorry to interrupt the noble Baroness, but we did hear from the noble and learned Lord, Lord Mackay, that this came about as a result of the secondary legislation from the tax credits legislation introduced by her Government. As a result of which, this is a natural progression from that legislation. Therefore, perhaps the noble Baroness could explain why that was wrong.

Baroness Smith of Basildon: I can certainly help. In 2002, the legislation that went through that allowed for amendments to tax credits legislation to be made by statutory instruments or delegated legislation was so that normal uprating, for example, could be applied. It was for minor changes and normal uprating. However, major policy changes would not normally be made by these kinds of regulations. Furthermore, as I said earlier in my intervention on the noble Lord, Lord Lawson, the legislation in 2002 was not itself subject to financial privilege. But now we have a Government saying that the secondary legislation that follows on from that should be subject to financial privilege. I hope that that addresses the concerns that the noble and learned Baroness has raised. I give way to the noble Baroness yet again.

Baroness Stowell of Beeston: An important point for the House to understand is that the original Bill—the Tax Credits Act 2002—was not certified as a money Bill because it included changes to the administration of the welfare system. Had it just been about the financial measures that we are debating, it would probably have been certified as a money Bill. It was the addition of administration that caused it not to be certified as a money Bill.

Baroness Hollis of Heigham: My Lords, I took those two Bills through this House. I can tell the Minister that such considerations never arose.

Baroness Stowell of Beeston: They would not, because certification of a Bill is done by the Speaker.

Baroness Smith of Basildon: In some ways, the Minister makes my point for me. Major issues and changes such as this are undertaken in primary legislation—a case she made for what happened in 2002. It is unusual to make such major changes in secondary legislation. But let us leave that to one side, if we may.

Anybody in the real world listening to us talk today would wonder what on earth we are on about—primary legislation, secondary legislation, delegated legislation, affirmatives and negatives. What really matters is the impact it has and applying a common-sense approach to what is before us today. We know, as parliamentarians, that SIs are more normally used for that specific detail of legislation that we have passed already or for issues following primary legislation where the principle has already been approved into law. As I have said, they can be very properly used for normal uprating in tax credits, and I made the point about 2002 to the noble and learned Lord, Lord Mackay.

The proposal before us today goes way beyond that normal kind of uprating. It is a major policy change that, in the first place, the Government promised not to do. The route that the Government have chosen is not illegal or the wrong route, but there are consequences of taking it. If the Government try to truncate the process, so as not to have that full consideration in the House of Lords, yet at the same time allow this House, through the normal constitutional procedures of your Lordships' House, to debate and discuss the proposal and the kinds of amendments that we have before us today, it is quite clear that the amendment from my noble friend Lady Hollis is not a fatal amendment, whatever the Minister and her colleagues may think. She has had advice from the clerks and has made numerous references. It is no good the Leader shaking her head at me; the evidence is there and it is very clear cut.

If the Government had gone down the normal route, they would have claimed financial privilege and we would not be here today, and there would have been further debates in the House of Commons. MPs from across the House privately, and now publicly, admit that this goes too far, too quickly and causes too much harm.

The amendment in the name of my noble friend Lady Hollis is what I refer to as the common-sense, practical approach. It can really make a difference and is in line with what most people in this country are asking for: 60% of the population today are reported to want to see a U-turn or change in this policy. That is what my noble friend is seeking to do. Her amendment calls on the House to reject these proposals as they stand and for Ministers to come back with a proposed scheme to protect those already getting tax credits for at least three years—that is all of them.

If the amendment is passed, what happens next? The onus is then on the Government to take the proposals away and reconsider. The Government can bring forward new proposals for consideration. The policy would not, as the noble Lord, Lord Butler, intimated, disappear into the ether—that is a matter

for the Government. If they are committed to doing something, the Government can bring new proposals to your Lordships' House or choose to bring forward new primary legislation. However, if they failed to bring anything back at all, it would mean that they could not proceed with these cuts, would have to look for another route and would have to reconsider their policy. No Government ever have the wisdom such that they are right all the time. This House is right to ask the other place and the Government to reconsider, to pause and to try to get it right.

Lord Butler of Brockwell: But it is a blocking amendment. Nobody can compel the Government to do what the amendment says, and if the Government do not, the House of Lords would be refusing to consider this Motion indefinitely.

6.30 pm

Baroness Smith of Basildon: The noble Lord, Lord Butler, seems to be under the impression that, contrary to what the Leader said, the Government want to do nothing. The Government would have us believe, from what they have hinted at, that they are happy to look at things again. Therefore, I do not accept his argument on that. What is clear, though, is that passing the amendment of my noble friend Lady Hollis would force the Government to look at this again. We would have a commitment, a promise: they would have to look at this issue again and say where they could make significant changes to protect those who are currently terrified of the letters they will get at Christmas outlining the cuts to expect in their income.

We have been very clear: this is not a fatal amendment; it does not totally block the Government's plans; it allows them to reconsider. Although we do not have the right to pass a fatal amendment, we have a moral and constitutional duty to scrutinise, examine and challenge and, when a Government have clearly got it wrong, to ask them to think again. The noble Lord, Lord Cormack, and I were sparring partners at a distance on Radio 4 today, but even those voting with the Government tonight are saying, "But I've got great concerns about the policy; I want to see change". The noble Baroness needs to know, if her troops follow her into the Lobby today, that they are doing so because she has tried to make a constitutional issue out of this, not because they agree with the tax credit cuts. We could give the Chancellor of the Exchequer tonight an opportunity to address the very deep concerns expressed by Peers and Members of Parliament of all parties, including very senior members of her own party and colleagues on the Benches behind her.

I want to explain why these Benches have not put forward a straightforward fatal Motion like the one tabled by the Liberal Democrats at the behest of their party leader, Tim Farron. In policy terms, there is little between us on this issue. It is significant that the fatal Motion was tabled only after the Government had threatened retaliation if your Lordships' House voted against the cuts. That escalated the constitutional issues and let the Government off the hook a bit, because they were more willing to talk about constitutional issues than about the impact of these cuts. The really important task before us today is to look at how we can protect people from what the Government have proposed, and I regret that the fatal Motion has allowed the focus to go off the issue and on to the constitution. My further concern is that the Government, having won a vote in the Commons, would quickly return with new primary legislation with very little change, if any, to avoid consideration by your Lordships' House.

We believe that our Motion is the only one that can lead to meaningful change. It gives Ministers the opportunity to take a step back and listen properly to the clamour of voices calling for them to think again. That is the right role for your Lordships' House to take. Those voices are clamouring not just here in Parliament; it is also the Children's Society, think tanks such as the IFS, the IEA and the Adam Smith Institute, and newspapers such as the *Sun* that would normally support this Government.

We have heard the arguments about whether this oversteps our constitutional authority. It does not.

Lord Forsyth of Drumlean: Can the noble Baroness tell us exactly how much the proposal of the noble Baroness, Lady Hollis, would cost?

Baroness Smith of Basildon: My noble friend Lady Hollis is very keen to tell the noble Lord.

Baroness Hollis of Heigham: Yes, my Lords. I had hoped that the noble Lord, Lord Forsyth, in his courteous way, would have heard my argument that the savings would come to the Government automatically; first, by the rise in the living wage, of which three-quarters of a billion pounds each and every year accrues back to the Government; secondly, by the fact that new claimants to tax credits are not covered by our amendment; and thirdly, because the National Audit Office says that, by 2019, more than 90% of those on tax credits will be on universal credit, where they will have their cuts. Over the entire Parliament, the Government will have matching savings that probably exceed the very cuts that they demand.

Baroness Smith of Basildon: My Lords, the point made by my noble friend is that this is a choice for the Government, not a necessity. What we have seen in the last week has enlightened all of us on the Government's reluctance to accept challenge or proper scrutiny. There is no constitutional crisis looming at all. The Prime Minister has provoked a rather phoney constitutional crisis in this House rather than dealing with the very serious problems with his and the Chancellor's tax credit policy. In the last Labour Government, we lost many dozens of votes here in the House of Lords on a range of issues, including one on 42 days' detention, and one on the entire Second Reading of a Bill. Of course we did not like it, but we accepted it and moved on. At no point in this Session of Parliament have this Official Opposition not accepted the right of the Government to get their legislation through, but they have to do so properly, and they do not have a monopoly on getting things right all the time. In this case, we really believe that the Government have it wrong.

[Baroness Smith of Basildon]

The threats that have been made to the House of Lords as an institution have been nothing less than parliamentary bullying.

Noble Lords: Hear, hear!

Baroness Smith of Basildon: Threats to suspend the House of Lords; to pack it with 150 new Tory Peers, or to "clip our wings" do nothing to address the issues that are before us and have given rise to concerns. There is a need for true reform of your Lordships' House and Labour Peers have already suggested good measures, but those threats have nothing to do with reform and everything to do with the Government not wanting to be challenged and not being willing to think again.

This is a common-sense way to do things. This House looks at the issues; considers them and thinks the Government have got them wrong; so let us send them back to the Government and urge them to rethink and come back with something that is significantly better and does not really harm, and create enormous fear in, those people in work who are struggling to make ends meet and are terrified of the letters that are going to come through their letterboxes near Christmas. We will not exceed our authority, but neither will we be cowed into abdicating our responsibilities to hold the Government to account and act in the public interest.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, the privilege falls to me, as Deputy Leader, of winding up this debate, which has proved to be a remarkable one. In many ways, it has been a landmark in the proceedings of the House. We have been treated to some extremely powerful contributions, both for and against the draft regulations, and both for and against the amendments that have been tabled. I listened with care to them all. I suggest to your Lordships that there are, in essence, two aspects of the matter that we are here to consider: the content of the regulations themselves and the issues which, for want of a better term, I will call the constitutional questions that arise out of three of the amendments before us.

Turning first to the policy issues, without unnecessarily going over the ground already covered by my noble friend the Leader of the House, there is one central point to be made at the outset. I make this point given that a number of noble Lords have seen fit to criticise both the intent and the effect of what the Government are seeking to achieve. The Government want a new deal for working people: a deal whereby those who claim either tax credits or universal credit will always be better off in work and always be better off working more. The way in which we are doing this will mean that a typical family man or woman, working full-time on the national living wage, will be substantially better off by the end of this Parliament than at the beginning of it. That is the aim that we have set ourselves and it is an aim that runs parallel with our policy intent, which we have made expressly clear for nearly two years now: that a Conservative Government, if and when elected, would look to find welfare savings of around £12 billion in order to reduce the public sector deficit. I simply say to the noble Baroness, Lady Hollis, that the proposals that she has very constructively put forward are already built into the assumptions that we made. I am happy to look at her proposals in more detail but, from what she said, the Chancellor has already factored those points in.

Achieving those two policies simultaneously is possible only if a series of measures is taken—measures that will move us from a position in which working households are supported by low wages and high tax credits to one where there are higher wages and lower tax credits. The regulations that are before us today are about only the tax credit element of that overall picture. That is why it is unfair to pick up the report from the Institute of Fiscal Studies and point with alarm to large losses that a poorer working family might incur from cuts in tax credits without also taking into account other vitally important things that we are doing. The counterbalance to lower tax credits is a combination of positives—the national living wage, the rise in the income tax personal allowance and, importantly—

Baroness Meacher: The analysis of the Institute for Fiscal Studies is very clear in incorporating the effects not only of the tax credit changes but of the rise in the minimum wage, the move to the national living wage and the increase in the income tax and higher-rate tax thresholds. It makes very clear the redistributional effects of all these things from the poor to the rich.

Earl Howe: I do not dispute that the Institute for Fiscal Studies has looked at these things, but the figure of £1,300 that has been quoted is one that does not take into account the positives that I mentioned. Importantly for families with children, the doubling of free childcare should not be overlooked. For many people, although not for all, that will make it possible to work longer hours. Those are just some of the counterbalances. The noble Baroness, Lady Manzoor, chose not to mention them.

I cannot pretend that these have been easy decisions. However, I put it to the House that the measures that we are taking are the right thing for us to be doing—right not only for individual working families but for the nation. We are still, as a nation, living grossly beyond our means. Even so, eight out of 10 working households will be better off by 2017-18 than they are now because of the combined effect of the measures that we are taking.

Baroness Manzoor: Will the noble Earl say where the evidence is to support that assertion about eight out of 10 households? That is partly the problem, because those sorts of impact assessments have not been done.

Earl Howe: The evidence was in the Budget analysis, which I am sure the noble Baroness has read—the distributional analysis that came out at the time of the Budget.

Lord McKenzie of Luton (Lab): My Lords, is the Minister saying that eight out of 10 people currently on tax credits and subject to these cuts are similarly to be better off?

Earl Howe: What I said was that eight out of 10 working families, whether or not on tax credits—

Noble Lords: Oh!

Earl Howe: Well, it is an important point to factor in because the creation of and rises in the national living wage will affect not just those on tax credits, but many millions of others paid above that level, in the so-called ripple effect that has been widely discussed.

Baroness Kramer: My Lords, for clarification, will the Minister focus on the two out of 10 whom he says are losers and tell us how many people those are? How many children are in those families and what is their loss likely to be? We are talking about something close on 1 million people, largely families with children. I think that he will be able to confirm that they are in the lowest deciles of the population in terms of poverty.

Earl Howe: Let me address that. It has been said by some noble Lords, and the noble Baroness's question implies it, that the brunt of these savings will be borne by those on tax credits who are relatively worse off. That is not the case. The 10% of tax credit claimants on the highest incomes—incidentally, those on £42,000 on average—contribute nearly four times as much to the savings that we are proposing as the poorest claimants. That is an important point to factor in. The problem with talking about those at the lower end of the scale is that everyone's circumstances are different. Some people have children and some do not. Some have a disability and some do not. Some work shorter hours, some work longer hours. It is very difficult to particularise.

I can say that the cut in public spending that we propose through this regulation is one that will take us back not to some far-distant point in the past, but to the levels of spending seen in 2007-08 before the financial crash. I am talking of course about the spending position in its totality. One cannot particularise, as I said, to an individual case because people's circumstances will be different.

Lord Purvis of Tweed: The Deputy Leader is giving a defence of the Government's position that does not give much of an indication that the Government are prepared to think again, as some Members on the opposite Benches have indicated. Before he came to the House today, I wonder if he had spoken to the leader of his party in Scotland, Ruth Davidson. She said over the weekend:

"If we're not the party of getting people into work and making it easier for them to get up the tree, then what are we there for? It's not acceptable. The aim is sound, but we can't have people suffering on the way. The idea that there's a cliff edge in April before the uptake in wages comes in is a real practical human problem and the Government needs to look again at it".

Will they?

6.45 pm

Earl Howe: The trouble with comments like that is that they fail to take account, very often, of the things that I mentioned such as the national living wage.

Lord Purvis of Tweed: Maybe I was not entirely clear. That was the leader of the noble Earl's party in Scotland.

Earl Howe: Look, I cannot take those comments in any sort of context, having not read them. Of course, I accept what the noble Lord has reported about the leader of the Conservative Party in Scotland, but I am not aware of the general context in which she was speaking and I hope he will understand that.

Lord Spicer (Con): Will the noble Earl say how these figures compare with the budget for the nation's entire defence spending, which he deals with in his day job?

Earl Howe: The regulations before us account for £4.4 billion of public expenditure in the next financial year. That is a large slice of the defence budget, but it is not the total defence budget. It will however mean that the Chancellor has more money at his disposal to spend on schools, hospitals and those with disabilities. Incidentally, I say to the most reverend Primate the Archbishop of York that the national living wage is possible only because the economy of this country is strengthening, and it is strengthening because there is a high degree of confidence in the Government's economic programme and their ability to deliver economic stability by, among other things, reducing the deficit. One has to look at the totality of what the Chancellor's programme consists of.

The Archbishop of York: The Living Wage Commission, which I chair, was working in conditions when the economic climate was not very good. We were very clear that those companies that can afford to pay should pay a living wage. The noble Earl will be interested to know that, even before the economy started improving, a lot of companies acted out of an ethical conviction about their workers. As Churchill said here 100 years ago, the greatest evil is that some of Her Majesty's people are not being paid a living wage. Those companies actually took on the need to pay a living wage and were doing so even when the economic climate was very poor. Of course, I agree that the economy has improved, but if it has improved, why are we not helping the poorest who need us most?

Earl Howe: We are doing so. We are doing so through the national living wage. We should welcome the fact that these companies are already paying the national living wage. There are 200 major companies already doing so. That is a very good thing. I congratulate the most reverend Primate on the work that he has done in this area. I do not think there is anything much between us on this, as a matter of fact.

The Archbishop of York: Sorry—this is about the impression that was being given. I am suggesting that the Chancellor of Exchequer actually may meet the £4.2 billion that he wants to cut in tax credits through the living wage, because the report actually shows that if the 5 million are being paid a living wage, it is more likely that less tax credit would have to be taken off. My worry relates to the people who are going to suffer. That is what my speech was all about.

Earl Howe: Interestingly, the Institute for Fiscal Studies said in terms in its report that the Chancellor made quite a big choice in the Budget to protect some

[Earl Howe]
of the poorest people on tax credits. That is self-evidently true. I would add in response to the noble Baroness, Lady Campbell of Surbiton, who I am sorry is not in her place—oh, she is, I beg her pardon—that the disabled and severely disabled elements of working tax credit will not be cut through these measures. They will be uprated by inflation. In fact, the Government are making savings in tax credits, so that they can protect disability benefits which have been protected from the benefits freeze and the welfare cap, including DLA and the support group component of ESA, as well as disability elements of the tax credits, as I have mentioned. I hope that that is of some reassurance to her.

Despite all that I have said about why what we are doing is both necessary and right, I recognise that there are noble Lords opposite who will remain unpersuaded. Let me therefore address the amendments. Other than in the rarest of circumstances, it is against the long-standing conventions of this House—and, therefore, I would suggest wrong—for us to vote down or block secondary legislation. Those rare circumstances, I would argue, do not include this situation, in which noble Lords are seeking to challenge the House of Commons on a matter of public spending and taxation, a point made very effectively by the noble Lord, Lord Butler. The sums involved are not trivial. The regulations before us, as I said, would account for welfare savings of £4.4 billion in 2016-17. We can argue—as I am actually quite interested in doing, but I do not think it would be profitable—about the technicality of whether these regulations are or are not financial, but in substance they are very definitely and very obviously financial. I therefore say to the noble Baroness, Lady Manzoor, that her fatally worded amendment should not be put to a vote.

On the amendments tabled by the noble Baronesses, Lady Meacher and Lady Hollis, the situation, I contend, is simple. There is a choice before this House to approve or not to approve these regulations. It is a binary choice. The noble Baronesses are inviting the House to withhold our approval. We can argue endlessly once again about the technicality of whether the wording of these amendments is or is not fatal in nature. But the reality is that if either amendment is passed, this House will not have approved these regulations. It is no good saying that this would merely amount to asking the House of Commons to think again. They can do that with Lords' amendments to primary legislation, but with secondary legislation there is no mechanism for a dialogue between the Houses and no mechanism to allow the will of the Commons to prevail in respect of this instrument—

Baroness Smith of Basildon: I sense the noble Lord is coming to a conclusion. Does he accept that the amendment of the noble Baroness, Lady Hollis, does not ask the House of Commons to think again; it asks the Government to reconsider their proposals and think about new ones? It is asking the Government to reconsider.

Earl Howe: Of course, I do accept that. The amendment of the noble Baroness is expressly asking the Government to do something other than what is in the regulations. By definition, that means that if her amendment were carried, we could not bring back the same set of proposals. The implementation of these regulations would not be delayed, as the noble Baroness is suggesting; it would be thwarted entirely. So, she is asking the House to accept a false proposition. It is very interesting that the noble Baroness herself has recently given an interview which certainly implied that the amendment of the noble Baroness, Lady Hollis, is a fatal one. In the interview she gave to the *Huffington Post*, she said that if the amendment of the noble Baroness is carried, the Government cannot go ahead with the cuts. Well, that, to me, is very fatal indeed. Therefore—

Lord Grocott: I am really quite surprised at the noble Earl, given all his experience and the respect in which he is held in this House. He seems to be suggesting that there is no significant difference between a fatal amendment and a non-fatal amendment. In the time I have been here, which is less than his, there has always been a clear distinction between the two—"binary" is the word he used in another context. Indeed, the Leader of the House seemed to be unclear in her opening remarks about the distinction between the Lib Dem amendment and the Labour amendment, but the difference is surely fundamental. If he does not accept my proposition, could he at least enlighten the House as to the professional advice from clerks to him and the Conservative Front Bench about which of these amendments are fatal and which are not.

Earl Howe: There is a clear difference in the wording—that is unarguable—but the effect is exactly the same. That is the point I am making.

Baroness Symons of Vernham Dean: I beg the noble Earl's pardon. I have the greatest respect for him, but in her speech my noble friend Lady Hollis said explicitly that she had drafted her amendment with the help of the Clerk of the Parliaments, and the Clerk of the Parliaments said that it is not a fatal amendment. Is the noble Earl challenging that?

Earl Howe: I cannot gainsay the Clerk of the Parliaments; heaven forbid if I did that. Perhaps what was meant was that the wording of the amendment in the name of the noble Baroness, Lady Hollis, is not of a kind that one associates with a fatal amendment. Nevertheless—

Noble Lords: Oh!

Earl Howe: —the traditionally worded fatal amendment is that in the name of the noble Baroness, Lady Manzoor. I am sure that the noble Baroness, Lady Hollis, got good advice—the best advice there is—but what we are looking at is what would happen if her amendment were carried. I am saying that it would frustrate the Government's intent.

Baroness O'Loan: Does the Minister think that it would be impossible, if either of these two amendments were passed, for the Government to bring back regulations in the form of a statutory instrument to this House?

Earl Howe: The problem is that the amendment in the name of the noble Baroness, Lady Hollis, holds the Government hostage. It holds them to ransom. We might be able to bring back some different regulations, but what if those were unacceptable to the House? Let us read the wording of the amendment. It puts us on a perpetual treadmill.

Baroness Meacher: There is a very important distinction between the amendment in the name of the noble Baroness, Lady Hollis, and my amendment. The crucial point about the amendment I have tabled, which is also not a fatal amendment, is that all it asks for is some time and some information. That is a very different thing from asking the Government to spend money on transitional arrangements. I have put down the amendment for only one reason, and that is because the House of Commons has a cross-party Motion on Thursday which they wish to and will debate. It has on it the names of eight Conservative MPs, including those of former Cabinet Ministers. Does the Minister accept that to give the Government time to listen to the Commons is an entirely appropriate duty for this House to perform?

7 pm

Earl Howe: I understand what the noble Baroness is seeking to achieve here, but the fact is that the House of Commons has looked at this three times and has not overturned the proposals. In fact, it has approved them. I would simply say to the noble Baroness that if we are talking about the advice given by the Clerk of the Parliaments, there is a crucial difference between an amendment that it is procedurally permissible to bring before the House, and one which it is constitutionally proper for the House to approve. I do not take issue with the noble Baroness, Lady Meacher, or the noble Baroness, Lady Hollis, bringing forward their amendments. What I do take issue with is the idea that we should vote in favour of either of them, or indeed in favour of the amendment in the name of the noble Baroness, Lady Manzoor.

I need to conclude. For the House to withhold its consent to the regulations today would, in my submission, mean overruling the House of Commons on an issue which that House has already expressed its view on three times. In other words, it would mean doing what this House has not done for more than 100 years, which is to seek to override the primacy of the House of Commons on a financial matter. So I say respectfully to the noble Baronesses, Lady Manzoor, Lady Hollis and Lady Meacher, that there is a right way and a wrong way to challenge government policy on a matter of this kind. This is the wrong way. The right way is to table an amendment such as the one in the name of the right reverend Prelate—not that I support it, but that is the proper way of doing it—or at a suitable opportunity to table an amendment to primary legislation. Indeed, a Bill is coming to us shortly, the Welfare Reform and Work Bill, which would enable noble Lords to do exactly that, should they so choose.

My contention is this. The measures in these regulations form a central plank of the programme on which the Government were elected to office in May. It is a programme that has been in the public domain for a long time. However, even if it was not and even if these were policies dreamt up by the Chancellor overnight, I respectfully say to your Lordships that this House, under its conventions, should not reject statutory instruments or seek to overturn the primacy of the other place on a matter of very sizeable public expenditure. I therefore invite the sponsors of each of the amendments to withdraw them, and I urge the House to allow the regulations to pass. Moreover, I simply remind the House that in order to support the amendment in the name of the right reverend Prelate, the preceding three amendments need either to be withdrawn or defeated.

Baroness Manzoor: My Lords, I thank everyone who has contributed to this debate. Noble Lords will be relieved to hear that I do not intend to summarise the excellent contributions that have been made from all sides of the House. As your Lordships know, I am a relatively new Member, and for me it is a privilege to serve as a Member of this House. But with that privilege comes responsibility.

Tabling this Motion was not something I did lightly. I do not discount the strength of feeling on the role of the House and I do not believe that this is a situation in which the House should find itself regularly. However, ultimately this is about the House making a decision on whether we think it is acceptable for the Government to cut off vital support for 3 million families which they claim to support. It is about whether we think it is acceptable for the Prime Minister to make these changes not via primary legislation, but by a procedural instrument—in direct contradiction of what he said to people during the general election. It is about whether we think it is acceptable for this House to relinquish its responsibilities to those affected.

I welcome the Leader of the House saying that the Chancellor will be listening to this debate—and I hope also to the country—very carefully. But I could not look myself in the eye tomorrow if I had not done all I could to stop this devastating measure going through. I know that many in my party feel the same, and while I hold no ill will against anyone who does not share our view, I hope that those who agree that the lives of the 4.9 million children who will be affected should be our primary concern will join us in the Division Lobby. Tax credit cuts for low-paid working families are short-sighted and deeply damaging, not only to the parents and children who will bear the cost, but to the Government's own long-term goals. I urge the Government to rethink, and I hope the House will choose to reject the regulations as they stand. I wish to test the opinion of the House.

7.04 pm

Division on Baroness Manzoor's amendment.

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Baroness Manzoor's amendment disagreed.

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7.20 pm

Amendment to the Motion

Moved by ***Baroness Meacher***

As an amendment to the Motion in the name of the Lord Privy Seal, to leave out all the words after "that" and insert "this House declines to consider the draft regulations laid before the House on 7 September until the Government lay a report before the House, detailing their response to the analysis of the draft regulations by the Institute for Fiscal Studies, and considering possible mitigating action."

Baroness Meacher: My Lords, you will be glad to know I will speak extremely briefly. I thank many noble Lords for setting out so clearly the consequence of these regulations for vulnerable people and the need for the Government to come forward with mitigating measures. My amendment to defer consideration pending a report, nothing more—no money, nothing unusual—raises no constitutional issues. The evidence is absolutely clear on this from our clerks and from many authorities. I ask the House to perform its duty: to enable the Government to think again and to ensure that they listen to the elected House next Thursday. I want to test the opinion of the House.

The Lord Speaker: My Lords, before I put the Question, I should inform the House that, if this amendment is agreed to, I cannot call the amendment in the name of the right reverend Prelate the Bishop of Portsmouth by reason of pre-emption.

7.22 pm

Division on Baroness Meacher's amendment

Contents 307; Not-Contents 277.

Baroness Meacher's amendment agreed.

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Trevethin and Oaksey, L.
Trimble, L.
True, L.
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7.39 pm

Amendment to the Motion

Moved by ***Baroness Hollis of Heigham***

As an amendment to the motion in the name of the Lord Privy Seal, to leave out all the words after "that" and insert "this House declines to consider the draft Regulations laid before the House on 7 September until the Government, (1) following consultation have reported to Parliament a scheme for full transitional protection for a minimum of three years for all low-income families and individuals currently receiving tax credits before 5 April 2016, such transitional protection to be renewable after three years with parliamentary approval, and (2) have laid a report before the House, detailing their response to the analysis of the draft Regulations by the Institute for Fiscal Studies, and considering possible mitigating action."

Baroness Hollis of Heigham: My Lords, we have had the arguments. I wish to test the opinion of the House.

7.40 pm

Division on Baroness Hollis of Heigham's amendment

Contents 289; Not-Contents 272.

Baroness Hollis of Heigham's amendment agreed.

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Bakewell of Hardington Mandeville, B.
Barker, B.
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Hay of Ballyore, L.
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Henig, B.
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Motion, as amended, agreed.

Bank of England and Financial Services Bill [HL]

Second Reading

7.57 pm

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

That the Bill be now read a second time.

The Parliamentary Secretary, Cabinet Office (Lord Bridges of Headley) (Con): My Lords, it is now over seven years since the height of the financial crisis. In that time, many steps have been taken not simply to repair the damage done but to reform the entire financial sector. The regulatory system and regulatory standards are now vastly different from those which existed before the crisis—and rightly so. Those reforms, many of which were enacted by the last coalition Government, bear the imprint of a number of your Lordships. I would like to thank in particular noble Lords who

[LORD BRIDGES OF HEADLEY]
were part of the Parliamentary Commission on Banking Standards. Although I cannot claim the considerable expertise that many of your Lordships have on financial matters, I have worked for two banks—HSBC and, more recently, Banco Santander. I mention this not just for the record but to say that, from that vantage point, I have seen the painstaking efforts your Lordships take to ensure that we fully address the failings of the previous regulatory regime, doing so in a robust but proportionate way.

Today our financial services are far more resilient than they were seven years ago. The Chancellor has talked of the British dilemma of being a host for global finance without exposing taxpayers to the costs of financial failures. We have made real progress in tackling this dilemma, but it would be hubristic to say that this is job done. Even if memories of what happened in 2008 may begin to fade, we must never forget the lessons that that crisis taught us. Eternal vigilance is required—but this should not be mistaken for ever more regulation. We must never fall victim to the belief that we can somehow magically regulate risk out of the system. Nor should we try to do so: risk and innovation are two sides of the same coin. Our challenge is to get the balance right—to deliver stability and protect taxpayers, while allowing free markets, enterprise and innovation to flourish.

This is the backcloth to the Bill, which seeks to implement a series of evolutionary changes to the regulatory system as part of this Government's commitment to deliver a new settlement for financial services. There are four main elements to this.

First, the Bill will strengthen the governance, transparency and accountability of the Bank of England, as well as updating resolution planning and crisis management arrangements between the Bank and the Treasury. Secondly, it will extend the senior managers and certification regime across the whole financial services industry to increase the accountability of the sector and will build a new duty of responsibility into the regime, ahead of its introduction next year. Thirdly, it extends the scope of the Pension Wise guidance service. Finally, it makes technical changes to the Scottish and Northern Irish banknote issuance regime to allow new issuers to be authorised in place of an existing issuer to facilitate group restructuring.

I turn first to the measures which will strengthen the governance and accountability of the Bank of England. As noble Lords will be aware, the Bank was established in 1694 to finance the War of the Grand Alliance against France. At that time, the 24 directors of the Bank were each required to hold £2,000 of Bank stock. The first matter the new court discussed was "the method of giving receipts for cash". At its third meeting, the court appointed the first officials of the Bank; there were only 19, including two doorkeepers. The new court also made a number of other important decisions, including appointing a committee to inspect the cash, and recommending that the cashiers should be "fenced in to keep off people from disturbing them". Scroll forward to the 20th century and much had changed, but even in the interwar years the long-serving executive director of the Bank, Sir Otto Niemeyer, observed, "When the Permanent Secretary of the Treasury visited the Bank of England … he took a taxi because he was not quite sure where the Bank was".

It is fair to say that both the role of the Bank and its governance have seen some changes in the intervening years. From a macroeconomic perspective, some of the most important developments have been in the recent past. In 1997 the Bank was given operational responsibility for monetary policy. During the last Parliament, the Government put the Bank at the centre of a fundamentally reformed regulatory architecture, giving it significant new responsibilities and the powers it needs to deliver its financial stability mandate. The Bank is tasked with delivering monetary and financial stability, and as such plays a critical role in maintaining the stable macroeconomic conditions that are a prerequisite for delivering the Government's long-term economic plan. It is vital, therefore, that the structure and governance of the Bank put it on the best possible footing to fulfil its critical role in supporting UK economic stability.

The Bank itself recognises this need. Through its "One Mission. One Bank" strategic plan and its 2014 publication *Transparency and Accountability at the Bank of England*, the Bank has set out a series of changes to reinforce its transparency, accountability and governance and contribute to its strategic objective of operating as a single, integrated institution. The Bill brings forward a set of evolutionary changes that are complementary to the steps the Bank itself is taking. The key measures that I would like to highlight are as follows.

First, the Bill will strengthen the role and governance of the court, including by implementing the recommendation of the Parliamentary Commission on Banking Standards to remove the Oversight Committee and transferring its functions to the court. This will complete the job to enable the court to act as a modern unitary board, with performance overseen by the executive and non-executive together. Next, the Bill will end the Prudential Regulation Authority's status as a subsidiary of the Bank, integrating microprudential supervision more fully into the Bank. The PRA board will be replaced by a new Prudential Regulatory Committee, modelled on the Monetary Policy Committee and Financial Policy Committee, with sole responsibility within the Bank for the PRA's functions. These changes will support the Governor's strategy,

"to conduct supervision as an integrated part of the central bank and not as a standalone supervisory agency that happens to be attached to a central bank".

The Government also recognise that the PRA's strong brand and operational independence need to be protected, and that transparency around the use of the PRA levy activities must be maintained. The Bill will therefore ensure that supervision continues to operate with appropriate independence and adequate resources, and the statutory objectives of the PRA, which underpin its forward-looking, judgment-based approach to supervision, will remain unchanged. In line with the approach taken to the MPC and FPC, the Bill will provide for a new remit letter from the Government to the PRC, to highlight those aspects of government economic policy that are most relevant to the PRC's duties.

Turning to the Monetary Policy Committee, the Bill includes provisions to move the MPC to a schedule of at least eight meetings a year and updates requirements for the timing of MPC publications, implementing the remaining recommendation of the Warsh review, *Transparency and the Bank of England's Monetary Policy Committee*, published in 2014. The Bill also includes a set of measures to strengthen and harmonise the legislative underpinnings of the Bank's three policy committees; the MPC, the FPC and the proposed PRC. As part of these changes, the Bill will harmonise the provisions around conflicts of interest for the MPC, FPC and new Prudential Regulation Committee and put in place a requirement for each committee to publish a code of practice detailing how potential conflicts of interest will be managed.

Next, the Bill will give the National Audit Office the power to launch value-for-money studies across all parts of the Bank, thereby bringing the whole Bank within the purview of the NAO for the first time. This is a significant strengthening of the accountability of the Bank to the public and to Parliament. The Bill implements this important change in a way that protects the independence of the Bank's policy-making functions. Alongside these changes to the Bank's governance and accountability, the Bill builds on the existing arrangements and the strong working relationship between the Bank and the Treasury by updating the formal framework for how the Bank and the Treasury should engage with each other on the public fund risks and the financial stability risks of firm failure. These changes improve co-ordination while maintaining the existing clear and separate roles of the Bank and the Treasury in the event of a crisis. It is essential that both the Government and the Bank are in the best possible position to respond to a financial crisis. This will be supported by these measures. These measures concerning the Bank of England form one part of the Bill.

I turn next to the changes that we propose to make to extend the principle of personal responsibility to all sectors of the financial services industry. As noble Lords will be aware, following the report of the Parliamentary Commission on Banking Standards in 2013, we legislated for a senior managers and certification regime to replace the discredited approved persons regime. At the moment, this new regime, which is due to come into force in March 2016, would apply to banks, building societies, credit unions and PRA-regulated investment firms, but not to any other authorised financial services firms. The new regime consists of three key components. The first is regulatory pre-approval of senior managers at the top of the firm. The second is certification by the firm of other key individuals as fit and proper, both at hiring and annually thereafter. Thirdly, the regulators will be able to make rules of conduct for senior managers, certified persons and other employees.

The Government now propose to extend the senior managers and certification regime to all sectors of the financial services industry, replacing the approved persons regime, so as to have a single approach for the entire sector. In 2014 former members of the PCBS called for the regime to be extended, as did the fair and effective markets review. This expansion will create a fairer, more consistent and rigorous regime for all sectors of the financial services industry, enhancing personal responsibility and accountability for senior managers as well as providing a more effective and proportionate means to raise standards of conduct of key staff more broadly, supported by robust enforcement powers for the regulators.

The Bill will also introduce a statutory duty of responsibility to be applied consistently to all senior managers across the financial services industry. This supersedes the "reverse burden of proof", which would, in the absence of legislative change, apply to banking sector firms when they become subject to the regime in March 2016. Under the statutory duty of responsibility, the same underlying obligation will remain on the individual to ensure that they take reasonable steps to prevent regulatory breaches in the areas of the firm for which they are responsible, but the burden will be on the regulators to prove that a senior manager has failed to do this.

A third part of the Bill extends the remit of the Pension Wise guidance service. As noble Lords will be aware, the Government are making fundamental changes to the pension system to allow people to access their pension pots flexibly without being hit with punitive tax rates. These reforms give people freedom and choice over how they spend their money. Following the decision to extend pension freedoms to those who already hold an annuity in 2017, the Bill will extend the scope of the Pension Wise guidance service, so that pensioners can access a free, impartial service to discuss their new options.

Finally, the Bill makes changes to the legislative framework governing the issuance of Scottish and Northern Ireland bank notes; it gives the Treasury power to make regulations authorising a bank in the same group as an existing issuer to issue banknotes in place of that issuer. This will increase the flexibility for banks to restructure their operations, while preserving the long-standing tradition of certain banks in Scotland and Northern Ireland issuing their own notes. This is a particular issue currently, as some banking groups will be adjusting their group structure in order to ring-fence their retail banking operations.

In summary, the Bill builds on previous reforms to financial regulation with a number of important measures that will contribute to the Government's commitment to deliver a new settlement for financial services. I am aware that a number of noble Lords have great experience and expertise in these matters, and my door is always open to meet them and discuss the measures in the Bill as it progresses through Committee. I look forward to hearing your Lordships' views. I beg to move.

8.10 pm

Lord Eatwell (Non-Afl): My Lords, I thank the noble Lord, Lord Bridges of Headley, for introducing the Bill, and welcome him to our debates on financial regulation.

For those of us who spent many hours in your Lordships' House examining, clause by clause, what were to become the Financial Services Act 2012 and the Financial Services (Banking Reform) Act 2013, achieving creative compromises with the then Minister, the noble Lord, Lord Deighton, and generally advancing

[LORD EATWELL]

the cause of effective regulation, this Bill makes depressing reading. That is not because of the proposals concerning the status of the PRA and consequential amendments, which are entirely sensible; nor because of the extension of the authorised persons regime to all authorised persons—in a seamless financial services industry that is obviously a sensible development. What is depressing is the Government's back-pedalling on the governance of the Bank of England, and their spineless surrender to industry lobbying on the issue of the burden of proof in the senior persons regime.

First, on governance of the Bank of England, noble Lords will recall that the Treasury Select Committee of another place recommended in its report on the accountability of the Bank of England, published in November 2011, that there be established a supervisory board, replacing the Court of the Bank. The supervisory board would have a wide-ranging oversight role, including ex-post reviews of the Bank's performance in prudential and monetary policy, and it should be provided with proper staff to perform that review function.

I remind the House why this proposal was made. First, it was argued that there was clear evidence of groupthink in the Bank during the financial crisis, and that it was important that there be appropriate challenge within Bank policy-making. Secondly, it was clear at the time that some of the groupthink emanated from an intellectually powerful and dominant Governor. While there is in this House the greatest respect for the noble Lord, Lord King, and, indeed, for Mr. Carney, we should all remember the maxim of Lord Keynes:

"It is astonishing what foolish things one can temporarily believe if one thinks too long alone, particularly in economics".

For both these reasons, the Treasury Select Committee and, I recall, almost all who spoke on the matter in this House, agreed that an independent review body of considerable weight and influence should be established. After all, as the Treasury Select Committee put it:

"The Bank is a democratically accountable institution and it is inevitable that Parliament will wish to express views and, on occasion, concerns about its decisions. Our recommendation that the new Supervisory Board have the authority to conduct retrospective reviews of the macro-prudential performance of the Bank should, if operating successfully, provide the tools for proper scrutiny".

So there is the third reason for the establishment of a supervisory board—that its reports will enable Parliament to do its job properly.

Noble Lords will recall that the Court of the Bank was hostile to the creation of a supervisory board, but instead proposed the establishment of the oversight committee, consisting entirely of non-executives who would perform the retrospective evaluations that the Treasury Select Committee felt were so necessary. Your Lordships' House accepted the proposal as a reasonable compromise. Now, without ever having had the chance to prove itself, the oversight committee is to be abolished, and its functions handed back to the Court of Directors, the very body the activities of which it was supposed to oversee. Of course, there is reference in Clause 4 to an oversight function being delegated to a small sub-committee of the court. However, as noble Lords will be aware, a sub-committee, however talented, is not the same as a full non-executive director committee.

The impact assessment performed by the Treasury argues—and the noble Lord echoed this argument—that abolishing the oversight committee will,

"bring the Bank's governance arrangements in line with normal best practice of a unitary board".

All I can say is that whoever wrote that has not had much experience of unitary boards of major companies. The oversight committee was never intended to replace the court, as the impact assessment also erroneously suggests; it was intended to be a powerful instrument of non-executive director review—an instrument that the financial crisis revealed to be desperately needed.

In Clause 5, we find that the Court of Directors is taken out of its policy-making role and replaced by an amorphous entity called "the Bank". The result is that Clause 9A of the Bank of England Act now reads: "The Bank must carry out and complete a review of the Bank's financial stability strategy before the end of each relevant period". That is typically called marking your own homework. The impact assessment says:

"Making the Bank responsible for setting the strategy … within the Bank … will ensure that Court is responsible for the running of the Bank and that the Bank's policy committees are responsible for making policy".

How do we know? We do not know. This Bill renders the governance structure of the Bank of England opaque and not fit for purpose. We do not know what "the Bank" is. Is it the court? If so, why the amendments? Is it the executive? Is it the governor? Where does authority really lie? We do not know.

Nor can any comfort be drawn from the section of the Bill on audit referred to by the noble Lord. Consider Clause 11. There we are told that:

"The Comptroller and Auditor General … may carry out examinations into the economy, efficiency and effectiveness with which the Bank has used its resources in discharging its functions".

However, it is also in Clause 11 that:

"An examination under this section is not to be concerned with the merits of the Bank's general policy in pursuing the Bank's objectives".

Moreover, Section 7E describes how the court may forbid the comptroller from proceeding with the examination if,

"the court of directors … is of the opinion that an examination under section 7D, or any part of it, is concerned with the merits of the Bank's general policy".

No wonder that Sir Amyas Morse who heads the National Audit Office—he is the Comptroller and Auditor-General—told the *Financial Times* on 15 October:

"The legislation proposed by the government includes a statement about my role. … However in departing from the existing legislative parameters governing my role it imposes unacceptable restrictions that, if enacted, would create an impression of increased public accountability without the reality".

An impression of increased public accountability without the reality—that is what we are being asked to endorse.

Now I turn to the other major retreat in this Bill—the reversal of the proposal from the Parliamentary Commission on Banking Standards that in the case of senior managers the burden of proof with respect to the performance of their roles should rest with the managers themselves. The noble Lord, Lord Newby,

the then government Minister, put the case clearly—what a shame he is not here this evening to enlighten us further. He said:

"The Parliamentary Commission on Banking Standards concluded that the current system for approving those in senior positions in banks—the approved persons regime—had failed … The commission's central recommendation in this area is for the creation of a senior persons regime applying to senior bankers. The regime for senior managers in banks will … reverse the burden of proof so that senior bankers will have to show that they did what was reasonable".—[*Official Report*, 15/10/13; col. 386.]

The most powerful speech in favour of the Government's proposal was made by the noble Lord, Lord Lawson, who made it clear that he had wearied of the excuses paraded by senior bankers before the commission, including, "It wasn't me; it was a collective board decision, so no individual is responsible," or "It wasn't me: I had no idea what the traders in my bank were doing; it was all them," or blaming the regulators or monetary policy or anyone but themselves. The noble Lord, Lord Lawson, concluded:

"The standards in the City of London should be the highest in the world. The whole thinking behind the commission on banking standards was that we wanted to clean up banking … Personal responsibility is not the whole of the solution, but personal responsibility of the senior management is a vital and necessary element".—[*Official Report*, 15/10/13; col. 398.]

I agree with the noble Lord, Lord Lawson.

So how is the Minister to explain Clause 22, which reverses the reversal? Can he explain in detail exactly why what was at the very heart of government policy two years ago is now to be abandoned before it has even been tried? Will the Minister also spell out in detail the rationale for ignoring the carefully considered arguments of the parliamentary commission?

Turning again to the Treasury's impact assessment, we read that the "duty of responsibility", as contained in the new Bill,

"will maintain the same tough underlying obligation on the individual to ensure that they take reasonable steps to prevent regulatory breaches".

These words were also echoed by the noble Lord in his introduction. If it is the same, why bother to amend it? Clause 22 is unnecessary; but if it is necessary then the "underlying obligation" cannot be the same. The Government cannot have it both ways. Which is it?

Fortunately, the impact assessment gives the game away. It tells us:

"One of the unintended consequences of the enforcing this obligation using a 'reverse burden of proof' has been that firms will have to incur greater costs than originally envisaged in preparing the documentation required by the regulators setting out the allocation of responsibilities in firms".

So there we have it: the Bill will result in less comprehensive documentation and hence less awareness of responsibilities and less detailed examination of the relationship between responsibility and risk. That is what the Treasury's own impact assessment says. Is that what we want? Less clear responsibility and less appreciation of risk? The requirement to fully document was not an unintended consequence. We knew that effective regulation of individual responsibility would cost more, and so it should when the failure to exercise individual responsibility imposes heavy costs on the community as a whole.

So for the—let us call us—regulatory old lags among us who worked late into the night to get regulation right, this is a seriously defective Bill. It must be amended.

8.23 pm

Lord Sharkey (LD): My Lords, this is a much shorter and simpler Bill than its two financial services predecessors, and I congratulate the noble Lord, Lord Bridges, on this welcome innovation, but, on the whole, it does not work to strengthen the regulatory framework put in place by those predecessors. On the contrary, and in very significant ways, it appears to weaken much of the work done in the past two Sessions.

There are four major areas of concern. The first is the abolition of the Bank's oversight committee alongside the reduction in the number of non-executive directors on the court. There is also the role of the National Audit Office, the change in the status of the PRA and the changes to the senior manager regime and, particularly, the U-turn on the reverse burden of proof.

I shall start with the abolition of the oversight committee. The committee was recommended by the Parliamentary Commission on Banking Standards and was introduced into the Financial Services Bill by lengthy and detailed government amendments at the suggestion of the Bank. The very helpful Treasury briefing note to this Bill says that these new oversight functions have been a successful innovation, but it describes the oversight committee as an "unnecessary layer of governance". As a reason for removing a key part of the Financial Services Act, this "unnecessary layer of governance" seems pretty weak. Will the Minister explain exactly how the existence of the oversight committee harms the bank's ability to operate or how its existence as a separate body, as Parliament deliberately designed it, is damaging in any real or significant way?

The oversight committee consists only of non-executive directors. Its replacement, the court, has five bank officials and seven non-executive directors. This inevitably raises questions about robust independence, which was entirely the point of the non-executive director-only structure in the first place. The Bill reduces the number of non-executive directors on the court from nine to seven, although it contains the rather odd provision to allow restoration of the number to nine. There is nowhere any justification for the reduction in the number of non-executive directors from nine to seven: not in the Explanatory Notes, not in the HMT briefing note and not in the impact assessment. Will the Minister say why there is to be a reduction in the number of non-executive directors and why to seven? The abolition of the oversight committee seems certain to reduce the independence of oversight activity. The Government have presented no convincing reason why this committee should be abolished, and I am certain we will want to have a much better justification before agreeing to it.

The second area I want to discuss is the role of the NAO. The Treasury briefing note asserts that the purpose of this part of the Bill is to increase the accountability of the Bank to Parliament. There seems to be some significant disagreements on this. In evidence to the House of Commons Treasury Committee, the chair of the Court of the Bank of England, Anthony Habgood,

[LORD SHARKEY]
said that the extent of the NAO's proposed involvement had come as a surprise. That is a surprise in itself. Will the Minister say why Mr Habgood was taken by surprise? Was he consulted? Will he say whether the chair of the Court of the Bank of England is in favour of the NAO proposals in the Bill and whether he believes they will in fact increase the accountability of the Bank to Parliament? Certainly, Sir Amyas Morse, the Comptroller and Auditor-General and head of the NAO, does not think so. As the noble Lord, Lord Eatwell, said, the *Financial Times* reported on 11 October that Sir Amyas had,

"attacked 'unacceptable' government plans to increase transparency at the Bank of England, saying that they created a false impression of greater accountability".

These are very important matters.

We welcome the prospect of increased public accountability of the Bank via the NAO, but it is not at all clear that that is what the Bill really offers. As the *Financial Times* pointed out, under the Bill's proposals the Bank would have a veto over what the NAO could scrutinise. This would be the first time that a public entity could restrict the scope of a value-for-money study. It is very hard to see why the Bank should have this power of veto and fairly easy to see why it should not. At the moment, the NAO is responsible for the financial audit of the PRA. The Bill proposes to end that arrangement and hand over the financial audit responsibility to the Bank's auditors. This seems a retrograde step and seems to signal a reduction in the independence of the PRA, which is the subject I want to turn to next.

The Bill proposes to end the PRA's status as a subsidiary and make the Bank itself the Prudential Regulation Authority, exercising its functions through a new prudential regulation committee. The chief reasons given for this proposed change in the impact assessment are that it will,

"maximise the synergies between micro-prudential supervision and macro-prudential policy",

and be,

"better able to exploit internal efficiencies by sharing knowledge, expertise and analysis".

Will the Minister explain this in a little more detail and perhaps in plainer language? Will he give concrete examples of the synergies anticipated? Will he explain how internal efficiencies can be exploited in a way not possible under the current set-up?

Both the HMT briefing notes and the impact assessment assert that the PRA's independence will be retained. The impact assessment says that the new PRC will have a majority of external members. However, the chart provided with the Treasury briefing note is open to a quite different interpretation. This chart says that the PRC will consist of the governor, three deputy governors, the CEO of the FCA, one governor's appointment and at least six external Chancellor's appointments. Unless one counts the CEO of the FCA as an outsider, which seems completely implausible after the summary sacking of Martin Wheatley, the outsiders are not in a majority. Would the Minister care to clarify this? Is he counting the CEO of the FCA as an outsider and, if so, on what grounds?

I now turn to the Bill's proposal to make changes to the senior managers regime. I welcome the extension of the regime across all sectors of the financial services industry, as was recommended in 2014 by former members of the Parliamentary Commission on Banking Standards and by the 2015 *Fair and Effective Markets Review*. However, I am very concerned about the U-turn on the reverse burden of proof. This reverse burden of proof test has not even come into force-yet the Government are now proposing to abolish it before it does. The reverse burden of proof was a key recommendation of the Parliamentary Commission on Banking Standards, which said that it would,

"make sure that those who should have prevented serious prudential and conduct failures would no longer be able to walk away simply because of the difficulty of proving individual culpability in the context of complex organisations".

The Government accepted this and wrote it into law. They were right to do that: the issue remains a serious problem.

Members of the House of Commons Treasury Select Committee, in February this year, investigating the scandal in which HSBC reportedly helped people around the world evade tax, were frustrated by senior executives, one after another, disclaiming personal responsibility. The Parliamentary Commission on Banking Standards was right to conclude that having a named executive with personal responsibility for key risks, accompanied by reversing the burden of proof, was essential to removing what it called this "accountability firewall".

It seems to me that the Government have advanced three main arguments in favour of this U-turn. They are, first, that it was necessary because the Bill extends the scope of the senior managers regime to financial institutions for which the reverse burden of proof would not work. The Chancellor said that he wanted to avoid a dog's dinner of a two-tier accountability system. This is very unconvincing. It is not obviously the case that a two-tier system would be problematic. In fact, a two-tier system may be necessary to keep the large, globally systemic financial institutions accountable.

The second reason, advanced by Harriet Baldwin in our recent meeting, was that senior bankers were losing focus on their real jobs because of the compliance burden imposed by the reverse burden of proof—presumably in preparation for it. We need to see the evidence for this. I assume that this is what the banks are claiming. Can the Minister say how these assertions have been evaluated? How do we know they are true and not the obvious special pleading?

The Minister also told us that the looming reverse burden of proof was causing senior managers to avoid the jurisdiction. This is a serious charge and I think we need to see evidence for it. Could the Minister provide us with some examples? The Bank has described the removal of the reverse burden of proof test as a matter of process rather than substance. I believe that is simply, straightforwardly incorrect. The issue of abandoning the reverse burden of proof is extremely serious and is central to the ability to hold bankers properly to account. I have no doubt we will return to this issue at later stages in the Bill.

There is one other provision in this part of the Bill that raises concerns: the removal of a senior managers regime obligation to report breaches of rules of conduct to the regulator. I can see no rationale for this in either the Treasury brief or the impact assessment. The impact assessment simply notes that this measure is likely to "mainly benefit larger firms". Can the Minister say why this provision is in the Bill?

Our discussions of this and other changes to the senior managers regime will be helped, I think, by the full, quantified impact assessment covering these measures promised in paragraph 103 of the current impact assessment. Can the Minister assure the House that we will have sight of this further impact assessment well before Committee?

This is an unsatisfactory Bill. It undoes much of Parliament's work on the previous two Financial Services Bills; it overturns a key recommendation of the Parliamentary Commission on Banking Standards; and it acts to reduce accountability and independent supervision. We have recently seen many moves in favour of the banks: we have seen changes to the banking levy and the sacking of Martin Wheatley, and we have heard talk of imposing a time limit on PPI claims. We should not let this Bill add to all that.

8.35 pm

Lord Lawson of Blaby (Con): My Lords, I begin by echoing the noble Lord, Lord Eatwell, in welcoming my noble friend Lord Bridges to this area of his responsibilities, and we look forward to the further debates that we may have in the future. I am also grateful to my noble friend for his kind remarks about the Parliamentary Commission on Banking Standards, of which I was a member, as were others who will be speaking in this debate.

The hour is late, for reasons that we are all aware of, so I shall be very brief and refer simply to two areas, one of which has already been spoken about this evening; the other one has not.

The one that has been spoken about already is personal responsibility, and the noble Lord, Lord Eatwell, even went so far as to quote me on it. It is something to which I attach the first importance and I do not think that the change to the burden of proof affects it. Personal responsibility is important, and indeed the Parliamentary Commission on Banking Standards had other proposals to nail it. It is absolutely vital that there is personal responsibility. It is not banks but bankers who commit wrongdoing. If we are to deter bankers from committing wrongdoing, they have to be held personally responsible. What happens if it is not clear who is personally responsible? I hark back to my time in the Navy many years ago. Then, if a ship ran aground, the captain was court-martialled. There was always personal responsibility and there was no way in which it could be escaped.

Currently, too often when the authorities discover wrongdoing, they fine the banks. That is, if anything, counterproductive. Not only does it enable those who are personally responsible to escape scot free but very often it is harmful for the banks to have their capital ratios adversely affected by heavy fines. That is not in the public interest. Furthermore, at the end of the day the people who suffer are the shareholders, who have done nothing wrong, and those who have done something wrong are completely immune from any punishment. Therefore, we have to take personal responsibility seriously. It has to be front and centre of the business of disciplining and supervising those in the banking system.

My second point, which has not been referred to, concerns the ring-fence. We on the banking commission took very seriously the need to separate out deposit-taking and high-street banking from investment banking and merchant banking or whatever. Indeed, we did not think that the Government had been strong enough and we recommended that the ring-fence should be strengthened or, to use a term of jargon, electrified. What has happened now is that some, but not all, of the big banks have been campaigning and lobbying very hard for the Government to back down on the ring-fencing. That has happened so much that Martin Taylor, a member of the Financial Policy Committee in the Bank of England, was moved to make a very outspoken speech attacking the banks for trying to prevent the ring-fencing coming about.

Ring-fencing is essential for a number of reasons. First, as noble Lords taking part in this debate are well aware, banking is of particular importance to the economy as a whole. Therefore, there is an implicit taxpayer subsidy, which is, in my judgment, inescapable when it comes to the deposit-taking banks. However, it is quite wrong that investment banks, which often undertake a lot of risky trade of one kind or another—including proprietary trading, where there are no clients at all; they are just doing it for themselves—should be able to benefit in any way, however remote, from the taxpayer subsidy. That subsidy is there because of the need to prevent deposit-taking banks, which are not just retail banks but also finance SMEs, from folding.

There is another reason why there has to be a separation. One thing that was clear was the importance of the culture of banking when things went wrong. The culture of deposit-taking banking and that of investment banking are completely separate. It is very difficult to see how we can have two quite separate cultures in one organisation. All too often, the high-risk-taking or go-go culture of the investment banks takes over what should be the prudent, risk-averse culture of the deposit-taking banks.

However, the banks that are complaining do have a slight point about one thing. They say that this curious thing, which came out of the Vickers commission and which has not been tried anywhere in the world, is unworkable for governance reasons. It is very difficult to see how the governance of two quite separate, ring-fenced banks could work. But they have a remedy; the remedy is in their own hands. They could separate completely, and then all the governance problems would be gone. I believe that complete separation is the right answer and have been publicly arguing that for more than six years now. Nothing that I have seen has persuaded me that that is not the case.

The Government have said that they will monitor the ring-fence to see how it is working in practice. If individual banks are gaining from the system—as some, but not all, will try to do—the Government will

[Lord Lawson of Blaby]
move from ring-fencing to complete separation. I would like the Minister to confirm that it is still the position that not only are the Government not going to give way to this lobbying, which Martin Taylor spoke out about, but furthermore that they are monitoring the ring-fence very carefully and will, if that ring-fence is bringing gains in any way, move to complete separation.

8.44 pm

The Lord Bishop of Portsmouth: My Lords, this Bill offers an important way to confirm the Government's commitment to promoting real diversity in the financial services sector. I want to make a very brief contribution in support of such diversity.

I hope that your Lordships will allow me a very mundane analogy, appropriate to someone like me—an amateur in this complex area. In the recent past, the international Anglican communion has been wrestling with the question of how its local ministry relates to global structures. I will not bore you with any details: there have been quite enough of those to contend with this evening already. Suffice it to say that at the heart of our deliberations has been the question of which aspects of church life are best agreed, shared and implemented internationally and which best happen locally. We have realised that, although global and national structures enable us to deliver much in terms of ministry, local delivery is of prime importance. When people think of the Church, they do not predominantly relate to international structures or even national bodies: they relate primarily to the local church and the local vicar, who may have helped them out when the going got tough.

For those of us close to the ground, in the banking sector in my lifetime, we have seen a shift from the local bank manager who knew your affairs and could guide you—we hoped—wisely and discreetly, to rather larger and often faceless multinational institutions that cannot relate, never mind respond, to localised needs of customers. Therefore, I want to place on record the importance today of credit unions, which—now that the building societies seem to have stepped away from local engagement—are often the best vehicle by which banking can take place responsibly and accountably within the local community. A requirement for the Bank of England, including the PRA and FCA, to consider diversity of provider would be a significant commitment to the benefit of both consumers and the wider economy. I invite the Minister to confirm on behalf of the Government that commitment to locally accountable, directly accessible facilities and advice, which are so important in our communities.

8.47 pm

Lord Naseby (Con): My Lords, I, too, welcome this Bill. I am only going to concentrate on one aspect: diversity, because the Bill gives us an important opportunity to solidify the Government's commitment to promoting real diversity in the financial services sector within legislation. A properly functioning, healthy and genuinely consumer-focused financial sector requires a broad range of different types and sizes of financial institutions operating in it to drive competition and financial resilience. This range of institutions should include customer-owned financial mutuals such as building societies, credit unions—as the right reverend Prelate has mentioned—and mutual insurers and friendly societies.

I recognise that, in the annual remit letters to the PRA and the FCA, the Government give a commitment to aim for, and follow up, diversity of provider and that is helpful, but it would be far better if it were put in legislation. I do not need to remind your Lordships of the difference between the mutual sector and the plc sector. One of the principal differences is the methodology of raising capital, whereby plcs can go to the market but mutuals have to raise organic capital. Your Lordships will be aware of the Private Member's Bill that I took through in the last Session, which was the beginnings of an easing up on how the mutuals can raise capital. That was the Mutuals' Deferred Shares Act 2015, but there is a long way to go still.

Why is it so important that this be put into legislation? There are two reasons. First, diversity increases the effectiveness of competition. After all, competition creates a better consumer environment in financial services through choice and so forth. Secondly, it makes the whole system a degree more resilient. We saw that in the recent financial crisis. Of course, out of it flows competition, which is helpful. One gets a superior service—and the evidence is there—from the mutuals. There are fewer complaints, and the evidence is there for that as well. Interestingly, one gets more competitive interest rates. What I found most persuasive is that, between 2012 and the end of June 2015, building societies provided no less than £52 billion of net new lending for mortgages. The rest of the mortgage market provided £7 billion. That is £52 billion from the mutuals and £7 billion from the plcs. That in itself is a demonstration of the importance of the mutual movement.

It goes wider than that. We have already heard about the great inclusion that comes from credit unions. There is a gap between the plcs and the high-cost providers. It is in that area that the credit unions are playing a key part. I submit to your Lordships that there is better conduct all round, more stable profitability and a lower risk appetite in lending; and they are, and remain, very efficient operations.

The thought that may be going through the mind of my noble friend on the Front Bench is, why do we have to put this into law? I submit to the House that, at this point in time, as we review the Bank of England and the financial sector, one size fits all is not acceptable. There were too many incidents in recent times where, as a last gasp, after much representation, either the European Union or our own Treasury suddenly remembered that there is a mutual sector. The fact that the mutual sector is a very important part of our financial sector should be right up front. What I and others in the mutual movement will be asking for is an environment where all types of firms can operate on a fair basis with regulations that are proportionate and appropriate to them, rather than this one-size-fits-all approach.

I should mention to my noble friend that I will be tabling an amendment to the Bill. It is important, but all it would do is impose a duty on the FCA and the PRA to consider models of ownership, such as mutual societies and firms of different sizes, when formulating any policy changes. I very much hope that when I have finished drafting it properly, it will find favour with my noble friend.

8.53 pm

Lord McFall of Alcluith (Lab): My Lords, I welcome the opportunity to participate in this debate. I welcome the Minister to his place and my fellow members of the Parliamentary Commission on Banking Standards, the noble Lord, Lord Lawson, and the noble Baroness, Lady Kramer. We started off on a three- or four-month project, which ended up taking over two years, with 10,000 questions. We presented the Government with recommendations and I am pretty disappointed in the Bill tonight, as are the noble Lords, Lord Eatwell, Lord Lawson and Lord Sharkey. I will focus on the ring-fence, the senior managers' regime, Bank of England governance and, lastly, transparency and disclosure.

The noble Lord, Lord Lawson, and I were at one from the very beginning in that we wanted separation in banking. But we went along with the concept of ring-fencing to give it a chance. We actually spent almost a disproportionate amount of time on it, so it was a big issue in our deliberations. I well remember Paul Volcker coming to give us evidence on that. He was very clear. He said, "You are going to have two boards. It is naive to expect the holding company directors to have anything other than an unremitting interest in responsibility for the retail". So you cannot separate those issues. He was very clear—as we were—that the culture is different. If it boils down to one thing, it is that the retail bank has to be customer focused, whereas the investment bank is trading and it is anonymous. It devalues and eliminates the personal relationships. That is the difference between the two of them. I do not think that this will ever change. We had individuals who came to the committee who were very supportive of the ring-fence—for example, Sir David Walker, who was chairman of Barclays. But hey presto, five or six months later, he has an article in the *Daily Telegraph* saying that ring-fencing has had its day—even before it has come in. The issue of lobbying is right at the heart of this very Bill.

Let us not forget that, post-crisis, banks are both bigger and more complex. The big issue now is "too big to manage". I well remember the chairman of HSBC, Douglas Flint, coming before us. I asked him the question, "Is HSBC too big to manage?". He said, "That is a good question". There was no other answer on that issue.

Look at the size of the 28 global banks: in 2006 their combined total was $38 trillion—an average size of $1.4 trillion per bank. In 2013, seven years later, it has gone up from $38 trillion to $50 trillion, with an average $1.8 trillion for each bank. We speak here in trillions. Can we understand what trillions are? If we ask the question "What is a trillion seconds?", the answer will come back: "32,000 years". Trillions are a hell of a lot of money—and lots of people in the banking sector do not understand what the issues are in their individual institutions.

When Lehman's went down, there were hundreds of legal entities connected globally. The issue was that it could not connect the individual pieces, hence it went down. Is it any different today? I do not think it is. So the concept of separation, as the noble Lord, Lord Lawson, said, needs to be kept alive by this Government. It cannot be dismissed.

On the senior manager regime, the main recommendation of the Parliamentary Commission on Banking Standards concerned the lack of individual accountability at the top. There was a no-see, no-tell policy, with no one responsible. We were very clear in our recommendation when we said that the problem is that:

> "Top bankers dodged accountability for failings on their watch by claiming ignorance or hiding behind collective decision-making. They then faced little realistic prospect of financial penalties, or more serious sanctions".

Now the Government are dropping the plans to reverse the burden of proof, which would have forced senior managers to demonstrate that they have done the right thing if there was wrongdoing on their watch. That is a concern. Why the change? We are changing the burden of proof from the senior manager to the regulator. It will be necessary for the regulator to prove that the senior manager had not taken steps before bringing disciplinary proceedings. The previous FCA chief executive, Martin Wheatley, was very clear when he said that there is an accountability firewall within institutions. Here we see the Government watering down that very proposal.

There is a history to the attempt by the regulator to hold banks to account. We should look at that history when we are filing this legislation. The mis-selling and misconduct of PPI, which went on for 15 years or more—we still have the remnants of it—has cost UK banks £40 billion in fines and redress. That £40 billion is three and a half times the cost of the London Olympics. Who has been fined or brought to account on this? If we look at Land of Leather, we find that the chief executive was disciplined by the FCA for mis-selling, but he is the only senior manager to have been disciplined. What is the moral in that? It is that if you mis-sell in a sofa shop, they are coming after you, but if you mis-sell in a financial system that is systemically important, then you are safe. What a condemnation.

I recall one regulator saying in a speech made in 1998 that senior managers were not held to account. He was very clear. He said that:

> "One of the least appealing features of a number of the scandals I referred to at the outset was that while junior and operational managers have lost their jobs and been disciplined",

the senior managers get away without that responsibility. He followed that up in a speech made in April 2001 when he said that, when things go wrong, we should look directly to the senior manager, whom we should hold accountable. In the case of the failure of Barings Bank or the pensions mis-selling debacle, senior management has not been held directly accountable. He asserted that:

[LORD MCFALL OF ALCLUITH]

"Now we have a system of personal registration, where specified individuals at the top of the firm have clearly set out responsibilities for risk management and compliance, for which we hold them accountable".

Who was this individual who spoke in 1998 and 2001? Why, it was none other than the chairman and chief executive of the FSA at that time, Sir Howard Davies, who is now the chairman of the Royal Bank of Scotland. He said, in 2001, that they had a system in place. So, what price believing the Government when they say they have a system in place, given that the man whom they ensured was appointed chairman of the Royal Bank of Scotland made a statement 15 years ago that is full of holes, if ever anything was? We have a real problem in that, 15 years later, we have no decent remedy. The Government are jettisoning any chance of achieving that in this Bill, which is a matter of sorrow for us all, including the Parliamentary Commission on Banking Standards and others here tonight.

On the issue of Bank of England governance, much of the Bill does seem to be technical, but perhaps that is largely to do with the Governor wanting to reorganise the Bank. But the real problem is a lack of constitutional accountability. Mention has been made of Clause 12, entitled "Bank to act as Prudential Regulation Authority." The Prudential Regulation Authority has responsibility for the microprudential regulation of the solvency of banks. As Chairman of the Treasury Select Committee at the time, I can tell noble Lords that the PRA did not work. That is why the Chancellor, George Osborne, changed it. But now, through his own architecture he is downgrading the PRA to a mere committee, not a subsidiary of the Bank that works as a separate authority. Given the experience of the past seven years or more, there is a need for a free-standing PRA with its own rule book. The recent failures of the Co-operative Bank and the Britannia Building Society should warn us that microprudential regulation is still vital. More answers need to be given as to why it is to be downgraded.

My noble friend Lord Eatwell made the very important point that the structure of the Bank is becoming opaque and not fit for purpose. Given the experience of the past seven years, there are many questions regarding the Bank and monetary policy. For example, what changes to the remit might have improved its performance before, during and after the recession? What has the true effect of QE been? Has it enriched the rich at the expense of the poor? Has it increased inequality? One thing we do know is that it has added £15,000 more debt to every person in the United Kingdom. Who pays that? Is it the banks or the investment companies? No, it is the ordinary citizen. These are relevant questions to ask of the Bank of England, which has not been probing enough.

Should the Bank of England have a broader, dual mandate similar to the Fed's? In the light of devolution, should we have broader regional representation, as the Fed has with its 12 regional banks? How will an independent Bank of England be more accountable to Parliament, and what will the role of the court be with the Treasury Select Committee? This issue of the court is not finished. It proved itself not to be up to standard during the financial crisis, and this just seems to be shifting different responsibilities about with seemingly no coherent strategy from the Government.

We need a wider engagement and a review looking at the future of the MPC. A number of years ago, when I was Chairman of the Treasury Committee, I established the Future Banking Commission to take the matter up with Parliament. I asked David Davis to chair it and he did an excellent job; the Liberal Democrat Vince Cable was also on it. We came out with our proposal, reported in June 2010 and the Conservatives accepted it—David Cameron said he would take it forward. As a result, we had the Vickers commission, which also reported in due course. We then had a Parliamentary Commission for Banking Standards, and now we have the Banking Standards Board, of which I have been asked to be deputy chairman. A focus outwith Parliament—a social dimension—has led to politicians and regulators looking at this issue again.

That is why, when Professor David Blanchflower phoned me earlier this week to ask me to join a committee—along with Adam Posen, the former MPC member, and Simon Wren-Lewis, professor of economics at Oxford University—I accepted. He told me that John McDonnell, the Shadow Chancellor, had asked him to form the committee. I replied that I would be delighted to be on it, on two conditions. The first is that it has to be independent, having nothing to do with any political party; the second is that it should have no resources from any political party. We need a cross-party, wider social engagement and we will report to any and every party. It is very important that we undertake this work. I hope that over the next two years, we will be able to engage with different people who can point the way forward to the future for an independent Bank of England, because there is a big democratic and constitutional issue still to be resolved. If our recommendations are taken up after 18 months or two years, we will be delighted.

I would like to finish on a note of transparency, with the disclosure of a contemporary issue. A few weeks ago, the Investment Association sacked its chief executive, Daniel Godfrey. He had tried to establish a set of principles, following the recommendations of the Kay review, for the industry as a whole to abide by. Two of the principles are that,

"we … always put our clients' interests first and ahead of our own",

and that:

"Costs and charges should never be so high as to compromise the likelihood of achieving agreed objectives"—

that is, the objectives agreed with clients. It all seems quite reasonable, but Schroders, Fidelity and M&G adamantly refused to sign up—though others did, such as Hermes Investments, which has put the principles on its website. Consequently the Investment Association chief executive was booted out the door. I thought that seemed a little superficial and needed to be examined a little more, to see why it happened.

Further examination indicated to me that at the heart of the matter was the issue of dealing commissions. For every trade, as noble Lords know, a broker is paid—usually an investment bank. However, part of

that sum is put into another account to buy research from the investment bank. In the United Kingdom, £3 billion per annum is spent on dealing commissions, with half that figure passed back to the fund managers who then pay investment banks and others for their research. That £1.5 billion—which does not appear on profit and loss accounts—is paid out of clients' money. It is the ordinary person in the street, striving for a pension, who pays—and let us keep in mind that the average pension in this country is £15,000. Some £1.5 billion is being siphoned off these dealing commissions, which are paid by ordinary people. Should we not see this as a kickback—as bribery? Meanwhile people on small pensions are struggling to make their way to ensure a decent reward for themselves. That is a contemporary scandal: £1.5 billion of customers' money being used not to satisfy customers' own ambitions but those of fund managers. It is one of many scandals in the global banking sector—I think the total is getting near $300 million of fines or redress. Again, that money is not paid by institutions; it comes from the ordinary saver.

All these scandals could be reduced to one, core scandal: that the customers' interests are secondary to the interests of the industry. I suggest to the Government that they are compounding the problem with the change to the senior management regime. Until they address the issue of personal responsibility properly, as the noble Lord, Lord Lawson, and others said, society will continue to be cheated and the Bill will do nothing to address that.

9.10 pm

Lord Northbrook (Con): My Lords, in general I welcome the Bill as it applies to the Bank of England, but in the second part of my speech I will say a few words about overregulation. As other speakers have stated, the Bill is split into three main parts. The first sets out the proposed changes to the Bank of England's governance and procedures connected to its accountability. The second includes a number of provisions linked to the regulation of financial services, in particular the introduction of the SM&CR regime. The third contains provisions on the issuing of bank notes in Scotland and Northern Ireland.

What I like is that many of the Bill's provisions linked to the governance and accountability of the Bank of England build on changes and suggestions announced by the Bank in 2014. The announcement was accompanied by two reports containing further details on the proposed changes—the Warsh review and the Bank of England's own report. The Bill was in the Queen's Speech, when the Government said that this would ensure that,

"the Bank is well positioned to fulfil its … role of overseeing monetary policy and financial stability".

It will also ensure that the UK's regulatory framework remains at the forefront of internationally agreed best practice standards.

Clauses 1 to 15 contain the proposed changes to the Bank of England's governance, financial arrangements and prudential regulation. The Bill changes the membership of the court—it adds an additional deputy governor post. This has not been mentioned by other speakers, so I ask the Minister: what is the rationale behind that? As other speakers have said, the Bill also assigns the oversight functions to the whole court to operate more like a unitary board. The Financial Policy Committee becomes a committee of the Bank, rather than a sub-committee of the court.

The Bill also intends to clarify the Bank's responsibilities for prudential regulation by ending the status of the PRA as a subsidiary of the Bank. I note the concerns raised by the noble Lord, Lord McFall, on that front. Instead, the Bill provides that the PRA is the Bank of England and creates a new Prudential Regulation Committee with responsibility for the Bank's functions as the PRA.

The Monetary Policy Committee is also subject to change in the Bill. Generally, the MPC has worked pretty well in recent years, judged by the low level of inflation and of interest rates. The big move is in the timing of publication of the MPC's minutes. It is proposed that they are now published as soon as is reasonably practical following a meeting. The MPC will meet fewer times in the year, changing from at least once a month to at least eight times a year. I do not really know what effect that will have, but it may be less or more valuable in these circumstances.

As other noble Lords mentioned, the Bill gives the National Audit Office the power to carry out examinations of the economy, efficiency and effectiveness with which the Bank uses its resources in discharging its functions. It also gives the Treasury power to carry out value-for-money reviews of the prudential regulation functions of the Bank. I disagree with other speakers; it seems to me that that is a sensible role for the NAO. Also, I like new Section 7D(3), in Clause 11, which says:

"An examination under this section is not to be concerned with the merits of the Bank's general policy in pursuing the Bank's objectives".

Clause 3 gives the oversight functions previously delegated to the oversight sub-committee of the court to the full court. I note the comments from the noble Lord, Lord Eatwell, on this. I am slightly concerned about the reduction of the oversight committee's role, although the Government say that it will simplify the way the Bank's oversight functions operate.

Part 2 of the Bill makes a welcome change. Here I disagree with most other speakers. I think that the reverse burden of proof in situations of regulatory breach was a very bad idea: that you should be presumed guilty until proved innocent does not seem to go down well in many other areas of the law. The original regime meant that a senior manager responsible for certain areas of a firm's business would be presumed accountable when regulatory requirements were contravened in that area. Now it will be necessary, quite rightly, for the regulators to prove that a senior manager has not taken reasonable steps to prevent that contravention to avoid being found guilty of misconduct.

SM&CR is due to come into force in March next year for financial services firms, defined as banks, other deposit-takers and those investment firms which are regulated by the PRA. The Bill extends the operation of SM&CR to cover all firms carrying out regulated activities under the Financial Services and Markets

[Lord Northbrook]
Act 2000. Part 2 also extends—which I welcome—the remit of the Government's Pension Wise service to holders of annuities specified by the Treasury, so that it can deliver guidance to pensioners who will be eligible to sell their annuity income stream in 2017. I also welcome the duty that Part 2 imposes on the Bank to give the Treasury information about what action the Bank proposes to take if a particular bank fails, such as what impact the failure will have on the financial system and on public funds.

In the rest of my speech I have a few words to say about a paper produced by an organisation called New City Initiative, which supplies an independent expert voice in the debate on financial reform. Its intention is to restore society's trust in the financial sector. I worked in the investment management sector until 2005.

The UK investment management industry generates about 1% of GDP and remains Europe's leading centre for fund management. It earns an estimated £12 billion a year for the UK, and London is the hub of specialist boutique firms. The financial crash of 2008 was especially damaging. The serious long-term cost was, perhaps, the death of trust.

Extra regulation was clearly necessary, but the extent is open to debate. The UK SME asset management sector has traditionally been vibrant and grown strongly, but is now stagnating, because start-ups cannot afford the cost of increased regulation. A chart from the FCA shows how the number of new firms—approvals—declined from 230 in 2004 to between 150 and 170 in 2014.

Boutique asset and wealth management firms find compliance increasingly onerous. New financial regulations from the EU and UK are applied equally to the very biggest and smallest asset management firms, disregarding their ability to shoulder the consequent financial and legal burdens. If financial regulation is not imposed more proportionately on large and small asset management firms, New City Initiative is convinced that many fewer start-up firms will come to market. This arrest of competition will damage all, but especially the consumer, because choice will become more limited. The complexity of new regulations, and the potential punishment for infringement of them, pose massive obstacles to the growth of competition in the sector.

A new priesthood, called compliance officers, has emerged from the financial crash. Extra regulation is necessary, but as the regulatory regime continually evolves, becoming ever more complex, and the scale of potential punishments becomes so damaging to small firms, the temptation is for compliance officers to engage in gold-plating, to avoid any possibility of failure to comply. Their numbers—again according to the FCA—have more than doubled in the last 14 years.

I make a final point on banking regulation generally. Can the Minister say whether it is true—as I have read—that retail banks are going to be allowed to pay dividends to their investment banking operations?

Overall I welcome the Bill and wish it safe passage through the House.

9.19 pm

Lord Bichard (CB): My Lords, I should declare an interest as the chair of the board of the National Audit Office and it is in that capacity that I want to address the audit proposals contained in Clauses 9 to 11. I should say at the outset that, unlike the previous speaker, I have major reservations about these proposals. Those reservations are shared by the Comptroller and Auditor-General, as has been mentioned. We believe that the clauses as drafted are deeply flawed and that, if they remain, they will create an expectation that the Comptroller and Auditor-General is prepared to carry out value-for-money studies in circumstances that would compromise his independence. They would also create a damaging precedent for other audit work across government. Let me explain those concerns by reference to specific clauses.

Clause 11 seeks to provide the Comptroller and Auditor-General with powers to undertake value-for-money studies at the Bank but does not provide for the audit independence that is essential to genuine accountability. The importance of this independence is enshrined in the National Audit Act, which applies to most of the C&AG's work. Under that Act the C&AG has,

"complete discretion in the discharge of his functions",

whether any examination is carried out,

"and … the manner in which any … examination is carried out".

Under the Bill, the C&AG would not be able to decide whether an examination was carried out but would instead have to persuade the Court of the Bank of England to allow him to examine an area. This clearly limits greatly the C&AG's freedom of action and therefore his ability to hold an important public entity to account for the use of its resource.

The Bill also states that the C&AG's examinations are,

"not to be concerned with the merits of the Bank's general policy in pursuing the Bank's objectives".

This is a further unacceptable constraint on the independence of the NAO and differs again from the language used in the National Audit Act. That legislation prohibits the NAO from questioning the merits of policy objectives but, in contrast, the Bill prohibits the questioning of the policy fulfilling those objectives and, as such, it limits and confuses the C&AG's remit. I assume that the Bank, or maybe others, have argued that to give the NAO full value-for-money rights would limit the Bank's own independence. But the NAO already operates in many different sectors with full rights, without impinging on the independence of the public bodies concerned.

It has always been accepted by the C&AG that he cannot, for example, question the merits of policy objectives. In many circumstances—for example, in the military—it is accepted that it would not be appropriate to question operational decisions. In the context of the Bank of England it is entirely accepted that it would not be appropriate, for example, to examine the Bank's interest rate decisions. To suggest that the NAO might take a different view is to ignore decades of experience of successive C&AGs in the most sensitive areas of government. If this clause remains as drafted

it will inevitably set a damaging, indeed dangerous, precedent for audit and accountability right across government. The NAO currently audits a wide range of public bodies, including the recent addition of Network Rail. Many of these, like the Bank of England, are concerned to be independent of government in their operational decision-making. If these provisions remain as drafted then every new body, and many existing ones, will want the same ability to veto and limit the NAO's work, to the great disadvantage of Parliament and the taxpayer.

I can be more succinct in dealing with Clauses 9 and 10. Clause 9 seeks to provide the C&AG with some of the powers he would have if he was the auditor of the Bank's financial statements. This aims to ensure that he has access to the information he would need to identify and undertake VFM studies. However, given the severe limitations placed on the C&AG's VFM examinations, this is little more than ceremonial in reality. Clause 10 seeks to ensure that the activities of the Bank which are the subject of an indemnity or guarantee given by the Treasury, and which therefore represent a risk to public funds, are audited by the C&AG. The Bank would still, however, have the power to elect which aspects of the relevant financial reporting framework to accept—thus limiting again the NAO's ability to conclude on the truth and fairness of financial statements.

I will make three further points of clarification. First, the NAO did not at any point lobby for powers over the Bank. The NAO was approached by the Treasury, not the other way around. When it became clear that the proposed clauses, as drafted, were unacceptable, the C&AG informed the Treasury of his strong concerns at the earliest opportunity. However, the clauses remain.

Secondly, the C&AG has sought to achieve some consensus with the Bank, and met with the deputy governor for prudential regulation on 3 September. At that meeting, he offered further discussions on the audit arrangements. Regrettably, that offer has not been taken up by the senior management at the Bank.

Finally, some might argue that some access on the part of the C&AG is better than none. However, limiting access in the way the Bill now proposes would create an expectation that the C&AG was prepared to carry out value-for-money studies in circumstances that would compromise his independence. He is not. It would also, as I have said, create a damaging precedent. Neither the C&AG nor the board of the National Audit Office regards this as acceptable, and I will therefore seek the removal of these clauses from the Bill, if the further discussions already kindly offered by the Minister do not find us a way forward.

9.27 pm

Lord Flight (Con): My Lords, I regret to say that I, too, have reservations about this legislation. First, with regard to the restructuring of the Bank of England and the PRA, I agree with much of what the noble Lord, Lord Eatwell, said. It also, to some extent, came across to me like shuffling the deckchairs—I will not say on the "Titanic"—and I wonder really whether there will be much or any effect. Power will stay with the governor. The Bill is full of contradictions in that it says it is aimed at integrating the PRA and microprudential policy more fully into the Bank—not, by the way, why or how—but then makes the PRA responsible to the Bank's Prudential Regulation Committee and at the same time counters this by moves to protect the PRA's operational independence. What does it want? To be candid, I think the PRA needs to be an independent regulator. It should obviously liaise with the Bank of England on its other functions, but I would have thought that that would be pretty automatic.

I did not like the abolition of the oversight committee and agree with the comments made by other noble Lords. There are also measures that are described as strengthening governance, but to my mind what is missing is something comparable to the senior managers and certification regime which banks are going to have. At present there is no laying down of responsibility or accountability by regulatory staff in the PRA, the Bank or the FCA, and yet I think we all know that the FSA had significant involvement in causing the banking crisis through wholly inadequate and inappropriate regulation.

There is a code of practice for all Bank committees on handling conflicts of interest. That is excellent, but I am surprised to discover that, at least at present, the Bank is banning anyone joining the court who is either an executive or non-executive director of a bank. It seems to me that NEDs, in particular, are very much the eyes and ears of regulators and the court should have people on it who can actually report on what is going on in the real commercial banking world. I agree with what the previous noble Lord said about the National Audit Office. Again, it seems that the Bank wants to have its cake and eat it, in that, while the National Audit Office has power to launch value-for-money searches, the Bank is there to define what is policy and to exclude the NAO from anything it chooses to define as policy. That undermines the independence.

Back in 2012, as noble Lords will know, the Act set clear rules for the Bank's operational responsibility and the Treasury's responsibility in the light of the banking crisis, the Treasury having the whip hand as being responsible for any decision involving public funds. We now have a detailed MoU of how the two are to interact. Personally, I think it is inappropriate and unnecessary and could actually be cluttersome in a crisis, when speed is of the essence, but there seems to be an obsession everywhere nowadays with writing every last micromanagement detail down.

As for the senior managers and certification regime, the objective of raising standards of conduct—not just of senior managers but of the next layer of management also—and of identifying responsibilities is clearly excellent. However, I was disappointed to find no mention of the fundamental principle of integrity and honesty. In that context, I declare my interest in the register and, in particular, as a director of Metro Bank. I am seeing the other end of this coming in at Metro Bank. By the way, I think that "guilty until proven innocent" had to go. As Andrew Bailey pointed

[LORD FLIGHT]
out, the courts would throw it out in due course anyway, as being contrary to the very fundamentals of British law.

At the other end of the new regime, again, there is an awful lot of paper. I chair the nomination and remuneration committee and at our first session looking at it there were 40 pages of detail and 26 different areas of responsibility to be worked out and gone through. To me, it has come across as somewhat overprescriptive, but, I repeat, without the all-important requirement of principles.

There is also a strange requirement for senior managers to notify the regulator every year if they think the regulator would have grounds for withdrawing approval from any particular senior manager. I think that a rather strange requirement; I certainly would not want to be the manager or director responsible for that.

The time limit for disciplinary action is raised from three to six years. I can understand the reason for that. I am slightly more critical of making a criminal liability for alleged reckless decisions leading to bank failure. It is fine after the event, but something viewed as reckless subsequently may not have been viewed as such at the time, so there are definitional problems there.

With the next layer certification regime—that is, internal management certifying annually the next layer of management's fitness and propriety—there is a complication of three material risk areas: European Banking Authority criteria, PRA criteria and FCA criteria. It also covers staff with the ability to take independent decisions to commit the bank and to affect the bank's risk profile, and all staff giving any form of advice. I think the certification regime is rather sensible and ought to be capable of being managed well by the banking industry. My main criticism is that it is wrong to include NEDs who chair one of the main committees within the management grouping, in that, first, NEDs are increasingly the agents of regulators on a bank board anyway—their duties are very much in the area of making sure that the bank is run properly. Secondly, they are not actually involved in the day-to-day management of banks, so I have yet to have anyone explain to me or particularly convince me as to the appropriateness of the chairman of the various committees being within the management regime.

Furthermore, I may be overly concerned, but extending the regime to all the financial services industry beyond banks seems strange, in that banks are quite different from fund management or insurance businesses. How they are run requires an appropriate oversight regime. I also make the point that the investment management industry came through the crisis perfectly well, and I do not really see that there is a huge need to impose new layers of management monitoring on it—it is quite a well-managed industry. But it is not yet clear what extending the regime across the whole sector actually means.

I have a few final points. When looking at the consultation document, it seemed to me that those who participated were nowhere near a representative sample of the City or the financial services industry generally. I would have thought that whoever organised the consultation should have roped in some other more suitable parties. I remain concerned at the mounting costs of regulation, ultimately borne by clients, pension funds and the public, and raised by the noble Lords, Lord Lawson and Lord McFall. Yes, indeed, the volume of fines paid since 2010 by the top five US banks and top 20 European banks is equivalent to $300 billion. As pointed out, that is shareholders' money and, frequently, pension funds' money; more seriously, it limits the ability of the banking system to lend. If there is one thing staring you in the eye that was wrong with the banking system, it was that it was under-capitalised, and it still is under-capitalised. I believe that banks should have a capital ratio of towards 8%; that is what one was taught when learning economics 50 years ago. So you are just taking away the capital—and I should like to see some attempt to address the ability of regulatory authorities to fine institutions in this way. It would probably at least need UK and US co-operation; it has got out of control and is completely damaging.

9.37 pm

Lord McKenzie of Luton (Lab): Despite the hour, I have enjoyed listening to the deliberations thus far and the many knowledgeable banking contributions. In fact, I signed up to speak on just one clause—Clause 24, concerning pensions guidance. As we have heard, this clause is an enabling provision which expands the scope of the guidance service, Pension Wise, to those considering selling their income from their annuities to a third party. It leads to regulations, what type of annuities might be covered and the interest therein. Doubtless, all this will be aligned with the legislation that ensues from announcements already made, and the Treasury consultation on the creation of a secondary annuity market.

The extension of Pension Wise to cover these situations is, in principle, unobjectionable, but it gives the opportunity to reflect on how the service is working so far and how the implementation of the reforms commencing in April this year are working out. It will be a pointer to whether Pension Wise is actually fit for purpose. The Budget 2014 announced that individuals aged 55 and over would be able to access their DC pensions savings as they wish, subject to their marginal rate of income tax. That was, for good or ill, a profound change to the tax landscape. It was recognised by most that for change to work, individuals would need help to review and explore the options available to them. So the Government determined that individuals should have a guarantee that at the point of retirement they would be offered guidance that was free, impartial and of a consistently good quality and that covered a range of options to help them make decisions, including taking further advice.

These arrangements were, of course, legislated for in the Pension Schemes Act 2015 and were debated at length in your Lordships' House and the other place. A particular bone of contention was whether there should be a second line of defence in encouraging referrals to the service, which has certainly proved to be necessary. The upshot of all this is a service that consists of a face-to-face component to be provided

by CABs, branded Pension Wise, a telephone service to be provided by TPAS and an online service organised by a Treasury team drawn from the Government Digital Service and the Money Advice Service. New duties have been placed on the FCA to have responsibility for the setting of standards and monitoring compliance. It seemed to be the Government's original intent that the Treasury would retain responsibility for service design and implementation until it was,

"very satisfied that it is working well and is seen to be in a stable and successful state".—[*Official Report*, 12/1/15; col. 568.]

Can the Minister therefore tell me how it considers this requirement has been met, given the announcement in September that, because of a strong strategic fit, Pension Wise should move to the DWP by April 2016, and the announcement in October that there is a need to identify a long-term home for the service? What on earth is going on? How does this uncertainty help the service, particularly in its early period, and especially if it is to take on the wider requirements for guidance which the creation of a secondary annuity market will entail?

Of course, we now have the benefit of the report from the House of Commons Work and Pensions Select Committee, hot off the press. The committee had a number of significant concerns about the current situation. One of these was the dearth of information on the use being made of the new pension freedoms, and in particular a near complete lack of data about Pension Wise itself. It pointed to there being no research programme tracking consumer outcomes. The committee noted that the take up of face-to-face and telephone guidance appeared to be lower than many had expected. Expectations when the Pensions Bill Committee was under way were that the take-up rate for guidance would be over 75%, and some 25% initially. The FCA found that, in the three months to June 2015, more than 200,000 individuals accessed their pension pots but fewer than 20,000 completed face-to-face and telephone Pension Wise appointments. This would seem to be consistent with suggestions that the CAB is running at 10% to 15% of its capacity and is redeploying staff to other duties. Would the Minister care to comment on this?

A number of reasons have been advanced for this slow take-up: limited early publicity because of parliamentary purdah, the propensity of individuals to take the path of least resistance and to look to existing established providers, and that the requirement on pension providers to give risk warnings and signpost consumers to Pension Wise is being followed more in the letter than in the spirit.

This is all deeply worrying. Pension Wise was designed to fill a gap in support for consumers, and the Government should see these concerns addressed before loading the service with further obligations arising from the secondary market. Of course, the service currently is predicated on the flow of those reaching retirement; causing the stock of those with existing annuities to be covered raises different issues of capacity. It is estimated there are some 5 million individuals with 6 million annuities.

The Select Committee report makes a number of recommendations, some of which the Government appear to be taking forward, although we would wish to probe these further in Committee. These recommendations include the Government publishing or causing to be published regularly a range of data on such matters as consumer characteristics, take-up of guidance and advice, and the decisions individuals make. Given that the pension freedoms have increased the prospect of people being conned out of their life savings, the recommendations urge a redoubling of publicity around pension scams, advise that the FCA strengthen its rules on guidance for pension providers regarding Pension Wise signposting and risk warnings, and state that there should be a research programme to track consumer outcomes.

It is acknowledged that the Government have launched a nationwide marketing campaign to raise awareness of the guidance service, and that two related consultations are under way. A consultation on public finance guidance has just been launched, and a financial advice market review consultation commenced in August. I presume we are unlikely to see these reports by the time the Bill leaves your Lordships' House; nevertheless, we will use this legislative opportunity to take stock of how the pensions relaxations are progressing and to consider the protections that need to be in place for the secondary annuity market, which is a very significant development.

9.45 pm

Lord Carrington of Fulham (Con): My Lords, I start by declaring my interests as in the register which are, I am afraid, rather specific to the Bill. I am a non-executive director and deputy chairman of a small British bank regulated by the PRA and the FCA. As a director of a bank, I am also an approved person, so I potentially have some conflicts of interest in the Bill, which I fully recognise.

New to the debate on banking regulation, the Bank of England and so on, I rather naively thought that the Bill would be relatively uncontroversial. Listening to this debate has rather changed that view, and I look forward to our debates in Committee because they have every potential to be quite interesting. I express my sympathy to the Minister because he is obviously in for a difficult time.

I welcome the changes proposed to bank regulation. They almost look like a tidying up of the internal structure of the Bank of England, but potentially they do more than that by integrating still further the PRA into the Bank of England. I hope that this will give the Bank of England the opportunity to strengthen the regulation of the financial sector in the UK. One of the reasons London is successful is because foreign investors and institutions have confidence in our tough but flexible financial regulations. In my experience, one of the weaknesses of the late, not very lamented, FSA was that it was very rules-based. Its rules ran to several substantial volumes, as those who dealt with it will remember well.

Financial institutions, and banks in particular, are not easy to regulate. On the face of it what they do is very simple, so to make a decent living banks have to devise clever ways of adding value and of distinguishing themselves from the competition. Many are very innovative and pay key staff a lot of money to find new ways of

[LORD CARRINGTON OF FULHAM]
providing services to their clients. They are always developing new products and new ways of doing business. Regulating them based on what they did last year, or last time there was a financial crisis, will guarantee that the regulator is behind the curve on the risks that banks are taking. Arguably, this was a major contributory factor to the crash of 2008. Regulators around the world did not understand, or if they did, they did not have the powers to stop the banks taking unreasonable risks or selling products whose risks neither the banks nor the regulators could assess. I do not know if fully integrating the PRA into the Bank of England will make this better come the next financial crash, but it should make it easier for the Bank of England to run financial regulation on a holistic basis rather than on rules designed to stop the previous financial scandal.

I am not advocating a return to regulation by a nod and a wink, which formed at least part of the regulatory system prior to 1998, but it is vital for regulators to have access to market intelligence and to be able to act on it. Maybe market intelligence is putting it too high; what I really mean is that regulators should be able to listen to gossip and rumour. Perhaps this is a similar point to the one made by my noble friend Lord Flight when he was talking about the Court of Directors. Regulators have to have the power to follow and act on leads that no self-respecting lawyer would consider evidence-based. This would be helped if the Bank of England could take back some of the day-to-day money market activities presently undertaken by the Treasury. As an aside, I hope that the closer integration of the PRA and the Bank of England will enable the regulators themselves to be paid properly. If they are not, the good ones will be sorely tempted to switch sides and work for the banks they used to regulate, weakening the ability of the regulator to regulate and enabling the banks to game the system.

The other part of the Bill I want to mention is the proposed extension of the authorised person regime to all financial institutions in the UK including:

"UK branches of corresponding foreign institutions",

and all types of financial service firms. This has to be long overdue although I can see that it will be fraught with difficulties. We are seeing a convergence of the risks taken by investment banks, hedge funds, family offices, sovereign wealth funds and investment managers. I dare say that some of these will not be capable of regulation under this—or probably any other—Bill or, at any rate, not without severely damaging London as a financial centre, which would be throwing the baby out with the bathwater, so to speak.

I welcome the Bill. I hope that when it comes into force the Bank of England and the PRA will use it to develop ever-smarter means of controlling risk in the financial sector, while encouraging innovation and the growth of the UK as a worldwide financial centre. I look forward to our discussions in Committee.

9.51 pm

Baroness Worthington (Lab): My Lords, the hour is late and I am sorry to detain the House longer than might have been expected. I wish to make a short contribution on a specific theme relating to the role of the Bank of England in helping deliver the Government's economic policy for strong, sustainable and balanced growth. I wish to focus on the word "sustainable". As we debate the Bill in this House, I hope we will think about the wider sustainability of our financial sector. In particular, I have questions I would like to put to the Minister. These relate to the role of the financial sector's regulatory frameworks in helping to ensure that we are not susceptible to future shocks or crises born of growing global environmental risks.

At the start of the financial crisis, investors went from believing they knew the value of products containing sub-prime mortgages to realising they knew little about what they were worth, and that was a very disorderly transition. The lesson for the challenges we face from climate change is that we should not underestimate risks we know exist because we lack a sufficiently clear framework to understand their implications. I believe our financial regulators must have a role in ensuring that climate risks are properly appreciated and that the transition is as orderly as possible. The City of London has a particular exposure to climate risk: close to one-fifth of FTSE 100 companies are engaged in upstream fossil fuels and, according to the Bank of England, 30% of equity and fixed-income products are exposed to climate risk.

I would therefore like to touch briefly on three areas. The first is disclosure. In its response to the consultation on the Bill, the Treasury referenced the governor's recent speech which talked of the need for more and better disclosure about climate risk. Does the Minister agree that there is currently an information gap and that better disclosure of information is needed? Are we, for example, monitoring the extent of the exposure to fossil-fuel-based risk that the UK-listed company market is carrying and how this risk is changing over time?

My second point concerns time horizons. Typically, monetary policy has a future time horizon of only one to three years, and other financial regulatory horizons, including credit rating agencies' modelling, are typically also short term. How can longer-term risks be better incorporated into the Bank's thinking without overloading it with impractical burdens? Both the Committee on Climate Change and DECC regularly use decadal-long timescales in advising on and setting policy. One answer could therefore be to require more joined-up thinking between different parts of the UK governance framework through, for example, a closer working relationship between the Committee on Climate Change and the Bank of England, both of which are independent bodies of experts reporting to Parliament.

Finally, is there more that can be done to enable stress testing of economic policy and investment decisions, through the use of carbon pricing scenarios? What role can the Treasury, the City of London and the Bank play in helping to ensure that comprehensive carbon-pricing policy is introduced and works effectively? We know that well-regulated capital markets can be incredibly efficient and drive strong and sustainable and balanced growth, but they do need to be well regulated.

We know that multiple risks lie ahead in relation to climate change and that London is a city well placed

to think through its implications in advance of its becoming a crisis. We also know, in advance of the international climate talks in Paris, that the UK rightly wishes to be seen as a thought leader on climate change and our response to it. We must ensure that our economic regulatory framework protects us against the non-linear risks associated with the impacts of climate change and that it also helps to deliver an orderly transition to a world with a safe climate. I hope in Committee to progress this line of argument, and I thank noble Lords for their patience this evening.

9.55 pm

Baroness Kramer (LD): My Lords, the hour is indeed late and I suspect that, like me, noble Lords are feeling utterly exhausted. However, this has been a genuinely brilliant debate and I am delighted that I have had the opportunity to listen to the speeches that have been presented so far. I shall try to restrain my comments because so much has been said, and I shall contribute to the debate only where I have something additional to say.

A number of Peers addressed the fundamental issue of oversight of the Bank of England. I share their concerns—in this, I am with the noble Lord, Lord Eatwell, my noble friend Lord Sharkey and the noble Lord, Lord Flight, rather than with some of the other speakers. During all the conversations that we had, particularly during the passage of the 2012 Bill, we were utterly focused on the issue that the noble Lord, Lord Eatwell, defined as "groupthink". We had a financial services industry that allowed a systemic risk to grow and eventually lead to a crisis, in large part because independent thinking was continuously crushed. The Bank of England was just as guilty as any other party of becoming engaged in groupthink. This led to the demand for an independent oversight group. As I read the changes that this Bill puts forward, that group is now captured by the insiders within the institution, and that has to be examined. Independent supervision and oversight are surely critical. I know that the Bank does not like it but we who sit on the outside know that it is no insult to an institution to insist on independent oversight.

That brings me to the issue of the audit. We must listen to the noble Lord, Lord Bichard. He speaks with an expertise that, frankly, few in this House have. I hope very much that he will bring forward amendments at later stages of the Bill, because the concerns that he has expressed are absolutely central and key. I also hope that the Government will take notice of the issues that he has raised. The lack of independence in the audit provision is surely of fundamental concern.

I am with those who are very concerned about the absorption of the PRA back into the Bank. I remember the conversations around this—again, they concerned the groupthink issue. We talked about the importance of making sure that the Bank was not one single monolith and that there should be an opportunity for real challenge rather than groupthink. The sharing of agendas and the pursuit of the same priorities were things that we all sought to avoid when we looked at the 2012 Bill. I would much rather see the PRA move to greater independence than be absorbed back into the Bank. I see no reason for the latter other than a sense of architecture. We will be pursuing that issue.

The noble Lord, Lord Lawson of Blaby, along with many others, talked about personal responsibility. I rather disagree with the noble Lord, Lord Lawson, because he is willing to accept a change to the reversal of the burden of proof. He, the noble Lord, Lord McFall, and I sat in hearing after hearing where former chief executives of institutions constantly claimed that they had no knowledge of the abuses being perpetrated within their organisations, even though those abuses and the profits that they led to drove very large bonuses for those individuals. It is a fundamental principle that if you take the bonus, you take the rap. We heard chief executive after chief executive say things such as, "I was shocked when I read about it". The LIBOR scandal, PPI, money laundering and the simple failure to follow decent credit standards all seemed endemic across banking institutions, but senior management and chief executives did not take responsibility.

What also struck me when we talked to those who had to enforce the regulations was the inability, having identified the abuse, to track up through the system and find the chain to senior management. That was one of the real drivers in reversing the burden of proof. When we listened to Tracey McDermott or Hector Sants, it was so evident that they could not find the email trail or track of phone calls; they could not find the path that took them up to senior management. I do not believe that the change to the statutory duty of responsibility deals with that adequately. The whole point about reversing the burden of proof was to overcome the ease with which that firewall was created between what happened inside banks and the awareness and responsibility of senior management.

We often talk about how limited regulation is in its ability to make fundamental change and that it is culture that counts. By making those senior managers responsible, we drive the change in culture. We saw banks with boards that never challenged what a chief executive did. However, a chief executive who is concerned that they might be liable for abuses in their own institution will want a challenging board. We saw bank after bank that failed to drive its culture down through the bank itself. Again, a chief executive is going to lead on this issue if he or she thinks that they are particularly at risk. It is that shift in the burden of risk that we wanted to achieve by the reversal in the burden of proof. I am very concerned that that has been abandoned.

A number of other noble Lords raised issues of great interest that this Bill gives us an opportunity to address, including that of diversity. The noble Lord, Lord Naseby, talked about the mutual sector and the right reverend Prelate the Bishop of Portsmouth talked about the importance of credit unions. We have in this country a real paucity of different types of financial institution. Look at the Mittelstand in Germany; it is very much supported by community and regional banks. In the United States, small businesses are very much supported by networks of community and local banks. We are missing those layers of banking. Regulators have always resisted any responsibility to have regard

[Baroness Kramer]
to that kind of diversity and the access that it offers, and have been satisfied with a very narrow definition of competition. In this Bill, we have a chance to change that and to emphasise the importance of diversity for long-term financial stability and also because of the way that it can create that generation of new activity and prosperity, particularly in local communities. I hope that we very much take advantage of that.

The noble Lord, Lord McKenzie of Luton, focused on Pension Wise. This is an excellent opportunity to be able to review where pension guidance is now, in a field that is constantly expanding. If change is needed, it would be an opportunity to use this legislation as a vehicle. I am personally very concerned by the number of people I talk to who do not understand the difference between guidance and advice and are getting themselves into a trap of faulty decision-making as a consequence of that.

This will be a useful Bill. However, I am sad that the direction in which the Government seem to have taken it is to roll back some key provisions, particularly around the reversal of the burden of proof and the oversight of the Bank of England.

There is nothing in the Bill that addresses the issues of ring-fencing. However, the noble Lord, Lord Naseby, raised the absolutely key issue. When we on the Parliamentary Commission on Banking Standards looked at the retail banks, it was evident that the taxpayer subsidy—the protection of the taxpayer deposit—created a pool of cheap cash that was funnelled from those retail banks up to their investment banking arms and drove a lot of the wild trading that we saw, which ended up undermining our financial stability. It is really important that that chain is broken. Therefore, the issue of ring-fencing is an entirely appropriate one to address within this Bill as we move forward to ensuring that the ring-fence, as the noble Lord, Lord Lawson, says, moves towards being electrified rather than weakened.

It has been tremendous to be part of this debate; I really look forward to the following stages. Like the noble Lord, Lord Carrington, I think this is going to be an exciting Bill if not a simple one.

10.05 pm

Lord Davies of Oldham (Lab): My Lords, the House owes the Minister a degree of thanks for the effective and precise way in which he introduced the Bill, though I perhaps detected that, as this is a fairly modest Bill of only 30 clauses and four schedules and contains some measures of limited contention, he thought that this was a fairly straightforward exercise. As soon as my noble friend Lord Eatwell had made his contribution, however, the Minister probably realised that, in fact, there were going to be a series of challenges on some quite fundamental points. I am going to discuss those in some detail, but we all recognise that the great opportunities we have for following through the broad arguments put today are during the remaining stages of the Bill, on which we all will strive to be active. In my own party, the shadow Chancellor is carrying out a review of the very issues that have been commented upon in relation to this Bill, and my noble friend Lord McFall is due to serve on that committee, which will be chaired by David Blanchflower, formerly of the court of the Bank of England.

There have been a number of excellent contributions to the debate but I wish to acknowledge that of my noble friend Lord Eatwell, who has very considerable knowledge of these issues. He was unremitting in his trenchant criticism of certain aspects of the Bill. I assure the Minister that those issues will be presented further as we go along. In particular, questions of transparency and scrutiny have come out in this debate. I do not want to put words into the Minister's mouth, but I hope he will accept that two key planks for the reforms the Government need to get right are in exactly these areas.

Furthermore, there were comments on the financial stability strategy and where the ultimate responsibility for that lies. Of course, this relates to the changes to the structure of the Bank and the new position of the Prudential Regulation Committee. We are bound to be interested in how effectively the Bank pursues financial stability strategies, against a background of its having to take some responsibility for the catastrophic failure that occurred in 2007-08.

There are two other areas that might have looked technical—the National Audit Office and the restrictive role envisaged for it in relation to the Bank—but it is quite clear from the comments of the noble Lord, Lord Bichard, that this idea will not be accepted in committee without the most vigorous debate. The Minister will also have noticed that several anxieties were expressed about the reverse burden of proof being abandoned before it had been significantly tried. We will certainly want to look at the Government's reasoning behind that concept in the Bill.

Transparency and proper lines of accountability are key for any institution, particularly those whose decisions have such an impact on the public. They are also critical to the trust and confidence that people have in an institution. We need to ensure that the changes being made—particularly changes to the membership of the Court of Directors, the abolition of the Oversight Committee and the changed status of the Prudential Regulation Authority—meet those standards, a point made by my noble friends Lord Eatwell and Lord McFall, who made some trenchant comments on these matters.

On the Court of Directors, the Bill gives the Treasury the power, after consulting the governor, to remove or alter the title of deputy governor. That, along with the reduction in the number of non-executive directors on the court from nine to seven, will clearly alter its structure. The Bill also establishes that in future, alterations to the Court of Directors will no longer need to be done through primary legislation but will be subject to regulation. Who in the Treasury will determine the changes in relation to the deputy governor, and can the Minister outline how that decision will be taken? The Bill states that the Treasury can make changes to the Court of Directors after consulting the governor. Can the Minister say how that will work in practice, or be prepared to answer that fundamental issue in Committee?

Will the Minister go into more detail about the rationale behind the reduction in the number of non-executive directors on the court, and what does the Treasury regard as the benefits of this reduction? I would also be interested to hear why the Minister feels it is appropriate to make these changes through secondary rather than primary legislation.

Noble Lords also commented on the disappearance of the Oversight Committee, which the Bill intends to abolish, of course. It was established by the Financial Services Act 2012 in order to keep under review the Bank's performance. As part of that, it may commission reviews and keep track of the delivery of any recommendations. The Government need to explain why they think they can dispense with that body, and how effectively its functions will be carried out in a different way. They will be transferred to the Court of Directors. However, Clause 4(3) states:

"The oversight functions of the court of directors (as defined by section 3A(2)) may be delegated to a sub-committee of the court consisting of 2 or more non-executive directors of the Bank."

How on earth can this be removing a layer of governance, if the legislation gives enabling powers for another committee to be formed? There is an essential contradiction in the Government's thinking on these issues. What safeguards are in place as a result of moving this committee in-house? Are the Government convinced that this will lead to self-evaluation, rather than some independent judgment? On the future make-up of the sub-committee for oversight, how far will oversight stretch if this function is being delegated to two non-executives? Previously, six non-executives were expected to perform that function. What prompted that change?

On the issue of transparency and oversight, the changes being made to the Prudential Regulation Authority and the reforms included in the Bill end the PRA's subsidiary status and integrate its microprudential policy into the bank. The PRA board will be replaced by the Prudential Regulation Committee, which will be solely responsible for exercising the Bank's functions as the PRA. We are concerned about whether this represents a downgrading, as it is no longer a freestanding committee, and we will want to explore that in Committee.

Turning to the financial stability strategy, the Bill moves the responsibility from the court to the Bank itself. What is unclear is how the various bodies that have previously been involved in developing this strategy will be affected by the proposed change. The Government's impact assessment states:

"At present, the Bank's financial stability strategy is set by the Court after consultation with the FPC … and HMT".

It goes on to say:

"Making the Bank responsible for setting the strategy, and allowing the Court to delegate production of the strategy within the Bank"

—which is the essence of clause 5—

"will ensure that Court is responsible for the running of the Bank and that the Bank's policy committees are responsible for making policy."

We need to examine that further. Who in the Bank of England is responsible for producing the financial stability strategy? If it is the FPC, that needs to be made clearer than it is in the Bill.

The role of the MPC has been discussed in great detail as well, but I have a couple of technical points to make at this stage for the sake of clarity. The Bill makes changes to the make-up of the committee, the requirement on the number of meetings and the publication of minutes. Does the Minister anticipate that this will improve the MPC's work, and how? What prompted the change? More fundamentally, I ask the Minister how these alterations really succeed in terms of protecting consumers of banking services.

Then there is the crucial question of the operation of the National Audit Office. I do not need to repeat, but I fully support, the remarks made by the noble Lord, Lord Bichard. He is right that the quality of independence, which is critical to a successful and proper audit, may be compromised in the arrangements made in the Bill. The Minister will have to address that issue, too. It is quite clear that the National Audit Office will continue to have independence in determining a value-for-money programme within the framework proposed: it is for the Government to make sure that that framework guarantees that position.

The noble Lord, Lord Lawson, raised the crucial issue of how we hold banks and financial institutions responsible—in terms of personal responsibility, as he saw it. He also introduced the issue of ring-fencing, although I would imagine that as far as the Government are concerned that is also a fairly contentious measure. Nevertheless, the noble Lord, Lord Lawson, is quite right to raise that issue within the framework of this Bill. I hope that it, too, will be pursued in Committee.

A number of noble Lords—my noble friend Lord McFall and the noble Lords, Lord Flight and Lord Sharkey, and others—raised the question of why in replacing the approved persons regime the reverse burden of proof was being altered. We are by no means convinced of the arguments on that front as yet. The Minister will be asked to make those points clear in Committee.

A number of other issues were raised. The noble Lord, Lord Naseby, introduced the issue of the mutuals. We could not possibly deal with a Bill of this kind without paying attention to their significant role. The right reverend Prelate commented on credit unions. They, too, have their proper place for consideration in this Bill. My noble friend Lord McKenzie identified the anxieties about the progress with regard to pensions advice—in what is one of the most crucial years for this, but it is only the first or second of crucial years. It is quite clear that we are going to have to wrestle with this issue of adequate advice for those who are seeking to change their position with regard to pensions and annuities. They will need a great help on that. Finally, my noble friend Lady Worthington raised quite fundamental issues about the financial strategy being responsive to environmental risks. We surely would be remiss if we did not take that into account as well.

This has been a fascinating debate. The Minister does not have to reply to every point at this stage—we would be here for an unconscionable time if he did—and we have the delights of Committee, Report and Third Reading ahead of us before the Bill completes its passage. But if the Government think that the Bill is a relatively modest one, and even one with limited

contentious issues within it, what has been established this evening is that it has much that we need to challenge them on.

10.20 pm

Lord Bridges of Headley: My Lords, I begin by thanking all those who have spoken and for their excellent contributions. I am very conscious that the hour is late, so I am delighted that the noble Lord, Lord Davies, says that I do not have to respond to every single one of his points, as we would all need our sleeping bags if I were to do that. I think that the noble Lord also said that this Bill is exciting, and on a typically dull day in your Lordships' House, I am sure that we could all do with some excitement to pep up our lives. Let me assure noble Lords that if I fail to respond to points that have been made, my door is open and I will certainly either write or meet to discuss them.

Let me start by addressing points that were raised by the right reverend Prelate the Bishop of Portsmouth and my noble friend Lord Naseby. They both stressed the importance of the diversity of business models, especially mutuals and credit unions. I agree entirely with the noble Lord, Lord Davies, on the need for diversity. As noble Lords will know, the PRA is required to have regard to differences in the nature of and the objectives of businesses. This important recognition of diversity is preserved under the new arrangements, but I would be delighted to meet and discuss these matters further.

My noble friend Lord Lawson talked about ring-fencing, as did the noble Lord, Lord McFall. Let me tell your Lordships that the implementation of the ring-fence is obviously the primary responsibility of the PRA, but we are monitoring the way in which firms are implementing it. There is no evidence to date that firms are gaming the ring-fence, and as noble Lords know, we discussed at length whether it was necessary to have full separation during the debates on the banking reform Bill, but obviously we decided to go for ring-fencing. The Government remain of the view that it is appropriate.

I turn to the issue of dividend payments, raised by my noble friend Lord Northbrook. The PRA proposed rules on dividend payments are entirely consistent with the ring-fencing legislation and the recommendations made by the Independent Commission on Banking. There has not been a watering down of what are very robust requirements. The ring-fenced bank will be required to be legally, economically and operationally separate from the wider banking group and will have to interact with entities in the wider group on an arm's-length basis. It is entirely appropriate that excess profits from the ring-fenced entity can be used to capitalise the parent company. This must be viewed in the context of the significant extra capital that the ring-fenced banks will be required to hold. Only excess capital above and beyond this would be eligible to be moved to the parent company. The PRA has rightly retained the power to prevent these payments, which the ring-fenced bank must inform the PRA of in advance if it feels that they would impact on the resilience and resolvability of the ring-fenced bank. There is no threat that these rules will result in a poorly capitalised ring-fenced bank.

I am sure that we will return to that issue, as we will to the next one I wish to address, which is the oversight function and committee and groupthink, which the noble Baroness, Lady Kramer, and others referred to. Let me start by saying that the court will have the ability to appoint independent experts to manage reviews as well as the continued ability to delegate to a sub-committee, including a sub-committee of non-executives. The balance of non-executive and internal members will ensure external challenge, while the abolition of the oversight committee will ensure that the statutory oversight functions are the responsibility of the whole court. It is worth noting that Andrew Tyrie has welcomed this change. I suspect—although I do not want to put words into his mouth—that Mr Tyrie, like me, sees this as an issue of transparency and accountability, both of which I believe are improved by this Bill. The noble Lord, Lord Eatwell—who has had a lot more experience of these issues—described the Bill as,

"opaque and not fit for purpose";

I dispute that, but I am sure we will return to that issue in Committee.

I would like to refer briefly to one of the problems caused by the oversight committee. I shall just quickly outline this, if I may. In 2013-14, the foreign exchange market investigation sought to establish whether any bank officials had been involved in or aware of FX market manipulation. As your Lordships may know, the Bank governors initiated an extensive internal review on this and made regular briefings to court. In March 2014, when it became clear that an independent investigation would be appropriate, the oversight committee took over the investigation, appointing the noble Lord, Lord Grabiner QC. That was a good use of the oversight functions, but in practice the executive needed to join the oversight committee discussions for them to function and be effective, both as the investigation progressed and once attention turned to delivering recommendations. It would have been better, in practice, to make the oversight function the responsibility of the whole court, which is what we are now doing.

I turn now to the question—which I believe the noble Lords, Lord Davies and Lord Sharkey, asked—of why the number of non-executive directors will be reduced to seven. This is to make the court a smaller, more focused unitary board, as I said at the start. The Bank's 2014 report *Transparency and Accountability at the Bank of England* said that,

"consistent with best practice in the private sector, the Bank sees the value of continuing to evolve towards a slightly smaller body, with a non-executive chair and majority".

It cited the Walker report—the review of corporate governance in UK banks and other financial entities, published in 2009—which identified the optimum size of a board as between eight and 12 people.

On the subject of the board, the noble Lord, Lord Eatwell, raised concerns about the shift of financial stability strategy from the court to the Bank. Under current legislation, the court is responsible for determining the financial stability strategy, but this Bill will make the Bank responsible for determining the strategy. The noble Lord suggests that this was a shift to an "amorphous

entity" and may serve to weaken the production of the strategy. This Bill ensures that aspects of its preparation can be delegated, so that the full expertise of all relevant areas of the Bank can feed into production of a single overarching strategy for delivering the Bank's financial stability objective. The court, as the governing body of the Bank, will retain ultimate responsibility for the strategy, as it has now.

I turn now to those who have made an eloquent defence of the reverse burden of proof. I would like first to address a small point that the noble Lord, Lord Eatwell, raised about lobbying. Concern has been expressed that the Government have removed this provision in response to lobbying from big banks. I wish to be very clear. We are aware of the views of the banks on this matter. It is no secret and no surprise that they were not in favour of the reverse burden of proof policy, but the Government did not discuss their intention to make this change with any Bank before they made their decision.

I ask noble Lords to let me explain why the Government believe that the reverse burden of proof should be superseded by the duty of responsibility. I am sure we will return to this in Committee, but I would like to make some points now. In the interests of fairness and regulatory coherence, it is vital that the regime is rolled out consistently across the industry. Otherwise, a senior manager in a small building society would become subject to the reverse burden of proof, but one in a large investment firm that did not quite meet the criteria to be PRA-regulated would not. That is not fair, nor is it proportionate. While misconduct by firms of any size can seriously impact on the welfare of consumers or on market integrity, the potential impact is larger in the case of the large investment firm than the small building society.

Secondly, it would clearly not be proportionate to apply the reverse burden of proof across the financial sector, including to the small organisations that will now make up the majority of firms which will come under the regime, and which pose more limited risks to market integrity and consumer outcomes. The reverse burden of proof makes it much harder for such firms to recruit senior managers, since they cannot offset the personal risk attached with high remuneration. This is particularly problematic for credit unions, for example, which provide vital services to vulnerable people.

Our solution is a tough statutory duty for senior managers to take reasonable steps to prevent regulatory breaches in the areas of the firm for which they are responsible, applied consistently across all authorised financial services firms and coupled with the other elements of the regime. This will deliver the intended benefits of the reverse burden of proof in a much more proportionate way. I draw your Lordships' attention to my phrase "coupled with other elements of the senior managers and certification regime". It is important that we do not underestimate the step change that the other reforms recommended by the Parliamentary Commission on Banking Standards, and those noble Lords who were part of that, will deliver.

As I pointed out earlier, the SM&CR marks a move to a situation where firms and senior managers must take responsibility for how a firm conducts its business. Crucial among the provisions that deliver this are the statutory statements of responsibility that each senior manager must keep up to date, sign and submit to the regulators, setting out clearly the areas of the firm's business for which they are responsible.

The noble Lord, Lord Eatwell, raised the issue of transparency. I argue that these steps will mean that there can never be any doubt for the individual concerned, the firm or the regulators what each senior manager can be held accountable for. This makes a statutory duty to prevent regulatory breaches in these areas a powerful incentive for senior managers to run their businesses well and a formidable enforcement tool if they fail to do so. Let us not forget that if a senior manager does not fulfil this duty, the regulators can and will enforce against them. Penalties could include prohibition and/or an unlimited fine.

I will briefly touch on the point that my noble friend Lord Flight made. I believe that he is concerned about the mounting cost of regulation. The PRA and the FCA are committed to implementing the SM&CR in a proportionate way, particularly for small firms. The SM&CR will lead to a significant reduction in the number of appointments subject to prior regulatory approval, from just more than 200,000 approved persons to just more than 100,000 senior managers. The extended SM&CR will not include the obligation to report to regulators all known or suspected breaches of rules of conduct for employees. Feedback during the SM&CR implementation process for banks has shown that these obligations can have significant cost implications for firms, quite apart from their other burdens on firms or the individuals concerned.

I turn to the other major issue discussed, which is the issue of the NAO conducting value-for-money studies. The noble Lord, Lord Bichard, was concerned that the mechanism built into the Bill to protect the Bank's independent policy-making goes too far and could impede the NAO's ability to conduct independent value-for-money reviews. I note the noble Lord's extensive experience in this field. His concerns are well argued and should be taken very seriously. No doubt we will debate them and I look forward to meeting him to discuss this in due course. However, pulling in the other direction are equally serious concerns for the vital policy-making independence of the central bank, where drawing the line between what does and does not constitute policy is particularly complex.

We have had to strike a balance in the Bill to protect the independence of two vital public bodies. That is why the Bill requires that, in the event of disagreement between the NAO and the Bank over the definition of policy, the NAO must make public the disagreement, ensuring that the process will be transparent and open to full public and parliamentary scrutiny. I hope that noble Lords will understand the desire for this balance and I look forward to discussing the mechanism we have chosen to achieve this in more detail in meetings and in Committee should that be useful.

The noble Lord, Lord McKenzie, raised some very specific questions on Pension Wise. To do him justice and merit, I will write to him to address them specifically. The noble Baroness, Lady Kramer, raised the issue of distinguishing between advice and guidance—a point

[Lord Bridges of Headley]
very well made. The financial advice market review, which published its consultation document on Monday 12 October, recognises that the distinction between advice and guidance is not always consistent with people's understanding of what advice is. It seeks views on how there could be greater clarity in this respect. As I am sure the noble Baroness knows, the consultation period for this will close shortly before Christmas.

I am very conscious that, at a late hour, I have not done justice to the excellent points that have been made. I look forward in the weeks ahead to debating and discussing these measures with your Lordships in more detail, and my door is always open. I thank noble Lords for their contributions today. To conclude, I would argue that—

Baroness Kramer: My Lords, before the Minister sits down, can he comment on the sustainability issue that was raised by the noble Baroness, Lady Worthington, and that I happened to overlook?

Lord Bridges of Headley: Indeed I can. These issues were raised and I am more than happy to meet the noble Baroness to discuss them in due course. This issue was raised by the Governor, Mark Carney, in a recent speech, and it is one that the Bank is always looking at. I am happy to discuss that in due course.

To conclude, the reforms in the Bill will strengthen the governance and accountability of the Bank of England, update resolution planning and crisis management arrangements between the Bank and the Treasury, and extend the principle of personal responsibility to all sectors of the financial services industry.

Finally, I return to a point raised by the noble Lord, Lord Sharkey, about the balance on the PRC and the role of the FCA CEO. First, it is right to consider the FCA CEO as external to the Bank: he or she is not a Bank appointee. The legislation therefore ensures that there is a majority of externals on the PRC, since the legislation provides for at least six externals plus the FCA CEO, compared to five Bank committee members. It is also worth noting that, for the PRA board, the legislation requires a majority of externals on the board and includes the FCA CEO as an external for these purposes. The legislation, therefore, will reinforce the independence of the PRC compared with the PRA board.

Lord McFall of Alcluith: In the debate I raised the issue of transparency and disclosure regarding the Investment Association. This is a current issue and I would like an assurance from the Minister that they will take this issue up with the regulators—both the Bank of England and the FCA—to see if we can do something to assist transparency and disclosure in this industry.

Lord Bridges of Headley: My Lords, I am all in favour of transparency and am happy to meet the noble Lord to discuss those issues. I hope the noble Lord will forgive me for not giving a blanket commitment here and now, but I am more than happy to meet him. Transparency must be in the interests of everyone, as long as it is applied proportionately. I am acutely aware that the noble Lord has a lot of experience in this field, so he will forgive me for not agreeing to that request here and now.

I thank your Lordships for all your contributions today.

Lord Davies of Oldham: It would be helpful if the Minister, after reading the debate, and after his officials have looked at it and seen areas in which he could usefully enlighten us before the Committee stage, could write to the Members concerned. Everyone in the House would appreciate that.

Lord Bridges of Headley: I certainly will do so, my Lords. Communication between us all will be very fruitful as we proceed. There are many technical issues here that we cannot perhaps do justice to on the floor of the House. It would be good to meet beforehand. I should also extend my apologies to the noble Lord, Lord Davies, because I believe he was unable to come to the briefing we had on this Bill, but that is my fault, not his. I am entirely in favour of good communication.

Lord Sharkey: Can I simply ask whether the Minister agrees that we will see the new impact assessment, promised in the current impact assessment, prior to Committee?

Lord Bridges of Headley: My Lords, I can agree that it is certainly being worked on. We will continue to work on it, and share and discuss the issues of the impact of these measures with the noble Lord. I absolutely agree that we need to make sure that the measures on the extension of the SM&CR, which is what I presume the noble Lord is referring to, are done in a proportionate and careful way. We must heed previous cases where that has not been properly, so I entirely agree on that.

Let me end by thanking your Lordships for your contributions today. I ask the House to give the Bill a Second Reading.

Bill read a second time and committed to a Committee of the Whole House.

House adjourned at 10.41 pm.

Grand Committee

Monday, 26 October 2015.

Arrangement of Business

Announcement

3.30 pm

The Deputy Chairman of Committees (Baroness Pitkeathley) (Lab): My Lords, as your Lordships will know, if there is a Division in the Chamber while we are sitting, this Committee will adjourn as soon as the Division Bells ring and resume after 10 minutes.

Enterprise Bill [HL]

Committee (1st Day)

Relevant document: 9th Report from the Delegated Powers Committee

Clause 1: Small Business Commissioner

Amendment 1

Moved by ***Lord Mendelsohn***

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

"( ) Her Majesty may by Letters Patent from time to time appoint a person to be the Commissioner.

( ) A person appointed to be the Commissioner shall hold office until the end of the period for which he or she is appointed.

( ) A person appointed to be the Commissioner may be—

(a) relieved of office by Her Majesty at his or her own request, or

(b) removed from office by Her Majesty, on the ground of gross misconduct.

( ) Her Majesty may declare the office of Commissioner to have been vacated if satisfied that the person appointed to be the Commissioner is incapable for medical reasons—

(a) of performing the duties of his or her office, and

(b) of requesting to be relieved of it.

( ) A person appointed to be the Commissioner is not eligible for re-appointment."

Lord Mendelsohn (Lab): My Lords, in moving Amendment 1, I wish to speak also to the other amendments in this group in my name and those of the noble Lords, Lord Stevenson and Lord Stoneham.

Today is a very important day. I was in the Chamber earlier and felt that many other noble Lords considered it significant—as is this first day in Grand Committee on this Bill. Indeed, I felt a sense of trepidation throughout the House. Perhaps I was slightly wrong with regard to noble Lords' interest in the subject matter, but I still think that we can muster great interest in the subject we are discussing. For me this is a very important day because I will seek to be at my absolute charming best in trying to convince the Minister to take on board the issues that we are raising. We have much common cause with the Government on these issues—for example, trying to do more for small businesses and addressing late payment. Over the next few years, we hope to continue on that path. We were unsuccessful with many of the measures that we proposed to the small business Bill and I do not wish to rehash all of those but there are some common themes here.

We have done quite a bit more work since then and been exceptionally constructive. I hope that the Government will be open to charm and persuasion and the sheer power of the argument presented by noble Lords on this side of the Committee—and, indeed, by noble Lords on all sides of the Committee. There will be no threats. On this auspicious occasion we see the familiar faces of many noble friends, noble Lords and officials and others who take a keen interest in these matters.

Today is also an important day as I will agree with the noble Lord, Lord Hodgson, on many more issues than I thought possible. So I think that we have a fair degree of consensus in this Room, all of it motivated by our strong desire to make progress. We attach importance to a number of measures proposed in these amendments and believe that they are worthy. Some later amendments on retentions in the construction industry and contingent liabilities are very thoughtful and well considered and we hope that the Minister will address them in detail.

I wish to make two important preliminary points. First, I do not wish to sound churlish in my comments, as I recognise that the Government deserve huge credit for starting the process of focusing on small businesses and doing a range of things to support the dilemmas and circumstances facing small businesses as they conduct their activities. Secondly, the Minister has been very helpful and has personally played an important role. She and her officials are trying to do a great deal.

This is a difficult Bill with an eclectic array of items, many of which bear the imprints of a strong press release and some of which, it has been suggested, bear the imprint of policies that could have been negotiated away had there been a coalition. Given these potential situations, the Government have done something to bring this all forward. However, there are many ways in which the proposals for a Small Business Commissioner can be improved. The Government have proposed a Small Business Commissioner with a general advice mission, a mission to signpost and a form of complaints procedure. These early initiatives are useful but limited. There is nothing like a good Small Business Commissioner, but this is nothing like a good Small Business Commissioner. There is a lot more it can do to develop the role. The UK variant of the model is subscale and unlikely to achieve its task. Even as a first step, we suspect that there are other mini-steps which the Minister may be willing to consider that will give this a lot more capability in the future.

Our contention on late payments is that, although there is a great deal of desire to do something on it, the inexorable economic logic allows an incentive for late payments to fester and poor payment practices to continue until there are concrete disincentives. Reputational disincentives are not the same as being able to ensure that businesses have a culture of enforcing their own rules about this. As a consequence of time, I can only note the connection of some companies with the Prompt Payment Code and who is really responsible

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for it in the business. Many times it is dealt with as external presentation, rather than being a finance department priority. We can deal with many of these issues and it is probably more important to make sure that it becomes a core part of their practice. We understand that the commissioner has been established to deal with late payment issues but we are concerned that it falls between being a late payment ombudsman and—especially with its direct connection to the Minister—becoming the small business baseball bat, trying to berate companies which might generate some media coverage at the time.

Small business commissioners work at their best when they show the skilled capacity to move the business environment and are able to work for all sections of business—not just small business—to make that work, and they are able to address some of the issues that affect relationships between small businesses. Some of those relate to the inability of small businesses to get access to credit and, somewhere along the line, there are larger businesses which are a problem in and of themselves.

Amendment 1 seeks to increase and enhance the level of independence of the Small Business Commissioner. We have adapted this from the Information Commissioner's Office and the Parliamentary Commissioner for Administration—who is appointed by the Crown on the advice of both Houses of Parliament. Amendment 3 amends the schedule, removing the paragraph stating that the commissioner is to be appointed by the Secretary of State. Amendment 4 removes the power of the Secretary of State to appoint staff for the office of the commissioner, which is clear in both the Explanatory Notes and the impact assessment. Amendment 5 specifies that:

"The Small Business Commissioner has the authority to appoint and recruit his or her own team".

Amendment 37 removes the provision which states that the Small Business Commissioner must lay an annual report before the Secretary of State and instead requires that:

"The Commissioner must lay a copy of the Report before both Houses of Parliament".

Amendment 38 removes the clause which empowers the Secretary of State to abolish the office of the Small Business Commissioner at the stroke of an administrative pen, meaning that instead, anything should be brought before Parliament. There are very good reasons for this. If the role of Small Business Commissioner is to work, it needs to maintain the confidence of all stakeholders and all the people in the process, not just be an instrument of government but be able to work collaboratively and collectively with government, small businesses, the media, academics and other stakeholders in the economic cycle. Moreover, it is very important that the Small Business Commissioner, to maintain confidence, is able to be a learning institution.

The changes that take place in the business environment as well as the pressures that exist require it to take a sensible, sound and broad view. Our desire is that the Small Business Commissioner learns how best to apply the levers that it has and to call in other allies and bodies that are receptive to its views. If you look at the origins of the best parts of the Small Business Administration in America and how they have worked, you see that they have involved a learning experience as regards how you apply, generate and change powers.

To look at the example from Australia of the 2003 establishment of the Victoria Small Business Commissioner, over the entire period in which all the other states have adopted a small business commissioner, as well as a federal one, you can see that there is a process by which an effective commissioner has been able to marshal the arguments and evidence and capacity of a body established by government to be able to be most effective and build the confidence of business. We want to see that model and we are concerned that the structure as defined in the Bill and the Explanatory Notes suggest that this is no more than a rebadged office of the department itself. If this is to work and to be of valuable long-term strength to the small business environment, it needs to be fully independent. We need an effective Small Business Commissioner, and one of the most important things that will make that person effective is their ability to appoint their staff. If we wish to be serious about late payments, we need someone who can work, not on the basis of the press release or the exhortations of Members of whichever of these Houses, but constructively, to be able to work with businesses, learn the right lessons and create the right solutions to do that.

Our amendments do not support only the obvious organisations that work in this area. It is important to note that the Institute of Directors has been very forthright in its support for Amendments 1 and 5. I will quote what it said at length, because it is relevant. Of course, one must remember that the IoD is probably the organisation that represents the largest number of directors, owners and operators of small businesses. It is important to understand that it has a great deal of expertise in this and is a very effective team and leadership. However, on Amendment 1 and the removal of Clause 11, it said:

"Together, these amendments would give the Small Business Commissioner a stronger footing from which to be a champion for small business. We fear that the possibility of abolition by the Secretary of State could potentially negatively impact the ability of the Small Business Commissioner to challenge that same Secretary of State. We hope for and anticipate a positive working relationship between the Commissioner and the Secretary of State".

On Amendment 5, it says:

"This amendment would allow the Commissioner to appoint and recruit their own team which, again, would increase the independence of the Commissioner. We do not want to see the SBC run as an insurgency within the Business Department, but it is important that the Commissioner has access to expertise outside the existing civil service when appointing his team".

All I can say is: I am more than happy to read out those lines and I concur with the motivation behind them. That is an important message about what we have been trying to do and how effective the Small Business Commissioner could become if it was given the right relative independence and the right environment in which it could flourish itself. I beg to move.

3.45 pm

Lord Cope of Berkeley (Con): My Lords, I was interested to see this amendment, and I understand what the noble Lord is proposing and have some sympathy with what he says. There was one interesting aspect which caught my eye when I read it. I was not sure whether it was deliberate, but the noble Lord has left in place that although the commissioner will be appointed by Letters Patent, the Secretary of State will appoint one or more deputies to act for him, even though the commissioner appoints the rest of the staff. Is it the intention to leave a deputy commissioner—of one or more deputy commissioners within the commissioner's office—as the representative of the Secretary of State, which is what one would assume from their appointment if all the rest of the staff are appointed by the commissioner? If the amendment were carried, would the noble Lord seek to refine those proposals?

Lord O'Neill of Clackmannan (Lab): My Lords, the Minister has had a distinguished record in public service and in the private sector. I imagine that in both of those areas she has had responsibility for the appointment of people to significant positions. As my noble friend Lord Mendelsohn was going through the amendments, I thought about what kind of person we will have as the Small Business Commissioner. The commissioner will be someone whose terms of reference are quite clear. He will be the creature—the satrap—of the Secretary of State. He will be appointed by that Secretary of State with little security of employment. He will be capable of being thrown out at the whim of the Minister. He will have little or no say over the appointment of the staff who will be working under him or her. I am sorry if I slipped into sexist language and assumed that the individual would be a man. I should have thought that a woman would be too sensible to do the job.

The truth of the matter is that this is a bit of a non-job. For it to masquerade as the defender of business, without an iota of independence of the Minister, means that the commission is, in effect, a state-run citizens advice bureau for businesspeople. Unless the salary is fabulous and the hours and conditions are not very onerous, there is not much incentive to take this job. Frankly, one would immediately ask questions of anybody who took the job in the first place.

It is for all of those reasons that the amendments tabled by my noble friend would make this appointment worth while. It would afford the business community a sense of confidence. A small business that has problems with payment and other concerns about administration will find that this place-person is in a job that affords the small business little or no protection and little or no opportunities for redress of an independent character. At the end of the day the operation of this office will be subject to the most minimal scrutiny and the reports will be given not to Parliament but to the Secretary of State alone, which leaves one with grave concerns.

I return to my original point. If the Minister were working for Tesco and it was going to appoint a customer ombudsperson on the basis that he would be hired or fired at the whim of the Tesco management and that reports would not be subject to public scrutiny—not necessarily by all the account holders of that company, but perhaps by the people who work in trading standards offices in local government, for example, who make it their job to protect the customers' interests—would the public have any confidence in a person of that kind? I doubt it. I doubt whether any business establishing a position of this kind would have the nerve to present it in this way. Frankly, it is not worth a light. One can have no confidence in the appointment of this nature under the terms of reference that the Government envisage. They are missing out a tremendous opportunity and bringing the appointment into disrepute by the manner in which it is being presented and the terms of reference under which the individual to be appointed would have to operate.

At this early stage in the Bill, and given the significance of this appointment, we are missing an opportunity which would be filled by the amendments which my noble friend has just introduced, with which I am happy to be associated.

Lord Stoneham of Droxford (LD): I support what the speakers so far have said, particularly the noble Lord, Lord O'Neill. This is an issue of confidence. Either the Government have confidence in this appointment and are prepared to give it powers and independence or we must ask whether it is really worth having it.

We will be raising this later, but if the powers of intervention are to be limited simply to other businesses rather than to look also at the role of public authorities, it is understandable why the Government are trying to circumscribe the position. Under other amendments, we will look at whether the commissioner should have a wider role. Nobody will say that other public authorities are not just as bad at times in dealing with their suppliers as some parts of the private sector. We must ask why they should not be included. If that is the case, the position clearly needs greater independence, rather than being responsible simply to the Secretary of State. For all those reasons, I very much support the amendments.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe) (Con): My Lords, I thank the noble Lord, Lord Mendelsohn, for opening the debate with his amendments. He is always a great charmer, but the power of argument matters too. I particularly thank him for his kind words to my officials—it is a bit like being photographed alongside the Minister in the media: they have to buy a round of cakes for the office—but I thank him in any event because, as he said, they are giving us a lot of support right across the board.

I thank the noble Lord, Lord Stoneham, with whom I spent hours on the small business Bill looking at some of the issues that I think we will probably visit over our next four sittings. I will come back to the public sector on later amendments, in the interests of time.

[Baroness Neville-Rolfe]

The Small Business Commissioner will be a valuable source of advice, information and support for small business, and, if I may say so, I think that we are all agreed that it is vital to find a person of talent and good judgment to carry out this very important role. We are very serious about tackling late payment, as noble Lords know. We are doing that not only in the provisions of the Bill but with a number of other provisions which we ran through on Second Reading.

As I said then, my view is that the commissioner does not need to be able to address any and every problem in order to be effective. Indeed, I believe that focus is an important ingredient in success. A commissioner who has a focused remit and great personal authority and credibility will have a significant impact on culture and practice—as we have seen in Australia, where the Small Business Commissioner's role has been focused on priority issues in the Australian circumstances. This first group of amendments addresses the independence of the commissioner from the Government. Obviously, I understand noble Lords' concern that the commissioner should be able to act independently. That is our intention, just as it is important that the commissioner must act independently of business.

Under the Bill as drafted, the commissioner will be required to act impartially in deciding complaints and when providing general advice and information, and the very fact of being set up by Parliament lends the office permanence and authority. Amendments 1 and 3 seek to remove the power of the Secretary of State to appoint and dismiss the commissioner and to give this power instead to Her Majesty. The fact that the Secretary of State will appoint the commissioner will not compromise the independence of the office. This will be a public appointment subject to all the usual public appointment rules and procedures.

As noble Lords will be aware, a great many appointments in public life are made in this way. The Commissioner for Public Appointments is the guardian of the process and ensures that the best people get appointed to public bodies free of personal and political patronage. The OCPA code of practice requires those making public appointments to comply with three principles: merit, fairness and openness. It is designed to provide Ministers with a choice of high-quality candidates, drawn from a strong and diverse field.

It is normal practice for public appointments to be capable of termination by the Secretary of State if he is satisfied that the person is unable, unwilling or unfit to perform his or her functions. The wording is carefully chosen and he or she cannot dismiss the commissioner at will. These grounds for dismissal reflect the approach that Parliament has been content to approve for the Groceries Code Adjudicator and the Pubs Code Adjudicator.

I agree with the noble Lord, Lord O'Neill, that we need to find someone excellent for the job but the power in Clause 11 for the Secretary of State to abolish the office of Small Business Commissioner is not one that could be used as lightly as the noble Lord suggests. The Secretary of State could abolish the commissioner only following a review, and only if he is satisfied that either there is no longer a need for a commissioner or that the commissioner's role has not been fully effective. Any regulations to abolish the office of commissioner would be subject to affirmative resolution.

If the role of commissioner is no longer required—either because sufficient improvements have been made in the issues the office is being set up to address or because it has proven ineffective in tackling them—it is right that there should be a clear and efficient process in place to abolish it, as my noble friend Lord Eccles said at Second Reading. To respond to the noble Lord's challenge, I think it is a very attractive public job, which, if circumstances were very different, I might even be thinking about myself.

I am aware that the Delegated Powers and Regulatory Reform Committee has published recommendations in relation to this clause, and I confirm that we are considering those recommendations closely and will bring forward amendments where necessary.

Amendments 4 and 5 would remove the ability of the Secretary of State to provide staff to the commissioner and would enable the commissioner to recruit his or her own staff.

Lord Stevenson of Balmacara (Lab): My Lords, will the Minister clarify what she said about the Delegated Powers Committee report? She said that the Government were considering it and would be bringing forward amendments. That is still not yet decided, is that right? The Government are still considering that position so we will not necessarily see the amendments as recommended.

Baroness Neville-Rolfe: The noble Lord will be aware that the committee produced its report at the end of last week. When I found out about it, I felt it would be right to refer to it. Of course, we always take very seriously the excellent work of the Delegated Powers Committee. I am not in a position today to say where we are on that but I wanted to make sure that noble Lords were aware of it because it seems relevant to our discussions.

As I said, Amendments 4 and 5 would remove the ability of the Secretary of State to provide staff to the commissioner and would enable the commissioner to recruit his or her own staff. Again, I can see that it may appear attractive to do this but it is not necessary. The commissioner will be staffed by civil servants. They owe no political loyalty to the Secretary of State and are obliged to do their work impartially and objectively. Such staff will work to the commissioner and under his or her direction.

Lord O'Neill of Clackmannan: We are talking here about what could be quite sensitive business arrangements, where the skill set of civil servants might not be appropriate. You might need people with direct entrepreneurial skills and experience. With no disrespect to the Civil Service, by restricting appointments to its ranks there is the possibility that the pool of talent would be rather more limited than it needs to be.

4 pm

Baroness Neville-Rolfe: My Lords, departments could bring in outside experts to work for or with the Small Business Commissioner if they need something more

specialist than civil servants can provide. Of course, there has been a lot of entry into the Civil Service from places such as business and the legal professions that perhaps gives us a bigger pool than classically we had. Indeed, the commissioner is expected to be recruited from outside the Civil Service. Obviously, the leadership of such organisations is critical—as I think we agree.

There is an important further point: staffing the commissioner's office in this manner provides a quick and easy way to provide the commissioner with the support he or she needs. It ensures the office can be responsive and flexible to demands, for example in the event of a surge in work. It avoids the costs and administrative burdens of setting up a whole new organisation that is able to recruit and employ its own staff outside the Civil Service.

Concerns have been expressed about the number of staff that the commissioner will have. I assure noble Lords that the commissioner will have the support that he or she needs. The estimates in the impact assessment take account of complaint levels to other bodies and reflect the fact that the commissioner will signpost to other dispute resolution services. However, if experience shows that we have got this wrong then the Secretary of State can review the commissioner's resources accordingly. I think that that is an advantage. I agree with the noble Lord, Lord Mendelsohn, that learning from experience—as other commissioners around the world have done—is very important.

It is right and proportionate that the Secretary of State should provide the commissioner's resources. Unlike the Groceries Code Adjudicator and Pubs Code Adjudicator, the commissioner will be funded from the public purse and not from a levy on the industry it regulates, so this is different in character. It is appropriate that the Secretary of State approves the budget and staffing of the commissioner as obviously that will have a direct impact on public expenditure.

Finally, Amendment 37 requires the commissioner to lay his or her annual report in Parliament, rather than the Secretary of State doing so. That would be an unusual move and unnecessary. The Bill provides that the commissioner must publish an annual report and that the Secretary of State must lay that report before Parliament. He does not have any discretion in this and has no power to alter the report. The critical thing is that we have a Small Business Commissioner who commands authority and respect, and who acts effectively and with credibility and impartiality. As my noble friend Lord Cope said, there is also scope for a deputy commissioner. I hope that with this extra information, noble Lords will feel more confident and able to withdraw their amendments.

Lord Mendelsohn: I thank the Minister for that reply. She cut to the heart of the problem when she talked about our arguments on the circumstances and way in which such a post could be abolished. She said that if it was felt to be ineffective and unable to carry out its task then there would be some easy means to abolish it. The problem is that if you do not give it the means to do the job, if you restrict its ability to learn and develop, then it will not be able to do that job particularly well.

When it comes to staff, the Explanatory Notes say:

"The Secretary of State may provide staff, premises, facilities or other assistance to the Commissioner. The Commissioner will not directly employ staff or lease premises, but will be allocated appropriate staff, premises and other facilities and assistance by the Secretary of State. The staff will be civil servants".

It is insufficient to say, as the Minister has, "We shouldn't worry about that because of course they will not be working with the Secretary of State—they will be working independently". By no means do I wish to cast aspersions on those individuals. However, if you want someone to do the job, it just does not work if they are given all the staff but no means of recruitment and development. It is not the largest organisation in the world: it consists of a dozen or so people; it is not huge. That is not the greatest degree of complexity. Recruiting for and scaling such an organisation is not the most difficult challenge. As for efficiency and effectiveness, what most small business people learn in running a small business is how to manage and work with their team. That is directly relevant to whether this body will be able to carry out its function. It seems somewhat ridiculous to say that it might not be able to perform its task when you give it the people who might be able to do the job but not the ability, powers, capabilities and the role actually to do it.

In that regard, I thought that the contribution from my noble friend Lord O'Neill was quite outstanding. There is a real problem in recruiting the right sort of person if you cannot see the pathway to making that sort of impact. I am encouraged that someone of the quality of the Minister has suggested that she herself might be interested in that role, although she has not confirmed that she will submit an application. That is a question that we might probe a little later. However, it is important to understand that we need people of quality and to allow those people of quality to flourish—to be in a role where they can make the best of what they have, as opposed to being within the vice of the Secretary of State. My noble friend Lord Stevenson made that point to probe the Government's view of the Delegated Powers and Regulatory Reform Committee's assessment. I think that it is worth reading out that assessment just so that we are absolutely clear about it. On a day when many people are talking about constitutional crises and historical precedents, I thought that the committee's language was very relevant. It said:

"We therefore consider that it is inappropriate for the Bill to confer on the Secretary of State a Henry VIII power to abolish the Small Business Commissioner without any of the procedural restrictions (beyond the need for an affirmative resolution in each House) of the nature set out in the Public Bodies Act 2011, particularly that requiring consultation".

That seems to suggest that this provision was written with a particular purpose in mind. I do not believe that that is the motive of those presenting it here today, but I worry because it has the feel of something that is more like that than a real way of developing something with a lasting impact for business in this country.

I am concerned that the general perception of how this provision was planned and developed underappreciated the role that the body should play. The estimate is that it will deal with 500 complaints. When a similar body

[LORD MENDELSOHN]
was first established in the state of Victoria, it dealt with 430 complaints of a comparative nature. Victoria is the second most densely populated part of Australia; I believe it has 5.8 million people—something of that nature. Its GDP is perhaps 1/10th the size of the UK's. It has perhaps 1/15th the number of small businesses that we do. It had 430 cases and we estimate that we will have 500. That is not a very ambitious view of the role of the Small Business Commissioner.

I say to the Minister that I hope that I am more than just charming.

Baroness Neville-Rolfe: I am grateful to the noble Lord for giving way. Obviously, we both enjoyed meeting the Australian Small Business Commissioner and comparing his role with the one that we have in sight. The role of that Small Business Commissioner is actually rather different from the one that ours will focus on. We have decided that he should focus particularly on late payment and the payment issues, which, as we all know, are a real problem. Many of the cases the noble Lord described involve matters such as property leases. I talked to the commissioner about what he was doing and it was a bit different from what we have in mind. We also have other provisions and ombudsmen, such as the Groceries Code Adjudicator, who deals with supermarkets, which means that the experience and the numbers are not comparable. I think that I have made it clear that we were making an assumption, I think rightly, based on experience of similar bodies in our own sphere. Obviously, one would need to keep that under review. I made it quite clear that the main thing is to have a commitment to resourcing this important commissioner. Happily, farm debt disputes are not a huge issue in this country, so we would not expect the commissioner to be hugely involved in such cases, as happens in Victoria.

Lord Mendelsohn: I thank the Minister for that intervention. That was about to be my next point. I have spent a large amount of time with Mark Brennan, both here and in other places. He identified the 500 tasks and challenges that he had to deal with. Of course, the origins of the Small Business Commissioner in Australia, as I outlined at Second Reading, came from very different circumstances and functions. In fact, late payment was never really part of the role. It still does not do that much. As I said at Second Reading, its performance on late payments is not one that I would wish to import. It does not deal with it effectively. In fact, one of our issues is whether or not the Small Business Commissioner can do it.

The number of complaints that the Australian Small Business Commissioner had was limited. If you divided by any means the number of complaints you had about late payments with the potential number that is meant to focus purely on late payments, you would end up in a situation where the comparable Australian figures suggest that their commissioner was trying to address 3% of the complaints and conflicts between businesses that we will if we take late payments. The assumed figure of 500 may well come from what we do currently but if you are establishing something that is meant to amplify it, what will 500 late payments do? Is one particular business responsible? If you were able to address 500 complaints, how much late payment debt would there be overall? It would not be that significant. In comparable terms, although the Australian commissioner has a different duty, 500 is still far too small.

Baroness Neville-Rolfe: It is important to remember the other work that is going on on late payment. We are bringing in the Small Business Commissioner. The noble Lord is right that it has not seemed to have worked in respect of late payment in Australia. That is why in parallel we are bringing in a statutory instrument, following the Bill that we passed last year, to bring in new rules on prompt payment, including some transparency provisions, which I suspect we will talk about later. These two have to come together and that is how you get the change of culture that you need.

The other point I want to make is that in my experience as a businesswoman, totemic decisions can be very important. You can end up with a lot of cases but you can find that if you make some correct judgments early on, they change the tone and the performance of the sector. None of us can know the numbers for certain but that would obviously be my hope.

Lord O'Neill of Clackmannan: I am sure that a court would back me up on this point. As elected Members of Parliament, we were required—and often enjoyed—to have surgeries in which we took the complaints of our constituents. One thing that always happened was the more successful you were in dealing with them, the more people you got. In fact, I used to get repeat complainers. I would say, "If I had not helped you the last time, you would not be back". The truth of the matter is that if this commissioner is going to be successful, the chances are that the figure of 500 will be a gross underestimation of the likely volume of business that he or she has to deal with.

Anyone who has been elected or who is in a significant position where queries and complaints can be registered knows that if the commissioner is successful, they will get more and more business and it will not necessarily be a class issue, in the sense of a legal class issue. All kinds of waifs and strays will come in off the street with questions and complaints, some of which might not be valid, but in order for them to be invalidated, they will need the attention and scrutiny of what could very quickly become an overworked staff.

4.15 pm

Lord Mendelsohn: I thank my noble friend Lord O'Neill for that useful intervention. There are academic studies on the culture of late payments which demonstrate that massive, punitive fines work best; regulation and legislation are better; and it is impossible to calculate the cultural impact of general provisions to inform and educate without a sense of what the consequence is, and in the absence of a public information campaign. In the same way, if you wish to encourage people not to do something, such as taking risks with fireworks, the case for a public information campaign is clear. I get the point about culture. We are saying that the

greater the number of effective measures to manage behaviour, the better the cultural change will be. We can argue about where we are on the spectrum, but that argument will play a significant part later on.

We understand what the Government are trying to do with the UK model, but that model will have inevitable flaws and there will be constant questioning about what it does. As the Minister rightly said, there were other measures and this is the safe harbour so that information can also be provided. There was not an adequate vehicle to send reports to and now there is. I suspect that, over time, it might be convenient for reports on other things to be sent to it too. I get that, but we are actually hoping that you will extend the role. It is very nice to be described as charming, but I hope that the power of our arguments, and those from other distinguished noble Lords present, will have an impact and help the Minister understand that our idea is to do more. There are concrete measures which can do this. The Government's proposal underplays it and does not provide the right sort of challenge and opportunity.

The noble Lord, Lord Cope of Berkeley, made a comment about allowing the deputy commissioner to be appointed by the Secretary of State. I suggest that our drafting was exceptionally wise and provided for a bit of give and take. If we were to remove everything from the Secretary of State we should at least give him something to feel comfortable with. We have continued to exercise a sense of to and fro and compromise with the Government on this. I suspect it was more an oversight and an error, but I would be happier for it to be seen in the first light than the second. These are significant issues which we will probably wish to return to on Report. I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Amendment 2

Moved by ***Lord Stoneham of Droxford***

2: Clause 1, page 1, line 9, leave out paragraph (b) and insert—

"(b) to consider complaints from small businesses relating to matters in connection with the supply of goods and services to—and make recommendations."

(i) larger businesses, and

(ii) public authorities;

and make recommendations."

Lord Stoneham of Droxford: My Lords, this is a simple probing amendment. If we have confidence in the Small Business Commissioner to deal with payment issues, and we are determined to build it up so that it has real authority and expertise, then it is the natural body for small businesses to go to for all late payment issues. So why do we not include public authorities as well? We know that it is better to have information and services all in one place. It simplifies and makes it easy for complainants to know where to go, as a last resort, to get matters resolved. Obviously, if there are other facilities available, they can be referred back. However, if there are genuine problems, why can the Small Business Commissioner not deal with them? Are we saying that there are no problems involving the public sector? Just the same issues emerge: small businesses find themselves dealing with big, anonymous organisations. There is a fear of falling foul of them, so they do not complain and the issues are not resolved.

The issues are the same whether we are dealing with small, medium or large businesses or public bodies. Why do we not have the Small Business Commissioner as a simple one-stop shop where these payment issues can be resolved as a matter of last resort? I beg to move.

Lord Hodgson of Astley Abbotts (Con): My Lords, this is an interesting amendment and worthy of further debate. Before I go any further, I ought to apologise to the Committee and the House for not having been present for Second Reading. Unfortunately, I was abroad, but I have obviously read the debate with care. I need to declare various interests, all of which are on the register of your Lordships' House. I am a director or chairman of various companies both public and private; I am a regulated person under the Financial Services and Markets Act; I have undertaken various reports for the Government looking at difficulties involving the growth of small business, particularly in the charity and voluntary sector; and I am currently undertaking a review of Part 2 of the transparency in lobbying Act for the Government. All of those cross over various parts of the Bill, so it is important that I get that on the record at the beginning.

I am concerned about the situation with regard to what the Minister writes in her response:

"I want the Commissioner to act as a disincentive to unfavourable payment practices, and build the confidence and capabilities of small businesses to help them assert themselves in contractual disputes and negotiate more effectively".

What the Government propose to do is splendid, but I would like it to go a bit further—in fact, I would like it to go rather further than the noble Lord, Lord Stoneham, suggested in his opening remarks—to make it possible for public authorities, in particular, to be brought within the purview of the Small Business Commissioner. I know that this is an issue with which the Federation of Small Businesses is concerned, and I suspect that Members of the Committee will have received briefings from it.

When I prepared for the Government the report called *Unshackling Good Neighbours*, which looked at the inhibitions that were affecting small businesses, particularly in the charity and voluntary sector—whether they were voluntary groups, community enterprises or, indeed, limited companies—it was clear that such organisations are playing an increasingly important role in the delivery of services to some of the most challenging and challenged parts of our society. The Government can provide the vanilla flavour solutions, but local organisations can provide answers to what are often very deep-seated and difficult challenges because they are more flexible and responsive to local conditions.

In all those cases, a public authority will directly or indirectly be the employer. The difficulty that those organisations have with public authorities can be widely demonstrated and evidenced, and it is a pity that the Government, who want a vibrant voluntary third sector, are not prepared to allow this to be part of the remit of the Small Business Commissioner. There are three

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particular aspects of the relationship of those groups with public authorities: the issues of commissioning, operating and payment. I could make a long speech about all of those, but I will not, I will just pick out a couple of points on each.

For commissioners, it is always easy to make a safe award: to award the contract to a big business, not a small one. The sunk costs of competitive tendering are not always understood. If you have a contract for £250,000 or £400,000, of course you need to get value for money for the public, the taxpayer, and you need to have some competitive tendering, but you must remember that if you ask 10 different voluntary groups to tender, nine of them will lose money because there is only one winner and the costs of their submissions are lost. There is not always clear enough consideration of the costs of making each and every tender in relation to the costs of the tender itself. This puts small companies, charities and voluntary groups under a very great disadvantage. The Minister might like to ask her officials to give her a copy of the report, published about 10 days ago. It states:

"Commissioning is failing charities and failing those they support … Commissioning is a significant challenge for small and medium sized charities for many reasons but not least their difficulty in competing against large, national and/or commercial providers who typically win larger contracts. These are often priced to work with those with less complex problems and those who are easiest to help—when small and medium sized charities are typically working with those with more complex needs who require more help. The commissioning process promotes competition over collaboration, making it harder for smaller organisations to participate and work together to benefit those they reach. Too often if they are involved they end up as 'bid candy'".

That is the position that the small business community should be able to consider. The same is true of operations. The monitoring costs of these contracts can be out of all proportion to the value of the contract. Not only that, but half way through the contract the basis for monitoring is changed, so that the small business is put under considerable administrative costs or has to change the way in which the contract is being looked at. They also come up against the operational requirements of other government departments. One of the examples I came across was from the Medway towns, in which a small voluntary group wanted two or three volunteers to assist the expansion of its operation. It asked the local jobcentre for help and 40 CVs were sent. They had to be considered and when requests for interviews were sent out, only about 15 turned up, and in the end it made only one of the three expected appointments.

When we inquired why that was the case and why 40 had been sent, the jobcentre said that it was interested in fulfilling its requirements for jobs offered and could put 40 ticks in the box if it sent along 40 CVs. If it had sent only 10, it would get only 10 ticks in the box. These are the sorts of practices and burdens imposed on small businesses, particularly in the voluntary sector, which the Small Business Commissioner should be able to tackle. The commissioner can do so by publicising difficulties, intervening to prevent repetition and facilitating co-ordination between government departments, but to do that, the commissioner needs to have the power when necessary to stand up and get involved with public authorities.

I hope that my noble friend will be able to reflect on this as we work our way through the Bill and we come to the later stages. It is in line with the Government's thinking, and it would help greatly in the development of a vibrant civil society.

Baroness Byford (Con): My Lords, I apologise to the Committee that I was unable to speak in the Second Reading debate. I had a funeral to attend elsewhere.

My contribution is very small but I want to enforce what my noble friend has just said. Having worked in the voluntary sector for many years, I can say that it was always one of the problems we had. It has become increasingly more difficult over recent years with the economic climate in which local authorities have to work. We can understand in some ways why this has been geared up. It is a very real issue. Perhaps I should declare an interest. I do not have many to declare but one of them would be affected by this. I am president of the Leicestershire group for young people. It used to be called Clubs for Young People, but it is now called Young Leicestershire. It is a good example of an organisation that looks to get some financial support from local authorities. Again and again, it is a matter of how much information has to be given, how much possibility of acquiring it, and how much time is given to it. I hope the Minister can reflect on this because if we do not include the public authorities, it would be an opportunity missed. Unless the Minister can tell us that it is already covered by something else, it is an issue to which we will return later. I encourage her to reflect on it.

4.30 pm

Lord Cope of Berkeley: My Lords, at Second Reading I referred to this question of public authorities. I repeat my view that it would be helpful if public authorities were included as well as larger businesses. I understand some of the reluctance from my noble friend and the Government to include public authorities in this, because there are other arrangements to which people or businesses can go to complain and get mediation in disputes with local authorities. However, the powers of the Small Business Commissioner as set out in the Bill are, for example, to give "general advice and information" on these questions. In doing that, why should not the Small Business Commissioner also be able to provide general advice and information to small businesses about how to go about dealing with a local authority that is not paying them promptly? That is what this is about.

Of course, there is another angle to Amendment 2. The noble Lord, Lord Stoneham, would not only include public authorities here but also omit the words,

"relating to payment matters in connection with the supply of goods".

The noble Lord's amendment would widen very considerably the amount of complaints that the Small Business Commissioner might get and I am less sympathetic to that element of it. I accept the argument that my noble friend made about focusing the efforts of the Small Business Commissioner. In time, once the commissioner's office is established and working well,

it might be right to suggest increasing the elements of business relationships that the Small Business Commissioner was able to look into, but let them start off with what has been one of the most perennial problems I can recall for at least 40 years, where there have been political complaints about late payment, the problems of small businesses and so on.

We all know why there is this problem; it is because of the cash-flow pressures on larger and smaller businesses. It has been such a difficult problem that, to my knowledge, all successive Governments over the past 40 years have looked at and tried to deal with it, including me when I was a small firms Minister in Margaret Thatcher's Government. Frankly, none of the solutions proposed has really been very successful. That is why I am happy for the Small Business Commissioner to concentrate, at least in the first instance, on this particular issue. I do not support that element of the noble Lord's amendment.

While I am on my feet, I apologise to the Committee but I will have to leave before long because I am a member of the House Committee and we are having our first ever joint meeting with the House of Commons Commission at five o'clock, which I should attend in spite of attractions in other parts of the building. I wanted to make that point to reinforce what I said at Second Reading.

Lord Mendelsohn: I congratulate the noble Lord, Lord Stoneham, on his presentation of this amendment and the basket of amendments that it covers. It had strong support from the noble Lord, Lord Hodgson, and the noble Baroness, Lady Byford, and for exactly the right reasons. That is very powerful.

To try and encapsulate this, these amendments are about a couple of very obvious things. First, the brief is too selective because there are organisations outside the terms currently drawn in the Bill but for which the flow of late payments or other matters become an issue. Secondly, the issue of the public sector is an incredibly obvious one.

Two angles to this issue are hugely relevant: the issue around payments and the business environment. They are connected and relate also to the Small Business Commissioner as late payments are rarely about just the egregious actions of a particular company. As the noble Lord, Lord Cope of Berkeley, said, in many cases very difficult issues arise with cash flow. These will rarely be solved by treating this matter as just a singular dispute between two parties. You have to consider the wider impacts on the business environment and the fact that late payment can be remedied only by taking a wider view and taking into account the capacity of the Small Business Commissioner to act in relation to the business environment in general.

If there is a problem with cash flow, you can shout at the businesses for as long as you like, but it means that one and possibly both are struggling. All of a sudden, if you tilt the balance too much one way, it may lead to one of the businesses closing down. The Small Business Commissioner is meant to be an agent who can create the right solutions. The Australian model has evolved great skill in creating what is called in Australia "commercially realistic solutions" rather than just determining right and wrong. Its great attribute is its credibility and authority and the scope of who it can deal with, not just its focus. If you deal with late payments just in terms of the circumstances of the two parties, you miss the point about the ongoing cash flow. Whether it is a case of large company contracts or small company contracts, a dispute between two parties is part of the problem.

Amendments 13 and 18 address the fact that 70% of small business trade is with other small businesses. Satago is a fantastic company with terrifically rich data. However, it highlighted the fact that under the Bill it is very hard for small businesses to come forward with some of the complaints we are discussing. Our amendments would help to ensure that whether it is a case of small businesses, large businesses or the public sector, the Small Business Commissioner cannot just deal with payment problems but can also take a wider view of the business environment. As I say, this is not just about disputes between two parties but about making sure that the overarching view is the right one.

Government regulation of small businesses should focus on addressing information balance and creating fair competition. While small business legislation should protect small and medium-sized businesses, the net outcome should be an enhanced competitive and fair operating environment for all business. Government involvement in small business matters should aim at ensuring that both prospective and ongoing small businesses have sufficient knowledge to make informed business decisions. While any business has a fundamental right of control over positioning and maximising its business opportunities, this right does not extend to engaging in unfair business practices. Small business should be able to access a low-cost informal dispute resolution forum prior to any grievances proceeding to formal litigation. These things are crucially important.

The business environment covers everything from where you get credit, which terms you establish, to how the logistics support the delivery of goods. All those things are relevant to late payment. If you want to deliver with a practical solution, sometimes you can mediate between two parties. However, sometimes the Small Business Commissioner needs to draw on the experience of others. These amendments are not just about the disputes mentioned by other noble Lords and dealing directly with certain problems; they deal with payment matters in general rather than just specific payment disputes. These things are important even as regards how you design a procurement process and the flow of money that comes from it, as this can sometimes be part of the problem. We should allow the Small Business Commissioner to draw on wider experience to promote an environment where late payments are less likely to occur.

Baroness Neville-Rolfe: I thank the noble Lord, Lord Stoneham, for his contribution on the scope of the complaints handling and the point that he made about late payments to public authorities, which I will come to in a minute. I am also delighted that my noble friends Lord Hodgson and Lady Byford have joined us for the debates on the Bill. I know that they will bring a great deal to our discussion. Before he leaves for his constitutional engagement, I thank my noble

[Baroness Neville-Rolfe]
friend Lord Cope for bringing us his long experience of the extremely difficult issue of people not paying their bills on time, which we as a Government are now seeking to address.

For completeness, perhaps I should mention Amendments 13 and 18, which I do not think anyone has focused on, which would allow the commissioner to handle a complaint made by a small business against another small business or a medium-sized business. The Bill provides that the commissioner's complaints scheme will handle complaints by small business suppliers about payment-related issues with larger businesses—that is, a medium-sized or large business. The intention here is to help small firms where they suffer because of an imbalance in bargaining power when dealing with larger businesses. I think that that responds to one of the points made.

Lord Mendelsohn: I am disappointed that the noble Baroness missed the fact that during my speech I made specific reference to Amendments 13 and 18. I said that the justification for them was that 70% of all transactions for small businesses are between them, and of those, a significant number are triggered by the impact of large businesses.

Baroness Neville-Rolfe: I thank the noble Lord for that clarification. I was just saying that I think that that responds to the point that he was making on them, but those amendments are before us today.

I must say that there will be circumstances where an imbalance of power exists between two small firms, but we did not have the weight of evidence before us when preparing the legislation to suggest that it is necessary for the commissioner's remit to extend to those cases. There is a lot of agreement today on a lot of aspects of our proposal, but perhaps not on that particular area: the focus that we propose on payment. We are targeting the commissioner's services at the businesses that are most in need of support. I understand what noble Lords are trying to achieve with the amendments. We know that medium-sized businesses may struggle, but they are likely to be better equipped to able deal with their problems than their smaller counterparts.

I turn to Amendments 2 and 36.

Lord Mendelsohn: I thank the noble Baroness for giving way. I have just a very quick question to help us to understand how she arrived at this policy architecture. Of whichever number that she identifies as money owing to small businesses, what proportion is to large businesses and what proportion to small businesses? If she has specific numbers, that would be helpful.

Baroness Neville-Rolfe: I will come back on that point soon, if I can; otherwise I will write to the noble Lord with the figures, if we have them.

I turn to the public sector side of this afternoon's debate. The proposals in Amendments 2 and 36 would widen the complaints-handing function to cover all matters relating to supply of goods and services to public authorities as well as larger businesses, and would require the annual report to summarise such complaints.

Where a small business has a payment issue with a public authority—I do not suggest that that does not happen; small businesses do have problems with public authorities—we consider that it is better addressed by existing frameworks. If I may, I shall talk the Committee through some of the existing frameworks. The first that I would mention would be the mystery shopper—slightly oddly named, I would say. It provides small businesses with an easy route to raise concerns about public sector procurement practices. It can investigate complaints about the procurement practices of the public sector and issue instructions and recommendations to remedy the situation. It publishes the outcome of its cases on its website and through its social media, naming the public authority involved.

4.45 pm

In response to my noble friend Lord Hodgson, I have an excerpt here of a report by the mystery shopper service, covering April to September of this year, which shows individual cases where the service has looked into public procurement and payment issues. It evidences that the service is focused on the very issues that my noble friend has raised. There is a good example involving the Ministry of Defence. The report says:

"A Mystery Shopper raised concerns in April that they had not been paid by a subcontractor",

whose name I will not mention. It,

"initially confirmed that the supplier had been paid after initial enquiries had been made. However this proved not to be the case so the team continued to press",

the firm concerned,

"and the Mystery Shopper subsequently confirmed that the outstanding invoice had been paid".

I like this example because it shows the detailed work that is being done on the public sector side with the mystery shopper scheme.

We have looked at the whole area of public payments because the Government should do in their own backyard what they are urging business to do. There is a framework which applies 30-day mandatory payment terms. Businesses can charge interest on late payments and claim administrative costs. There are new reporting requirements on the Government and we have legislated to cascade 30-day payment terms down public sector supply chains. The Public Contracts Regulations 2015 include a number of innovations on exactly the points that my noble friend Lord Hodgson raised; for example, a pre-qualification stage below the EU level, and a number of improvements which get at payment and actually go a little bit wider. I would be interested to talk to him about whether he thinks these are beginning to help. There is a "contracts finder" website as well. Noble Lords will know that I am always very keen to have information on public change on the web so that people can access it. We have a public policy commitment for central government to pay 80% of undisputed invoices within five days.

For all those reasons—I hope noble Lords will forgive me for going on at such length but these are important reforms—we think it is right to limit the

role of the Small Business Commissioner. Having said that, although the commissioner's focus will be on business and small business, he or she will have an important signposting role to help small businesses deal with complaints against public authorities, to ensure that they get the support that they require. I hope I have responded to the main points that were made in the debate and that the noble Lord, Lord Stoneham, will feel able to withdraw his amendment.

Lord Stoneham of Droxford: I thank everybody who participated in the debate. It was very interesting and I am very grateful for the support that I seem to be getting from the noble Lords, Lord Hodgson and Lord Cope—I accept only in part—the noble Baroness, Lady Byford, and the noble Lord, Lord Mendelsohn.

The points made by the noble Lord, Lord Hodgson, were very apposite. I agree entirely with his three stages of commissioning, operations and payment. I accept that that is widening things considerably. I could welcome that but I also have some sympathy for the Minister, who is trying to get some focus. I am prepared to accept what the noble Lord, Lord Cope, is saying—that the main area is payment—but inevitably, as whoever is dealing with this is trying to focus on these issues, that person will be drawn into issues of commissioning and operations as well as payment. If there was an argument saying, "We want focus", I could accept that the first stage would be to look at payment and then, if we are not resolving things as we like, we can look at commissioning, the monitoring process in the public sector and so on, if those are the subsidiary issues. So I can accept the argument for focus.

The noble Lord, Lord Mendelsohn, was saying how important it is that the whole culture here is all-embracing. This is why I find the Minister's response quite disappointing. On the one hand she is saying, "We're making a lot of improvements, the Government are committed to this. We're having mystery shoppers, and that's improving things". If that is the case, what are we frightened of? If we are saying that the Government are making improvements, why do we not monitor it? Why do we not allow the Small Business Commissioner to say, "It's amazing—I had a number of complaints in the private sector but because of all the work the Government are doing, I have to say that I am mightily impressed by the progress there, and as a result we have very few cases". Therefore, if the work that is being done is successful, there will be less of a burden on the Small Business Commissioner, which will be welcomed.

The Minister made a very telling point. She was saying that obviously, if we are legislating on the private sector, the public sector will have to behave as well. Anybody in the private sector looking at this will say, "You're putting all the burden on us and you're not prepared to have the guts, the courage and the confidence to say, 'We'll allow the public sector to be measured as well'". Call it clearly. If we have the confidence and are determined, we should include that.

Baroness Neville-Rolfe: I was trying to make the point, with rather a long list of what we tried to do in the public sector to put our house in order—alongside the noble Lord, Lord Stoneham, for a number of years—that we brought in the Public Contracts Regulations 2015 and a number of changes, and we are trying to measure and look at that. It seemed that what we are doing there and how we are monitoring is relevant to the issue of what the priority should be for the Small Business Commissioner that we are setting up. We believe that the prime focus of the commissioner should be on late payment, particularly when there is an imbalance of power between big business and small business, which has been a recurring issue that noble Lords on both sides of this House have been worrying about.

Baroness Byford: My Lords, before the noble Lord comes back again, I thank the Minister for that clarification. In particular, in the first instance, I think we are all concerned about late payments. As for public authorities, the instance I gave is about looking at local authorities as well. I am not sure whether the amendment, as it stands, would include both local and national authorities. On the charity side, negotiations invariably take place with local government, which is key. At the moment, with the economic pressures that local authorities are under, clearly it is putting extra pressure on those who are bidding for commissioning and everything else that goes with it. Therefore I was not quite clear whether the noble Lord's amendment would include local authorities as well as national ones.

Baroness Neville-Rolfe: The mystery shopper and the arrangements I have described obviously cover local authorities as well as other public authorities, and I suspect that the amendment does the same for the same reason.

Lord Mendelsohn: The Minister made the point that the prime focus should be on where small businesses need to address disputes with large businesses, where there is an asymmetry of power. That is where the prime focus is, and currently the law is drafted to make that exclusively its focus. Does that mean that the Minister is not averse to an extension of the role so long as it was able to carry on with these functions, which is the prime and current focus?

Baroness Neville-Rolfe: My Lords, the proposal before the House is set out in the Bill. I think we have all agreed that this is quite a challenging office to set up. We want to get off on the right footing, and for today's purposes the focus is on where this imbalance of power is.

Lord Hodgson of Astley Abbotts: Before the noble Lord, Lord Stoneham, finally withdraws this amendment, I hope that, if he is to persist in this at a later stage of the Bill, he will reflect on how one distinguishes payment from monitoring and contract. If you accept a payment-by-results contract, you are committed to it long before you get to the payment stage. If you change the monitoring methods in the middle of the contract, the payment flows from that because it is then paid a different way. The yardsticks, the key performance

[Lord Hodgson of Astley Abbotts]
indicators, will be different. While it is very neat for the Government to say this is about payment, it washes back up the chain to what was done before. I understand what my noble friend Lord Cope and the Minister said, but these are not discrete silos. They are all interlinked.

Lord Mendelsohn: I have one final question. The Minister said that this of course addresses the issue about the imbalances of power. What is the size of a particular business and the circumstance of a transfer of goods which defines whether that imbalance of power exists? Is that defined by size, turnover or number of staff? What is the definition of power that allows this to take place?

Baroness Neville-Rolfe: My Lords, small businesses caught by this Bill are those with fewer than 50 employees —so 49 or fewer. To further refine that, we can add extra provisions by regulation, provided those are in accordance with EU law. I do not think we have tried to lay down what constitutes a big supplier but I will certainly look again and come back to the noble Lord if I have anything to add. I do not have anything further on that.

Lord Stoneham of Droxford: I am grateful for those various interventions. There were so many, I am not sure I can respond to them all but I will try.

First, I intended that this general reference to public authorities would include local authorities, for the very precise reason given—that it is more likely that it will be a small business which deals with a local authority. I intended that and if I have not got it right I hope that as we go forward we can look at that further. I am grateful to the noble Lord, Lord Hodgson, for developing his argument with me. I will return to and look at this further because I think it is right.

However, the critical issue here is the words "imbalance of power". The imbalance of power argument seems to refer as much to the big businesses in the private sector as to a small business dealing either with a local authority or the public sector. Although I accept that the Government are doing a lot here, they should have the confidence to look at this as a way of doing more to show that, just as they make requirements of the public sector, they ensure that their own house is in order and, indeed, setting an example. Together, that would be a much more forceful way forward in what we are trying to do here, which is to deal with the whole issue of late payment.

I see—I am not sure the Government do—the Small Business Commissioner as a one-stop shop. If we start saying to local businesses, "Well, you cannot take issues you have with local authorities to the Small Business Commissioner", then, although the Small Business Commissioner will be told that he can instruct them to go somewhere else for advice, local businesses will just get frustrated. They will want resolution of their issues. If they are referred around the houses, it will just disillusion them and undermine confidence in the system that we are trying to set up.

I accept the arguments that have been made in the debate. I welcome the support that the amendment has generally received—it was much wider than I expected. Obviously, although I am happy to withdraw the amendment now, I will come back to this matter at a later stage.

Amendment 2 withdrawn.

Clause 1 agreed.

Schedule 1: The Small Business Commissioner

Amendments 3 to 5 not moved.

5 pm

Amendment 6

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

6: Schedule 1, page 50, line 29, at end insert—

"Advisory Panel

The Commissioner may establish an Advisory Panel with membership drawn from different regions and industrial and commercial sectors to assist in the efficacy of the Commissioner's work."

Lord Hodgson of Astley Abbotts: My Lords, Amendments 6, 7 and 35 are probing amendments, designed to explore the Government's thinking about how the Small Business Commissioner will actually work in practice. This goes back to some of the ground covered by the noble Lord, Lord O'Neill of Clackmannan, in an earlier debate. I hope that my noble friend can enlighten the Committee about the sort of experience the Government expect the Small Business Commissioner to have. I am sure it will be tempting to say, "It depends, it depends". At one end of the spectrum they could be the doughty Whitehall—or ex-Whitehall—warrior, practised in the ways of government. At the other end is the practitioner with a successful small business record behind them. Those two would lead to very different approaches in the way that the commissioner carries out its functions.

Amendment 6 suggests the appointment of an advisory panel, with membership drawn from different sectors and geographical regions. This is because it will be exceptionally difficult for a commissioner to grasp the full range of the commercial and industrial challenges that small businesses face with payments and other things. Those challenges will be different depending on whether you are operating in Stockton-on-Tees or deepest Devon. The first question, therefore, is whether he or she can have an advisory panel to provide routes into information about and detailed knowledge of how different industries and different parts of the country operate.

Amendment 35 is intended to make sure that the commissioner does not become M25-centric, which is always a danger if one gets bound into Whitehall. It requires the annual report, specified in the Bill, to contain information about visits made around the country. We can therefore be reassured that real-life knowledge is being gained. This is part and parcel of

the philosophy which I hope the Government can reassure us will be espoused. Amendment 7 is slightly focused and deals with the issue of relationships with regulators. We will deal with regulators in more detail when we come to Part 2, but this amendment—if the Government were minded to consider it—would give the Small Business Commissioner a particular duty or locus in highlighting specific areas of concern relating to regulators. Small businesses, individually, simply cannot take on regulators because of the time involved and the fear of what might happen. There is a role here for the Small Business Commissioner to assist in the Government's deregulatory agenda. The Government are very keen on deregulation and an amendment on these lines would assist in that process.

It is always worth while remembering how one gets regulatory creep and how the tentacles of bureaucracy push on outwards. Noble Lords may be familiar with the PAT: the portable appliance test. They will recall that one used to push the flex into the back of the kettle then switch it on. This meant that the flex was used a lot and frayed; water and electricity do not mix well together. After some staggering and terrible accidents, the PAT was introduced and these appliances had to be inspected. That quickly morphed into an inspection of all portable appliances, because they all had flexes and were all equally dangerous. By the time this happened, the electric kettle was no longer a problem because, as noble Lords will know, one now buys a kettle with a stand it goes straight on to; the flex does not move at all. So the whole rationale for the portable appliance test had been morphed around.

Now we have a situation where, although the regulations require an inspection only every three years, small businesses are often encouraged to have inspections every year. It costs about £1 a shot to have your portable appliances tested. An enormous amount of time, money and effort is being wasted to no great avail. These are the sorts of things about which the Small Business Commissioner, in dealing with a regulator, could say, "Actually, there is an issue here that you could tackle and help with". I know it is outside the scope and it is widening the Bill, but it is an area in which small businesses could be greatly helped.

I take part in the Lord Speaker's outreach programme, talking to schools. It is a wonderful thing to do and I learn an awful lot every time I go to a school. I often finish by having a cup of tea with the headmaster. At a school I went to last year, the headmaster asked me whether I knew about the portable appliance test. I said I knew a bit about it. He said the school had just had an inspection. The inspector went round the classrooms and found an overhead projector on the ceiling. He said, "I need to check that because it is portable". The school said, "You can only get at it if you get on a ladder and get up there. Therefore, it is not portable and nobody can get at it anyway". The inspector said, "Well, I think it is". The school, quite bravely, said, "We are going to ring the Health and Safety Executive in London". The Health and Safety Executive found in favour of the school. I asked the headmaster, "Was that very good?". He said, "Not exactly, because they then went through the whole of the rest of the school—absolutely everything—inch by inch, and they managed to find in the bursar's desk drawer an electric pencil sharpener which had not been inspected for three years and they therefore failed the school".

Those are the sorts of costs that are being applied to businesses, and if we had a Small Business Commissioner he could draw attention to those sorts of things and do something about relieving the burden. These are probing amendments at this stage. They are designed to try to find out what sort of person is going to do this job and then to try to find a way in which they can do things to assist the Government's deregulatory agenda and the operational efficiency of small businesses. I beg to move.

Lord Stoneham of Droxford: I cannot resist the temptation to support the noble Lord, Lord Hodgson, as he was so positive about my amendments. We will see what the Government say on these amendments but I sense that there is a general watering-down of the proposals and they will be slightly reticent about the advisory panel. If there is not a board or whatever supporting the commissioner, clearly a panel is a very good idea because it will widen support. It is related to the regional issue because if this body has only 50 staff, it is difficult to see how it is going to have regional purveyance and credibility around the country. All these points, plus the duty on the commissioner to refer good advice and to deal with regulatory issues, mean that this becomes much more of a one-stop shop where local businesses can come, initially with problems related to payment, but its remit will widen as other issues are seen to be pertinent.

Lord Mendelsohn: My Lords, I congratulate the noble Lord, Lord Hodgson, on his excellent presentation of these issues. We are very supportive, although I suspect that we would be less sympathetic to Amendment 6 on the advisory panel and it would not be something that we were wholly in favour of. This is not a formal ombudsman where there is usually an advisory panel to make sure there is some connection with it all. We also believe that the Small Business Commissioner needs a certain amount of discretion. We would not feel entirely comfortable with an advisory panel. However, the noble Lord might be infinitely more successful in persuading the Minister to adopt an advisory panel, and in those circumstances the measure would certainly help rather than hinder the potential progress of unlocking that broader role.

We strongly support the measures that the noble Lord talked about to address the questions of being very London-centric and making sure that the Small Business Commissioner understands the need to operate across the country, and also the noble Lord's very apposite concerns about where regulation fails. Very briefly, our view is of course that the Small Business Commissioner has a role to work from the bottom up. Some of the problems we address in regulation could be dealt with quite comfortably by focusing on the role of the Small Business Commissioner.

On our Amendment 38, we are very concerned that on occasion the Small Business Commissioner would be able to inform government regulators and other public agencies of where the impact of regulation is far too onerous. In many instances, the easy option for

[LORD MENDELSOHN]
regulators and administrators of all different types is to concentrate effort on enforcement, crackdowns and looking for disciplinary measures to deal with non-compliance. However, that is quite a lazy way to deal with the lee-ways available. Simply issuing infringement notices is not the best mechanism available to regulators to improve the business environment. Businesses want to comply with laws and regulation. Non-compliance, especially in the case of small businesses, is frequently associated with unawareness or even the very simple management challenge of having too little time and, frankly, expertise in the areas dealt with. There are only a small number of people in a small business, ranging from one to a few. It is far too much to believe that someone would be able to spend their time finding—or then understanding—all the regulatory and legislative ins and outs.

It is a responsibility of government, agencies and regulators to inform and educate small businesses about the rules and regulations that they need to comply with. Our proposed measures, together with those of the noble Lord, Lord Hodgson, sensibly address this and look for opportunities where compliance can be streamlined and business interaction reduced. The example that the noble Lord raised is one we can avoid. We need to make sure that the Small Business Commissioner plays his part in ensuring that government agencies and others can be facilitative and educative, can deal with the problems of information and are able to ensure justice, rather than just be crackdown enforcers who impose on the management of businesses the sort of difficulties which we would rather redress. Here are proposals to ensure that in circumstances where the Minister may consider it, the Small Business Commissioner might, apart from the prime and overwhelming focus, at some point on the horizon be able to exercise their immense judgment in being able to develop that sort of role. We strongly support these measures.

Baroness Neville-Rolfe: My Lords, as always I am grateful to my noble friend Lord Hodgson for this probing amendment, which led to a very good debate. I will try to answer the questions raised, starting with the million-dollar question of what sort of person should be commissioner. I am not writing a job description this evening but I think we will look for someone with practical experience, perhaps in law or business, and with important skills including judgment, personal authority, the ability to influence effectively and to understand the intricacies of business relations and disputes, energy, and probably the charm—going back to the opening remarks—to get things done.

I will say a few things to my noble friend on Amendment 6 and the issue of an advisory panel to assist the commissioner. I agree that the commissioner will need to understand how supply chains work in different sectors and whether or not there are particular payment issues in certain regions—I will come on to that again later. In order to carry out the role we would also expect the commissioner to have regular contact with senior figures across industrial and business sectors and elsewhere. I have heard from the Australian Small Business Commissioner how important that has been to the success of his role.

However, having said that, the Government do not consider that providing for the establishment of an advisory panel in primary legislation is necessary or advisable. We would rather permit the commissioner to determine what advice he or she may need and what that means for his or her engagement with industry and the regions. As we have said several times this afternoon, the commissioner must be, and be seen to be, independent and should be mindful of this in engaging with industry. This would inevitably bring with it considerations and criticisms regarding the balance of membership of the body.

5.15 pm

We would expect the setting up of such a panel to be no small task. There would be questions of what sectors are to be included or excluded, what regional balance is necessary, how many small businesses versus how many medium and large businesses, and so on; that would cost money and divert attention from the prime task, which is focusing on improving late payment.

There are many existing bodies and arrangements that the commissioner may wish to work with, which could include the trade bodies, local strategic partnerships, growth hubs, the CMA or indeed any national or regional body that can advise on sectoral and industrial issues. It would seem more efficient to begin here rather than start with a new arrangement. The intention behind the amendment is understood, and of course nothing in the legislation would inhibit the commissioner from setting up a panel should he consider that appropriate.

Amendment 7 would amend Clause 3, which enables the commissioner to publish or give to small businesses general advice and information that would be helpful for small businesses' dealings with larger businesses as supplier or customer, and in encouraging them to resolve or avoid disputes. The types of general advice and information regarding small businesses' dealings with larger businesses that we envisage the commissioner will provide, principally via a web portal, are very important. They include the principles of agreeing contracts, general rights and obligations relevant to supply chain dealings as well as options available for resolving the dispute such as mediation. There are of course a wide range of options, as we will come on to discuss, from arbitration to ombudsmen, which we envisage the Small Business Commissioner signposting.

Clause 3 also provides for the commissioner to give information about and signpost to bodies including regulators, which can assist small businesses in their dealings with, for example, public authorities, which we have already discussed. I will give noble Lords an example. To illustrate, information and signposting to bodies that provide dispute resolution services could include the Groceries Code Adjudicator, which clearly provides overlapping advice, but not, for example, the Environment Agency, which is on the list, except in the narrow area where that would be relevant to his focus.

The Bill already provides that the commissioner's advice and information function will cover information about a number of the regulators that are in scope where they could help a small business with its supply relationships; for example, in a dispute. I can say this

evening that this is obviously a very important part of the Small Business Commissioner's work. I envisage a process of consultation on some of the signposting that is needed and so on, to make sure that that is useful. It is a two-stage process, involving setting up a signposting operation with a web portal so that people can find things that they need in relation to disputes in one place, and, one hopes, with links to other areas which are not so directly applicable. Then there is the complaints process, which we have focused on so far and which is the second stage.

My noble friend wishes to ensure that the commissioner works across all of the regions of the UK and understands the different issues at play across our great nation; I took that point. The annual reporting requirement, of course, provides transparency by ensuring that the commissioner gives a clear account of his or her work to the public and to Parliament. I agree that this should cover the work of the commissioner across all regions of the UK. However, within the parameters of the existing requirement to describe what has been done, the commissioner should be allowed the discretion to decide on the content and scope of the report, based on his or her activity during the period. This is the best approach: insisting that the commissioner visits or reports on their visits across the UK, rather than building on the Australian model and allowing the commissioner to consider what is appropriate and proportionate, could end up limiting, rather than optimising, their impact.

Lord Hodgson of Astley Abbotts: Amendment 35 just says,

"including details of any visits to the different regions of the United Kingdom".

It does not say that the commissioner has to make them. If they do not say anything, we will assume that they have not gone. Without constricting or constraining the Small Business Commissioner's judgment of the best way of executing the task, there is, nevertheless, an inherent idea that a certain number of visits should take place.

Baroness Neville-Rolfe: I thank my noble friend for that clarification. This is an eminently sensible approach: we need to make sure that the interests of regions are taken into account. Although we try not to be, some of us tend to be a bit M25-focused. I think my noble friend is saying that there is a wider wealth of opportunity on payment issues right across our great nation.

I have tried to respond to the various questions which have been raised and I hope that, in the circumstances, my noble friend and the noble Lords will feel able to withdraw their amendments.

Lord Mendelsohn: I have a brief question before the noble Lord, Lord Hodgson, rises. We are different from the Australian example in that we define small business and who this operates for and they do not, and in relation to complaints information, signposting and other things. There is a question about how the Australian system evolved—in Victoria it happened by accident and in all the rest by design. It allowed larger businesses that dealt with small businesses to make complaints, raise questions or seek information. Famously—and this will interest the noble Lord, Lord Hodgson—one large company used the Australian Small Business Commissioner to help renegotiate franchises to the betterment of small business. Would that be excluded with this legislative architecture?

Baroness Neville-Rolfe: My Lords, that would be excluded in the approach we have adopted in the Bill.

Lord Hodgson of Astley Abbotts: I am grateful to the noble Lords, Lord Mendelsohn and Lord Stoneham, for their supportive remarks. I am also grateful to my noble friend for giving a degree of assurance that we are not expecting the individual to be stuck within the M25 but to get out and about. I will, obviously, read carefully what she has said. I am interested in how we are going to have equality of arms with regulators. My noble friend made some interesting comments on that which I will reflect on. In the mean time, I beg leave to withdraw the amendment.

Amendment 6 withdrawn.

Schedule 1 agreed.

Clause 2 agreed.

Clause 3: General advice and information

Amendment 7 not moved.

Amendment 8

Tabled by ***Lord Stevenson of Balmacara***

8: Clause 3, page 3, line 10, at end insert—

"( ) tax rates, allowances and thresholds of relevance to small business owners."

Lord Stevenson of Balmacara: I beg to move.

Lord Mitchell (Lab): My Lords, I speak in support of Amendment 9 in this group. Yet again I return to the subject of payday lending. Over the past three years, noble Lords have secured some pretty impressive legislative reforms. As a result of amendments to previous Bills, the FCA is now in power to regulate the terms and conditions under which payday loans are made. The rate of interest is now regulated but the most significant change is that, under all circumstances, the total repayment of any loan is restricted to double the value of the loan itself. This is a real result, since those charming people in the payday lending industry had been adept in slipping in all sorts of unexpected and sneaky charges.

It is interesting that the perils that the payday lending companies themselves and their lobbyists forecast failed to materialise. It really was a change for good. I pay tribute to the FCA for getting on top of this abuse and I read on today's BBC website that Dollar Financial UK has admitted malpractice and will refund £15.5 million to 147,000 customers. So it really is working. This morning I checked on Wonga's website and saw that

[LORD MITCHELL]
the APR on its loans is 1,500%—scandalous, it is true, but dramatically less than the mere 6,000% it had previously been charging.

Today's amendment in my name is designed to give the commissioner the powers to advise small businesses in respect of payday loans and, by implication, all the short-term, high-interest category of loans. Clearly, many small businesses are often desperate for cash to meet unexpected costs. Many of them are sole traders or employ no more than a handful of people. Banks, as we know, tend to be unhelpful and for many businesses payday lending is a short-term option. We simply want the commissioner to advise the small business sector of the potential pitfalls of this type of borrowing.

I also want to address the area of EIS—the enterprise investment scheme. I state my interest that I am chairman of a small company, Instant Impact Ltd, which started four years ago with two young men based in Starbucks drinking coffee and it has now expanded to £1 million turnover. It is involved in graduate recruitment. We, too, have just introduced an enterprise investment scheme. There is also the seed enterprise investment scheme, introduced by this Government. Both schemes work pretty well. The Labour Government introduced the EIS but SEIS was introduced by the last Government and it works really well. In the area in which I am very involved—the tech sector—SEIS is absolutely crucial.

I have noticed that surprisingly few young businesspeople, older businesspeople, advisers, accountants and lawyers are aware of some of these schemes. That surprises me and I advise that the commissioner should have the power to influence the knowledge of these schemes and others that might come throughout the business community. I beg to move.

Lord Hodgson of Astley Abbotts: My Lords, I certainly recognise and applaud the work that the noble Lord, Lord Mitchell, has done in exposing and correcting some of the more egregious aspects of the short-term loan lending industry. I add a word of caution on the proposals.

The short-term loan sector is like an iceberg and the noble Lord fairly and properly sought to regulate the visible part of the iceberg. He referred to the FCA, the work going on, and the effect this work has had. I applaud that. However, it is the invisible part of the industry that is really nasty. That continues to exist. The danger is that if we make it too difficult for firms in this visible part of the iceberg to operate with full disclosure it is to the invisible part that people will turn because there will always be a demand for short-term cash for one reason or another.

Given what he said about the FCA and financial regulation, I am not convinced that it is part of the Small Business Commissioner's role to give guidance on payday loan rates and their appropriateness as that is a very difficult and problematic concept. That is something for the financial regulator. All I ask is that we avoid the risk of demonising these firms. However unattractive the noble Lord may find the interest rates charged and everything else, we should ensure that everything is above board and is done clearly and in the open. We should avoid demonising these firms while allowing the hidden part of the iceberg to continue to exist. My goodness me, that really is baseball-bat territory and not the sort of thing that any of us wish to see increase. We wish to see it eliminated. I am concerned that putting this sort of further pressure on firms that operate in compliance with the law will encourage the growth of those who operate outside the law.

5.30 pm

Lord Cope of Berkeley: My Lords, incidentally, the other meeting I was due to attend did not raise a quorum.

Nobody has so far spoken in support of Amendment 8 so it is perhaps unnecessary for me to speak against it. However, it has been formally moved. I think that inserting a duty or giving a duty to the commissioner that she or he should publish information about,

"tax rates, allowances and thresholds of relevance to small business"

would introduce a major distraction into the commissioner's role. It is the duty of Her Majesty's Revenue & Customs to publish the allowances, rates and everything else, and it does so with considerable vigour on its websites. There are large numbers of people, including people in the profession in which I qualified, although I have not practised for many years—namely, chartered accountancy—who do this kind of thing. If the commissioner finds himself or herself with a legal duty written into the Bill to publish this kind of information, I fear that it will be a major distraction from what we all want to see as the commissioner's initial role, at any rate; that is, to deal with the late payment issues.

Lord Mendelsohn: My Lords, I support these amendments and will say a few words about Amendment 8, to address the comments made on it by the noble Lord, Lord Cope of Berkeley. Fortunately, the noble Lord is able to be present as the other meeting he was due to attend did not gain a quorum.

I pay tribute to the fantastic work of my noble friend Lord Mitchell on payday lenders. I disagree with the noble Lord, Lord Hodgson: this is not about the visible and invisible parts of an iceberg but about the devil and the deep blue sea. The problem is that the choice we are making is between two things that are broadly unacceptable. It was only through the great efforts of my noble friend Lord Mitchell that we understood that Wonga, which has completely changed its business model, operated in a market based on pushing people into failure to pay, rapidly increasing their debt burden over time and charging effectively a permanent rate of interest. That was its business model—to force people into continued and prolonged debt. To my noble friend's great credit, Wonga has changed that model as it could not continue to function with it. This is relevant to the Small Business Commissioner as we should not accept the principle of choosing between one thing which is bad and another thing which is really bad. His job is to find an alternative. We all know that there are problems with people accessing finance and with debt and with our banking sector. The answer is not to say that it could get a whole lot worse but to enable someone to act as an agent or agency and make a difference. That is why I think this is a very sensible amendment.

Some years ago when I operated a small business, we had a tax issue and a little tête-à-tête with Her Majesty's Revenue & Customs. There was a particular issue that we contested. Rather than pay—forgive me for saying this—the fees our accountants would charge to deal with this, we thought we would do it on our own. We had a particularly effective financial controller and he spent a considerable amount of time trying to research this. In fact, we funded him to go on a day's seminar given by HMRC to look at the particular issue. He attended the seminar and came back with a series of materials that gave very clear advice on the problem. Subsequently, we wrote to HMRC saying that this was our case, completely consistent with its advice. It wrote back saying that it did not accept our arguments. We wrote to it saying that we could not claim the letter we had written was entirely our authorship but was based on advice we now enclosed, which came from HMRC. We got a letter back saying, "We are not bound by our own advice".

That was a few years ago but I raise the point because it is relevant. Our experience in talking to small businesses in particular but also to some of the representative organisations is that their complaint is not that they must pay tax. There are some who do not like to pay tax—many of those live in Monaco and other sorts of places, but they are not the ones I am so concerned about here. For those who are concerned about paying tax, it is about paying the right tax and understanding the taxes that they must pay. In the same way, it is about not regulation per se but the burdens of regulation. These amendments address this question. They say that the Small Business Commissioner should be able to deal with those issues.

I accept that we have a particularly narrow focus for the commissioner, and it is what the prime focus should be. However, in that wonderful nirvana where the commissioner can extend its role, it would not be a bad thing to be able to assist small businesses to have a better understanding of and some degree of certainty about the issues that they must face and the taxes they must pay, as well as being able to make observations to others to be clearer so that there is better compliance and understanding of what these things are. I fear this constant sense that there is a huge amount of non-payment and total avoidance, and all sorts of scandals and terrible practices by business. Invariably, especially with small businesses, they are not fully aware of what they must do. These amendments allow a Small Business Commissioner to play a very effective role in that area.

Finally, on Amendment 47, I declare an interest as an investor using the EIS benefit. I hope that that does not become a tax problem and the Revenue starts to chase me on it. I am fairly confident at this stage that I am on the right side. I agree that the EIS is exceptionally useful and many small businesses know about it. We have somewhat cheekily tried to extend the EIS relief beyond individual investors to institutional investors. We put that as a role for the Small Business Commissioner in order to probe the Government about whether the commissioner could also play a useful role in how we grow small businesses, being able to make observations about how some of the government schemes that currently exist could be used further.

Baroness Neville-Rolfe: My Lords, Amendments 8 and 9 would widen the scope of the general information and advice function to allow the commissioner to cover tax rates, allowances and thresholds of relevance to small business owners, and payday loan rates and their appropriateness. I join the tributes paid to the noble Lord, Lord Mitchell, for his contribution to the work done on payday loans. I am also glad to hear the discussions about EIS, which I agree is a good scheme. I hope it will prove useful in the long term to the noble Lord, Lord Mendelsohn.

The commissioner will be able to provide small businesses with general advice or information in connection with any issues arising from their supply relationships with larger businesses. Small businesses will have access to useful information for these relationships, whether as a supplier or customer.

I have already given some examples of the varied matters that this can cover and I will not repeat them, but the commissioner will also have an important role in signposting to relevant bodies and sources of assistance with these supply relationships; for example, regulators in particular sectors, such as utilities. I am sure noble Lords will agree that this will be a sizeable area for the commissioner to cover. The commissioner will not cover specific issues such as taxation and payday loans because this information and advice is already available and it is reasonable to assume that small businesses will know where to get access to it. The commissioner will plug information gaps where they exist or signpost small businesses to other bodies which are more likely to be able to assist them in their query, including where it relates to a dispute. Consultation feedback has indicated that there are various existing sources of relevant advice, information and support but, as has been said, small businesses are not always aware of them. We have designed the commissioner in order to address these specific issues and to become a single point of contact for small businesses when they find themselves in commercial disputes. It is important for the commissioner's remit to be focused to achieve real impact on the ground.

I am grateful to the noble Lord, Lord Mitchell, for raising the issue of payday lenders and EIS, but I agree with my noble friend Lord Cope that we should resist this amendment because the matter could be a major distraction. Having said that, a web link to HMRC and the FCA could be considered and counting the use of that link might provide some interesting information. I am also glad that the noble Lord, Lord Mitchell, feels that we have acted decisively to reform regulation of the payday loan market. We transferred the responsibility from the OFT to the FCA. As he said, the FCA has far stronger powers to protect consumers, and its more robust regulatory system is already tackling sources of consumer detriment in this market. We also legislated to require the FCA to introduce a cap on the cost of payday loans, to protect consumers from unfair costs. This cap has been in place since 2 January 2015. The last time we debated this in this Room, that provision had not really come in. The more stringent regulatory regime is obviously having a beneficial effect in the payday market. The FCA has found that the volume

[Baroness Neville-Rolfe]
of payday loans fell by 35% in the first six months of FCA regulation, before the introduction of the cost cap.

Amendment 47 provides that the Secretary of State may publish information or provide advice on the enterprise investment scheme. BIS already works to support small business, including promoting the venture capital schemes. However it would not be appropriate for BIS to provide detailed advice on the schemes. HMRC administers the venture capital schemes and provides advice to small companies, investors and advisers through a specialist unit. That service is highly regarded by the venture capital industry and it would be confusing to try to match it. However, I agree that EIS schemes are a good thing. They were expanded and developed in the last few years and higher thresholds were set for investment.

We want to try to focus the effort of the Small Business Commissioner. He will be doing an annual report and I am sure this will reflect on where queries are coming from. However, it is better to stick with the arrangements that already exist for the various tax and financial schemes we are discussing, rather than trying to bring this into the purview of the new commissioner.

Lord Mendelsohn: The Minister described a unit which provides advice on these schemes. Would she give some colour to that and give some idea of the scope of the advice it gives directly to small businesses? On how many occasions did it give advice during the last year?

Baroness Neville-Rolfe: My Lords, I would be happy to write to the noble Lord on that matter before the Bill reaches its next stage.

Lord Mitchell: My Lords, I thank the Minister and all those who have taken part in this short debate. On the subject of payday lending, although I have worked very hard on this, never have the words passed my lips that I wanted to abolish or abandon it; it just needed to be regulated. Indeed, were it to disappear, somebody else would step into its place—people we really do not want to know about. It was never our objective to do that.

On the EIS and similar schemes, we also received confirmation that the Institute of Directors was supportive of the points we have been making that these need a lot more publicity. We have not really addressed that but the IoD is very keen that more people know about them. When we are here discussing these issues, we automatically assume that the world knows. It does not. It tends to be a long way behind the curve. We feel that the commissioner should have the responsibility for publicising the EIS. With that, I beg leave to withdraw Amendment 8.

Amendment 8 withdrawn.

Amendment 9 not moved.

5.45 pm

Amendment 10

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

10: Clause 3, page 3, line 29, at end insert—

"( ) The Commissioner may publish details of cases in which, in his view, there have been delays in legal process which have acted to the detriment of small business."

Lord Hodgson of Astley Abbotts: My Lords, as the noble Lord, Lord Mitchell, sat down, I realised that I have some EIS investments. Since I spoke in that group, although not on the EIS, I probably ought to declare that for the record before we go any further.

Amendment 10 is concerned with the law. Here I am trying to steer between Scylla and Charybdis. Scylla, as evidenced by the Minister, is about advice to be given on supplier relationships, and Charybdis is the statement in paragraph 6 of the Explanatory Notes that:

"The Small Business Commissioner will not provide advice on legal issues relating to a specific case".

Obviously, I understand the challenge surrounding the use of the word "specific" but there is an issue here about the way large businesses can use legal means to delay payment. I am aware that Amendment 39 in the name of the noble Lord, Lord Aberdare, focuses on the construction industry. I do not wish to run before his horse to block it. Therefore, I do not want to get involved in that industry.

My focus is on two areas. The first is the practice of finding a minor fault, or perhaps claiming a minor fault, in some goods supplied and withholding a disproportionately large proportion of the sum owed—and, when challenged, the purchaser inviting the supplier to use the law in the certain knowledge that the legal wheels can be made to grind slowly, which is one way that this can happen. The second is the use of a similar approach in matters involving intellectual property—an area where small businesses give a huge degree of help to our economy because small businesses worry away at the coalface, finding new and better ways of doing things—where a small business has made a breakthrough and developed a new product, patented it and then is sat on by a large company.

What do I mean by "sat on"? The example I have in mind is a company I knew of which developed a new freezer cabinet for supermarkets. It had various devices that made it particularly efficient and operationally effective. A large supermarket chain bought six of these—to the delight, obviously, of the small business, which thought that this was a breakthrough—only to find that the supermarket had reverse-engineered the freezer chests and was now manufacturing them itself. The small company claimed infringement of a patent—the intellectual property. The supermarket denied it and invited the small company, if it believed that it had a case at law, to take it to court. The sting in the tail in the meeting was when the person from the supermarket said, "By the way, just before you make up your mind, our lawyers say that we can prevent this from coming to court for two or three years". The small company

had no way to sustain the cash flow and the capacity to maintain the costs of a legal action for two or three years.

There will always be a degree of inequality of arms between large and small companies in legal matters, but there is a chance here, where we have supplier relationships being abused in this way, for the Small Business Commissioner to be of real help to small businesses and help redress that balance. That would be of advantage to our country and of particular advantage to the small business community. It is not about specificity or about getting involved in individual cases but, rather, about making sure that where these sorts of cases happen they are published and efforts are made to make sure that their use and abuse is minimised. I beg to move.

Lord Mendelsohn: Briefly, I support this amendment, which dovetails quite nicely with an issue that we will raise later on the powers of the Small Business Commissioner. There are many difficult cases, on which many people receive letters, where the ability to use legal processes works massively to the detriment of small businesses, and it is exceptionally difficult to be able to extend those procedures. I think that the noble Lord, Lord Hodgson, made the point that it is not about getting involved in the legal case in and of itself but about using the convening power and sense of the Small Business Commissioner to help to get these processes streamlined to make sure that small businesses are not affected by that asymmetry. This is a very sensible and proportionate amendment and we support it.

Baroness Neville-Rolfe: I thank my noble friend Lord Hodgson for his amendment and for his examples, including the IP examples—an area that he knows is close to my heart. I like the Scylla and Charybdis parallel, which one could use more broadly in public policy. I did Latin A-level, being in an era when they did not teach women science.

Clause 3 provides for publication of general advice and information relevant to small businesses and their supply relations, and to resolving disputes. Under existing drafting, obviously this could include information about the timings of and risks of delays within legal proceedings. However, I think that the intention of my noble friend is much broader than the provision of advice and information to small business. As I see it, he intends that the commissioner should shine a light on where delays in legal processes and litigation tactics are used in a manner that is detrimental to small business as they frustrate efforts to resolve a dispute, as he said in examples that he raised.

Clause 9 requires the commissioner to publish an annual report on its activities. This must include a summary of the matters raised with the commissioner by small businesses that the commissioner considers are the most significant. It can of course include any recommendations that the commissioner may have in relation to such matters. Therefore, if issues related to delays in legal processes are brought to the commissioner's attention and she or he considers them significant, he or she may include them in the annual report.

It is difficult to develop this further without impeding the right of business to have access to the courts. However, obviously, as the noble Lord, Lord Mendelsohn, says, the commissioner has a certain convening power. I do not think that my noble friend Lord Hodgson was trying to get him involved in individual cases, and that convening power will be able to be used to survey what is happening in these areas—as I said, to shine a light on them. I therefore agree with the spirit of the amendment, which is to shine a light on delays, on aspects of the courts system or on the exchange of legal letters that are preventing or deterring small businesses from resolving disputes. However, the Small Business Commissioner has sufficient powers in this respect and I am not persuaded that we should go any further in this area.

Lord Hodgson of Astley Abbotts: My Lords, I am again grateful to the noble Lord, Lord Mendelsohn, for his support on this set of amendments.

I am slightly disappointed by my noble friend's response. The reason is this. Lawyers are extremely jealous of their territory. When the Small Business Commissioner decides to say something critical of the law without having specific powers built into the Act, he will come under considerable criticism. There will be a danger that he will flunk the issue. These are tricky, difficult issues; they are not easy. There are always two sides to the argument, but we need someone who has the responsibility to speak out on specific issues, and the legal issue is one where a specific duty is important. Otherwise, I can see it being shuffled to the side and put into the pile of complaints that are too difficult to deal with. The commissioner will say, "Let us leave that, because we shall only have trouble. We will only have the lawyers getting after us for interfering with due process"—my noble friend even referred to the question of due process in her response.

I shall reflect a bit further on this but of course, in the mean time, for this afternoon, I beg leave to withdraw the amendment.

Amendment 10 withdrawn.

Amendment 11

Moved by ***Lord Mendelsohn***

11: Clause 3, page 3, line 43, at end insert—

"( ) Where a recommendation is made under subsection (8), the Commissioner may take the relevant action in response to the recommendations where he or she sees fit."

Lord Mendelsohn: My Lords, this is a pretty crucial element. We are turning over some territory which we first discussed during Second Reading. I really hope that we may be able to make some inroads on this—obviously, recognising that the Small Business Commissioner has an immediate and urgent task, very narrowly defined, and that its role is very narrowly defined on whom it is serving.

The amendments in this group, Amendments 11, 12 and 34, address some significant issues about the role and scope of the Small Business Commissioner. We are looking at two areas in particular. The first is

[LORD MENDELSOHN]
that the Small Business Commissioner has a mediating role. That is a crucial opportunity for the commissioner. Experience of such roles suggests that that is a very useful mechanism. The other powers provide much wider platforms for the Small Business Commissioner to be able to act in concert with others, encouraging others to be able to take certain actions.

Subsection (8) states:

"The Commissioner may make recommendations to the Secretary of State about the publication, or provision to small businesses",

and Amendment 11 allows the Small Business Commissioner to act on the recommendations where it sees fit. Amendment 34 provides:

"The Small Business Commissioner may facilitate … representative action taken by a number of small business claimants in a case where a number of small businesses have complaints against the same company which share common characteristics".

That does not mean that it would become the principal litigant, but it is a way in which problems can be addressed. Where each individual may have problems that they cannot discuss within the context of the company for a variety of anti-competitive reasons, the Small Business Commissioner, where it sees a pattern, can help to trigger some significant action.

That works not just in relation to the commissioner's general duties. Ultimately, with late payments, where people facing the same characteristics are unlikely to share information about their current circumstance, the Small Business Commissioner in and of itself becomes the agency by which others may be aware and help to facilitate action by the individuals or by third parties on their behalf, which helps to ensure that a company that is in particular default of its obligations can be challenged to meet them.

Again, this works very nicely in tandem with the alternative dispute resolution mechanisms, which we have been debating for some time and which are subject to some changes, and with the signposting role of the Small Business Commissioner to other forms of mediation, but in and of itself having a mediating role. It is also a means by which the Small Business Commissioner can build confidence with other segments in business.

If we make it seem that it is the champion advocate only in a very narrow sense and there is no sense in which it is trying to build a co-operative and collaborative environment, I have no doubt that we will see the shutters go down in many quarters. That is not a constructive place to be, so for us it is very important that such measures help to sustain successful business relationships. That is where the Small Business Commissioner can act in and of itself to take the heat that sometimes exists out of the relationships between companies where their problems, concerns and legitimate interests are not addressed because of the potential consequences, impairing the relationship between two business entities.

I hope that this package of measures is fairly consistent with the Small Business Commissioner's current roles. If it were to be passed—I hope to persuade the Government to adopt some modicum of its provisions—the powers that it does not use in pursuit of its current narrow, focused and extremely specific role could be available in future. One would hope that the Government would see it in that light. I beg to move.

6 pm

Baroness Neville-Rolfe: My Lords, I am grateful to the noble Lord and will now respond to Amendments 11, 12 and 34, which, between them, would amend and extend the commissioner's functions. As I have already set out, the Government consider their proposals for the commissioner's functions proportionate in addressing the payment issues facing small businesses, especially when combined with the new reporting requirements. They balance the disincentives to encourage larger businesses to behave reasonably towards smaller suppliers with support for smaller businesses so that they become more savvy contractors—taking the heat out of difficult issues, as the noble Lord, Lord Mendelsohn, said.

The proposals have been arrived at following consultation over the summer which—partly to my surprise—showed a need for better navigation of dispute resolution services rather than direct provision. Responses to the consultation and subsequent stakeholder engagement showed broad support for the Government's approach to meeting these needs.

Amendment 11 would amend Clause 3, which relates to the provision of general advice and information. The Government intend the Small Business Commissioner to help build the confidence and capabilities of small businesses in managing their commercial dealings—for example, enabling them to assert themselves in contractual disputes and negotiate more effectively.

Under Clause 3, the commissioner may publish, or give to small businesses, general advice or information that would be helpful for them in dealings as a supplier or customer, and in encouraging them to resolve or avoid disputes—for example, information about agreeing contracts, supply chain dealings and options for resolving disputes. It also allows that general advice and information to be provided in different ways. It might be provided by the commissioner or his or her staff, or via others—for example, via a government department or a representative or professional body—but in all instances the commissioner has a key role in determining what advice or information is delivered, including approving content, which we intend will be delivered primarily via a web portal.

Clause 3(8) enables the commissioner to make recommendations to the Secretary of State about the provision of general advice and information to small businesses by the Secretary of State, and subsection (9) requires the Secretary of State to inform the commissioner of what, if anything, is to be done in response to the recommendation. I am not sure that we have discussed that before.

I do not believe that Amendment 11 is needed. The power in subsection (8) to which the noble Lord's amendment applies is additional to the commissioner's own powers to make that information available to small businesses, which are set out separately in Clause 3(1).

Turning to Amendment 12, I know that the noble Lord is concerned about the inability of the commissioner to directly provide dispute resolution services, such as

mediation, and is calling on us to extend his role. This was one of the questions on which we consulted. Indeed, as noble Lords will be aware, initially we were thinking of creating a small business conciliation service. But our consultation and our engagement with stakeholders over the summer showed that there was little appetite for government to step into the dispute resolution market. There was broad and clear agreement among business stakeholders that the problem is not a lack of dispute resolution services. There are plenty of avenues for business to mediate or resolve a dispute outside of court action. There are various regulators and ombudsmen, including for example, those that cover utilities. There are numerous adjudicator schemes, including public sector schemes that I talked about earlier, and there is a large private sector, complete with relevant professional bodies, such as the Civil Mediation Council and the Chartered Institute of Arbitrators doing good work.

Instead stakeholders, including the Federation of Small Businesses, the CBI and IPSE, which importantly represent freelancers and the self-employed, have told us that there are gaps in the information available and that small businesses need support to navigate it more easily. The Small Business Commissioner will fill this gap.

Amendment 34 would provide the commissioner with the power to facilitate group litigation or representative action by small businesses with similar complaints. The commissioner will work to raise awareness among small businesses of alternative dispute procedures and where they can seek support when they have issues or disputes with other businesses—spreading the word. The aim is to encourage a change in how businesses deal with each other—a long-lasting culture change to promote fair treatment for all, especially in relation to payment practices. The commissioner will advise small businesses about their rights and options which in some circumstances could include litigation. However, it is essential that the commissioner is impartial. The impartiality of the commissioner is where we came in today, and it has to apply when he or she is dealing with complaints. He or she must be perceived by business to act impartially in any dispute that he or she deals with. It would therefore be inappropriate for him or her to take a more direct role in facilitating group litigation or representative action.

Lord Stevenson of Balmacara: I am slightly anticipating what the Minister may go on to say, but it is an interesting point. I do not think that in considering this issue we were trying to argue that in any sense the Small Business Commissioner would have to take sides if, in the process of their activity, they noticed that similar cases were appearing in many parts of the country. One of the problems we hear from small businesses is that they feel isolated and unaware of what is happening elsewhere. It would be simply acting as an information exchange point and gatherer of similar cases and a playback to those industries that they are not alone and that this company or group is in fact acting either irresponsibly or aggressively towards a small or even large number of companies across the country. It does not imply one side or the other; it implies working for small businesses against the difficulties they have. Does the Minister accept that?

Baroness Neville-Rolfe: I certainly agree that the convening power is one of the key strengths of setting up a new Small Business Commissioner, joining the dots and noticing perhaps that there are a number of cases in an area and putting that into the annual report, or drawing attention to it. It may be that we are not as far apart as I had thought. We are reluctant to make amendments or change the role of the Small Business Commissioner in this area. In the light of the discussion that we have had, I hope that the noble Lord will feel able to withdraw the amendment.

Lord Hodgson of Astley Abbotts: We have heard a lot about navigation and the website, and how that will work. Will the Small Business Commissioner have his or her website, or will it be part of the government website? In that connection there has been a lot of criticism about navigation through the government website. The Charity Commission has now had to move into the government website and accessibility has dropped dramatically. There have been many complaints. If we were going to put the Small Business Commissioner website into the government website we would want to make sure that accessibility is better than that currently experienced. I am not asking for an answer to that question now. Perhaps the Minister can write to me about it in due course.

Baroness Neville-Rolfe: Of course, I am very happy to write to my noble friend. I have to say that I was a GOV.UK sceptic to start with, which is perhaps the point that he is making. I have found that there have been transitional problems, particularly with those organisations that have been unfortunate enough to have to, as it were, migrate from their website to the new website, but actually it has a lot of strengths. I think we are talking here about a new website—the Small Business Commissioner's website. I think it would be rather odd not to have it on GOV.UK because that is where small businesses go. Obviously, it has to be a special website and suitably promoted. However, if I have any further thoughts I will certainly write or we can talk about it because we need to get this right. It is very similar to the Consumer Rights Act, where we spent a lot of time discussing how the new rules would be described to business and passed on to consumers.

Lord Mendelsohn: I thank the Minister for her response and her comments after the very thoughtful intervention of my noble friend Lord Stevenson. To be clear, does her reply mean that she will reflect on that point and come back to us prior to Report?

Baroness Neville-Rolfe: My Lords, I will certainly reflect on it. I do not think that I made any commitment to accept an amendment. What I was doing was to agree that we could have a further think about how this was going to work. A fair point has been raised which we think is adequately dealt with but obviously I am happy to discuss that further.

Lord Mendelsohn: I thank the noble Baroness for that clarification. I hope that she may be slightly more enthusiastic once she has a chance to reflect on the

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measure. In keeping with a number of the points that we made, we are looking at areas where we wish to extend the narrow terms of how they work. Even given the context of what the noble Baroness believes should be the focus of the Small Business Commissioner, and an extended role for him in providing information or signposting, there are other things that he can do to join the dots. We are clear that those are not currently provided for within the legislation or outside it and we are very keen for the noble Baroness to consider that point. On the basis that we have at least made some positive progress on this issue compared with other measures, I beg leave to withdraw the amendment.

Amendment 11 withdrawn.

Clause 3 agreed.

Amendment 12 not moved.

Clause 4: The SBC complaints scheme

Amendment 13 not moved.

Amendment 14

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

14: Clause 4, page 4, line 25, at end insert—

"( ) relates to allegations of unfair treatment or unfair contracts,"

Baroness Hayter of Kentish Town (Lab): I rise to move Amendment 14, standing in the names of my noble friends Lord Mendelsohn and Lord Stevenson, and speak to the others in this group.

When we debated the issue of micro-businesses as consumers within the then Consumer Rights Bill, we argued—and I think the Minister sort of agreed in principle—that micro-businesses should be treated as consumers where they are purchasing goods or services which are not their core business. I think the example we cited was that we would expect a hairdresser to be knowledgeable enough in their purchase of shampoo, hairdryers and scissors, and so not to expect the same level of protection as when we as individuals buy a hairdryer from Boots. However, when a hairdresser bought some coffee for the staff, or a kettle to make it, their right to return that kettle, should it be faulty, should be the same as for any of the rest of us. So, essentially, business-to-business purchases which a small trader would have with its main suppliers should not attract the same consumer protection, but its one-off, non-essential purchases, should be covered.

I believe that the Minister's main argument at that point against our amendment was that the Consumer Rights Bill was not the right place for it—but a Bill encompassing a Small Business Commissioner surely is. We have a number of asks for these amendments, each of which seek to put a small or micro-business in a similar position to an ordinary consumer when purchasing goods or services not core to the business.

6.15 pm

Perhaps I can best illustrate this by starting with Amendment 40, on the handling of complaints and access to redress. On complaints about unsatisfactory service or the quality of goods, our view is that the protections in the Consumer Rights Act about returns, refunds, repairs and unfair terms should be available to micro-businesses—which we define as having fewer than 10 employees, though of course we would be happy to discuss the exact definition if this principle were agreed. My guess is that the Minister would share our view that retailers or service providers would not have any problem with this. Indeed, in practice they probably treat a small commercial customer as if they were an individual. It seems nonsense that if someone running a small consultancy or barber shop runs out to buy a heater for the office and pays with a corporate cheque they have none of the normal consumer rights they would get had they paid cash or with a personal cheque or credit card.

On having complaints heard by an independent body, there is a similar issue with the EU directive on alternate dispute resolution, introduced on 16 March via the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015. These regulations require every service provider and retailer to be able to signal to complainants an appropriate ADR provider for that particular sector. Very sadly—this is a problem of Europe rather than us—the company does not have to agree that the complaint can be handled by that ADR provider, which is somewhat confusing for the customer but not in front of us today. Unfortunately, although the obligations from the directive as set out in the SI should have been in force on 9 July, they were postponed by the Government until this month. They are now the law. Before I go on to subsection (2) of Amendment 40, could the Minister update the Committee on the number of recognised ADR providers and what proportion of the total market she estimates is now covered in the manner required by the directive?

Amendment 40 would ensure that, as with any other customer or client, a micro-business should similarly be told of the appropriate ADR provider and, where a company uses that alternative dispute resolution provider, complaints from a micro-business would also be heard as with any other customer or client. Again, many existing ombudsmen schemes already allow small businesses, small charities and organisations like that to access their service. We are not talking about B2B complaints, where supplier contracts give rise to complaints. Where a micro-business buys something outwith its own specialist knowledge and core business—an umbrella for visitors or the services of a window cleaner—its ability to have a complaint dealt with quickly, cheaply and independently should be the same as for any other consumer.

The lead amendment, Amendment 14, is on the issue of unfair contracts, about which I currently know rather a lot, being in the middle of a house-move. The example I will give is my own but had much broader salience, unfortunately. Pickfords will do the removal and storage. I am sure it is a good firm, especially as I am moving to the headquarters of the

original Pickfords. However, it insists that we buy its full insurance despite much of it already being covered by our own house insurance. More than this, because I am a sort of sad anorak, I of course read all the small print—pages of it. I discovered that if something was broken I could make a claim only if I did so within seven days of delivery to my new house. Many noble Lords may be unpacked and sorted seven days after they have moved to a new house, but I have the feeling that I will not be. I doubt we will have finished or even started unpacking the books by then. However, there it is in very small print: only a claim made within seven days of the delivery to our house would be met. No doubt they would seek to enforce that if, a fortnight later, some very damp books were discovered. As a private consumer I could challenge the fairness of that term, given that it clearly was not brought to our attention. However, could a small business moving a couple of filing cabinets across town also claim that part of the contract as an unfair clause?

For these reasons Amendment 14 would enable small businesses to take allegations of unfair treatment or unfair contracts to the Small Business Commissioner's complaints scheme. In similar mode, Amendment 24 would enable the commissioner to advise a court that a particular contract term is unfair and that the court may then declare that contract void. This is particularly important in the case of payment terms, where many a company is now requiring small firms—and, I gather, even very large ones such as WPP—to accept very long periods for payment of their invoices. Small firms are in a very weak position to negotiate against these. They will often be in competition with bigger firms, which can take the risk of long payments. They may not be members of a trade body which can advise or represent them. They need the work yet are in a totally unbalanced relationship as regards bargaining power with the much larger company, so they are not able to query these very long payment times. That just about sums up an unfair contract.

Finally, I turn to Amendment 48, which will again be familiar to the Minister as we sought to protect rent to buy consumers during the passage of the Consumer Rights Act. This amendment would require traders who offer hire-purchase agreements to provide proper information and explanations before a contract is made, allowing the business to compare the total sum due under the contract to a representative retail price for the goods. Importantly, it would end the practice of requiring the customer to purchase an insurance policy which is sold or brokered by the trader as a condition of entering into the contract.

Much of the Bill recognises the importance of promoting enterprise and helping small businesses get a fair deal. What it also needs to recognise is that—almost by their nature—small firms do not have in-house lawyers, contract checkers or savvy negotiators. They are often just individuals, with a talent for computers, dressmaking, importing, building or picture-framing. When they buy—not their essential tools or hardware, but their casual purchase or advice—they are not really in a B2B relationship. They are often as informed and savvy—or perhaps I should say as uninformed and unsavvy—as the rest of us. The way we can really help them is to extend normal consumer and redress protections on such goods and services to them. I beg to move.

Baroness Neville-Rolfe: My Lords, I welcome the noble Baroness, Lady Hayter, to our discussions. I am glad to return to her examples, especially hairdressers, where, as noble Lords can imagine, I spend a great deal of time. I will take the amendments in turn. I am conscious that this is a new area in the debate and quite complex, so I hope that noble Lords will bear with me. We may even be interrupted by a Division.

Amendment 14 would apply the Small Business Commissioner's complaints-handling function to allegations of unfair treatment or unfair contracts. Tackling unfairness is at the heart of our proposals for the commissioner. The complaints-handling function is designed to cover questions of fairness, specifically over payment issues, because we have found these issues to be most pertinent. Over half of respondents to my department's discussion paper cited some evidence of unfavourable treatment by larger businesses. The majority of these responses provided evidence of late payment, and many also provided evidence on wider payment issues.

We may be moving tentatively towards agreement that the commissioner must be effective and efficient. It is right to focus the complaints-handling function on payment, which is the issue of unfairness that our stakeholders tell us causes the greatest detriment to small businesses. However, the commissioner will provide general advice and information to small businesses on how to negotiate effectively and avoid problems. This is a more proportionate way of addressing any problems that small businesses have with contract terms that they think are unfair.

Amendment 24 would enable the courts to declare an unfair contract term to be void, on the commissioner's advice. The commissioner is not intended to alter or undermine the fundamental rights of two businesses to agree commercial transactions on such terms as they see fit. In tackling unfair payment practices, the commissioner will consider a complaint on the basis of what is fair and reasonable in the circumstances of each case. This reflects the fact that there are complex issues at play in businesses' payment arrangements, and that each business will know best what works for them. The commissioner will hear from the parties to a payment issue and can give recommendations to encourage their resolution. The commissioner will have powers to publish a report and name the respondent to a case where appropriate. Our approach here is to encourage culture change through persuasion and building confidence and capability in small businesses. We want the Small Business Commissioner to be an effective alternative to the court. It is worth stressing that the commissioner is intended to fit within the existing landscape of dispute resolution services and not to undermine the independence of the courts, a critical British principle which we have discussed already.

On the subject of unfair terms, it is worth remembering that, through the annual reporting duty, the commissioner has another important function: to gather evidence on the issues facing small business, and on whether payment practices are improving as a result of our reforms.

[Baroness Neville-Rolfe]
The commissioner may make recommendations to government where he or she considers that there are changes that could be made.

One area in which we have been seeking evidence is in relation to whether there is a gap in protection, such that certain consumer rights, including those in relation to challenging unfair contract terms, should apply to small or micro-businesses when they buy goods or services. This was the main thrust of the presentation given by the noble Baroness, Lady Hayter. I thank the noble Baroness for returning to the charge and for her amendments proposing that micro-businesses be considered consumers for the purposes of the Consumer Rights Act 2015 and the 2015 alternative dispute resolution regulations when they are purchasing goods or services for use within their commercial activities.

In relation to the Consumer Rights Act, I can reassure the noble Baroness that we have been giving it considerable thought over the last few months. Our call for evidence ran from 24 March to 30 June and the Government hosted two stakeholder sessions in May and June. We have not yet published a government response to this. We are still considering the evidence, which poses some interesting questions, such as whether there is a distinction between micro-businesses and other small businesses when they purchase goods and services; whether there are specific problems faced by small businesses when they contract with the regulated sectors; and whether some aspects of consumer protection could actually be less helpful to small businesses than their current rights. We currently expect to publish a response later in the autumn. It is clear from the evidence that there is no consensus on this issue but we are still actively considering the case for change and, if so, how that might be achieved. I hope noble Lords will understand that I cannot pre-empt the government response at this stage. However, I am sensitive to the frustration that this might cause the noble Baroness and I hope she will be reassured that we are taking this issue very seriously and not putting it on the back burner.

The second part of the amendment seeks to extend the requirements in the alternative dispute resolution regulations to micro-businesses. The regulations that implemented the ADR directive introduced a range of new measures to facilitate consumer to business dispute resolution. These included the introduction of certain standards for ADR providers and the establishment of competent authorities responsible for approving ADR bodies as being compliant with these standards. Under the regulations, when a consumer and a business are unable to settle a dispute, the consumer has the right to be given details of an approved ADR provider and be told by the business whether it is willing to use ADR in an effort to settle the dispute. This is the only mandatory requirement on businesses in the ADR regulations and it is this requirement that the amendment would extend to business to business disputes.

The important issue here is that ADR providers have been assessed and approved by the competent authorities as having reached the standards in regulations to enable them to deal with consumer-to-business disputes. They have not been approved to deal with business-to-business disputes, which can be far more complicated than the faulty kettle or leaking washing machine that we have discussed in the past. I do, however, have a list, which I can make available to the noble Baroness. The risk of this part of the amendment is that businesses could be given details of an approved ADR provider which is wholly unsuitable or even unable to deal with their particular dispute. There is a real risk that the amendment could lead to confusion and increased costs for business.

The noble Baroness asked about coverage. Around 25 ADR providers have been approved to deal with consumer-to-business disputes. In the UK there are already several large and well-established ADR schemes in regulated sectors such as financial services, energy and telecoms. In other sectors, growing numbers of businesses voluntarily participate in ADR schemes as part of their commitment to customer care, and some trade associations offer ADR services as part of their membership benefits. This was the vision. This is what we hoped would happen. You now see approved ADRs in everything from travel and retail to home improvement, energy, the ombudsman services and the more general providers.

6.30 pm

We welcome more companies entering the ADR market as it will increase choice and drive down the cost. To gain and keep certification, ADR providers must comply with strict requirements and will be monitored by the awarding body. I apologise for the promotion of this service, as it were, but it is as well to explain what is going on so that we can understand what, if any, gap there is. As part of the Small Business Commissioner's function to provide general advice and information to small businesses, there will be easy access on the website—which I am going to write to the noble Lord, Lord Hodgson, about—to information about ADR providers that have been assessed as being able to deal with business-to-business disputes.

Amendment 48 proposes safeguards for small businesses entering into hire-purchase or conditional sales agreements. Would the Committee like me to go through the detail? It provides for information to be provided to small business before such contracts can be concluded. With the leave of the Committee, I will write a letter setting out the detail.

This is an important area. I have tried to give a positive response. I hope in the circumstances that the noble Baroness will feel able to withdraw her amendment.

Baroness Hayter of Kentish Town: I thank the Minister for that and look forward to the letter—which may already be drafted, indeed.

I will deal with the issues in reverse order. The ADR issue is really interesting. There is the business-to-business one, which obviously is not free to the complainant. The interesting thing about the EU directive, of course, is that it is free to the consumer, and it is those areas where the business is acting like a normal consumer—the kettle, if you like—that we were very keen that the ADR directive should cover. I will come on to whether the Consumer Rights Act should cover small businesses. I have to thank the department very much for the work it is doing on this—the consultation

and the meetings. If the consultation closed in June, I am slightly surprised that we have not had it yet. The word "autumn" was used. The clocks changed yesterday. I consider that it is now autumn.

The Minister knows better than I do the difficulty of getting any legislative time for changes. Should the consultation lead to the department thinking that it would be right to make some change, this is the right Bill to do that. I hope that that opportunity will not be lost, and if the response could be in a timetable that fitted with this, that would be really important.

Going back to the ADR providers, I was sorry to hear the reference to trade associations. The ADR directive is very clear that these bodies should be independent in this regard and I think that trade associations probably do not have that independence. However, that is by the by. I also regret the suggestion that having more ADR providers gives choice. As we have discussed, it gives choice only to the provider. The consumer can still go only to the one that the retailer or whatever says they use. There is always a danger of a rush to the bottom, with an ADR provider saying that it will look after complaints for 20p a complaint and another one doing it for 10p a complaint. That is not an area where competition operates well. I think that I have probably lost that argument but I leave that thought with the Minister.

I have only one other point to make in response to the Minister's helpful comments and that is about getting better advice on whether a term should be void. I think she said that each business knows what is best for them. I think that the issue is a different one. It comes back to the lack of bargaining power, as the Minister said in relation to an earlier amendment. Somebody being offered three-month payment terms on an invoice may know jolly well that that is an unfair term and is silly and wrong, but they have no bargaining power. We were trying to strengthen their hand not as regards the business-to-business relationship but as regards very small businesses which are small fish in a very big tank, if you like.

We may want to come back to this measure. I will not push the Consumer Rights Act point until we have the response to the consultation but I hope that we can have it in time for it to be meaningful. If the idea is that we should move forward, it seems to me this is the right Bill in which to do it. In the mean time, I beg leave to withdraw the amendment.

Amendment 14 withdrawn.

Amendment 15

Moved by ***Lord Mendelsohn***

15: Clause 4, page 4, line 27, leave out paragraph (c)

Lord Mendelsohn: In moving Amendment 15, I wish to speak also to Amendments 17, 42, 43 and 45.

This is a fabulous measure on which I hope we will reach agreement. We have discussed these interesting issues before. I hope the Minister will note that we have designed these amendments specifically with the Small Business Commissioner in mind and seek to give him a very strong role. This series of amendments deals with late payment and addresses some of the issues involved. Currently, we have a very narrowly defined role in dealing with this as a priority.

We are looking for a way to address what we believe is a major deficiency in the Bill by continuing with our attempt to increase the capacity of the Small Business Commissioner through introducing compulsion in that regard, and to address the velocity of cash in the economy by persuading the Government to take up a fabulous, transformational aspiration. I am extremely positive and hopeful about all these amendments. I only hope that my great positivity and the enormous support and adulation for these measures that I and many other noble Lords have talked about will enjoy the full weight of the Minister's attention and that we will not be disturbed by any Divisions that may take place. But who knows? My hopes in that regard may well be dashed.

There is a fear that the way in which late payments are described means that the Small Business Commissioner's role will be like that of Alice in Wonderland—namely, that it will shrink enormously and get smaller and smaller to go through a very small door. The reason for that is because there is a variety of payment mechanisms that fall outside the definition of late payments. The sorts of practices that can be conducted between large businesses especially, but not exclusively, are very problematic. They cause massive cash flow problems, which are an abuse of contract terms. Their net effect are forms of late payment but they are about late payment terms, meaning that one company massively disadvantages another, particularly when it comes to whose cash flow is being exploited.

In relation to this we went through a number of particular cases during the course of the Small Business, Enterprise and Employment Act, and were encouraged by some of the Minister's responses. Some work has been done on this and I hope that we have started a process that addresses it. It is very important to understand that if a company says the payment terms are 90 days, take it or leave it, then late payments sometimes do not apply until 91 days. That is an unacceptable form of a payment term that abuses another company.

A variety of mechanisms are established in which they say, "We'll pay you X and then there will be charges which we could vary, so we'll pay you X minus marketing costs, warehousing costs, or other sorts of costs". Invariably, that goes to forms of discounting which reduce the payment terms, but many of them will have a retrospective impact. There is no necessary correlation between those payment terms and any form of marketing activity, warehousing costs or proportionality to them. These are massively extensive business practices, but many have terms allowing people to vary the overall payment on the basis of saying that their marketing costs were higher, or their building, warehousing or other sorts of costs were significantly higher. We have seen some of the most appalling abuses, and cases arise from time to time illustrating that. These terms are becoming ever more present and they are unacceptable.

There are also issues in which the dispute resolution process is defined by contract not on the basis of timing but on the basis of process. A late payment

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cannot be defined until the process has been gone through. Let us say there is a random company that deals only by email and it does not respond, and there is no human being to contact. The company will drag it out for as long as is humanly possible, but that still cannot be defined as a late payment. We could even have disputes when the goods are received. There can be significant disputes but the timescale by which these things are resolved means that, in effect, it is a late payment with people using other people's cash.

Our amendments would work in tandem with the unfair terms in the earlier Amendment 14. Ours would take out exclusions from the scheme because these are areas when the sorts of issues that have been excluded from the role of the Small Business Commissioner can be used to ensure that they do not fall within it. Some Members of the Committee will know that I like the occasional flutter and I would be happy to wager a considerable bet—it is not a particularly hard prediction—that if you give businesses the opportunity and an out clause by which they can avoid having to deal with late payments through the Small Business Commissioner, they will take it. It is inevitable. It is important to capture the right things.

Amendment 41 also addresses the issue of retrospective discounting. Company A supplies Company B, and Company B then insists on a retrospective discounting clause. It decides that it is not making enough profit at the end of the year and causes a retrospective discount to try to make up its numbers to the massive detriment of Company A. Those sorts of practices are just wrong and we should get rid of them, because they are inappropriate.

Amendments 42 and 43 are very similar in nature. Rather than relying on people's good intentions, there is nothing like a duty to pay to increase people's adoption of a culture. Here we are looking at duties to pay for the private sector and, indeed, the public sector. That is just an extension and a tidying up of some of the Bill's provisions to give it more force by giving people a duty to pay and a duty to report on whether they have paid, what they owe and when they paid it. That should be reported to the Small Business Commissioner who, happily, has a lovely address for them to report it to. There, we have used the Government's proposal to good effect to provide a duty to pay. It is not discretionary; there is a duty to pay; you do not have a choice.

6.45 pm

Finally, Amendment 45 covers the traditional notion of what a company's payment terms should be. At the moment there is the notion of a payment term where interest is due at 60 days. We suggest that the Government aspire massively to create a world-leading position and adopt 30 days. Obviously, we would not want to do that tomorrow, we would want some transitionary arrangements to ensure that such a scheme was adopted over a period, but nothing could do more to emphasise our ability to be a world-leading entity than to take a position such as that. The intention behind the Bill is very clear: the promotion of enterprise and economic growth. It would be massively enhanced by a much faster trajectory of cash flowing around the economy. Rather than small businesses having problems with late payment, as they do in so many cases, if they were able to employ only one extra person—which is pretty much the scale of most small businesses—what a wonderful position that would be in promoting growth. It will come if we can get a grip of late payments.

This package of amendments is something that the Government could easily and comfortably adopt into their measures. It would not expand the role in the way that they are concerned about but would certainly enhance the powers and companies' ability to feel comfortable and feel certain that they should be doing the right thing. I beg to move.

Lord Stoneham of Droxford: I will speak to Amendment 41. Our concern throughout has been that the powers of the commissioner are somewhat ineffective. There is a danger that, as a result—this is our fear—he or she may well be side-lined because there are ineffective follow-up powers to deliver on his work. If we are to deal with some of the abuse of late payments, there must be some clout coming down the line.

I accept that the noble Baroness may tell us that it is best to wait and see before we come forward with legislation in future, but here, we provide that, subject to the commissioner's advice, the Secretary of State may consider regulations which would give power, as necessary, to fine late payers who are not complying with the advice they receive from the Small Business Commissioner to resolve complaints. This amendment, which again includes the public sector, could set definitions of good practice and follow them up with some penalty if they are not complied with. The Minister should consider that in the Bill, so that people see that the commissioner will not be ineffective and side-lined in future.

Lord O'Neill of Clackmannan: My Lords, I am very pleased to come in on this point. The problems of small businesses can very often be summed up as that they spend a lot of time financing bigger businesses. They do so because they are not getting paid and the bigger businesses have the money which they should have been paying further down the supply chain. We all recognise that this is an issue and, in some respects, the establishment of the Small Business Commissioner is evidence of that. However, it is equally significant that we have got to give the commissioner a chance from the very start. He has powers and teeth and he has support. Big businesses will not be allowed to set aside their responsibilities in respect of payment. This group of amendments covers both public and private sectors. In many instances, we have supply chains where the initial payment for work done comes from the public sector but there are many casualties going down the chain. The 30-day rule may be applied by some, but not by all. We do not need to wait on the commissioner asking for powers. We need to be able to say that this is the arena in which you will be operating and these are the powers and weapons you will have with which to take on the recalcitrants.

The amendments are a bit imperfect at the moment, but the principle is there. It is up to the Minister to come to us and say that the Government think, like

noble Lords on this side of the Room, that something needs to be done. If this is not adequate, then by all means let us look at it again at subsequent stages, and in the other House, if necessary. Without this kind of clear backdrop, the Small Business Commissioner will be disadvantaged and will not be able to make the significant take-off, in respect of payments, that everyone would like to see right from the word go.

Baroness Byford: My Lords, I have a couple of questions for the noble Lord who moved these amendments. The theme of our discussions in the Room today has been that the powers in the Bill are felt to be ineffective. That made me think back to the discussions we had when we set up the Groceries Code Adjudicator not so many years ago, when the powers and effectiveness of that role were discussed fully. My first question, which is also for the Minister, is whether we learnt anything from that adjudicator that might have a bearing on the issues raised in our discussions. Secondly, in light of that, might a transitionary scheme be an advantage in the long term? It seems a shame not to learn from things we talked about in great detail in the past. One of these was the question of whether the powers were sufficient and would bring reward.

I know there is a slight difference between the Groceries Code Adjudicator and the commissioner we are setting up here. A lot of the adjudicator's role was trying to solve the problems between suppliers and the people they were supplying. Fines and enforcement were nearly a last resort, but it was very important that they were there. My question, to both the Minister and the noble Lord, is about whether lessons have been learned, or whether there are other schemes out there which would give us more guidance on what the Bill proposes.

Baroness Neville-Rolfe: My Lords, we have had a very interesting debate on these amendments. I like the positivity of the noble Lord, Lord Mendelsohn, and will look carefully at his examples before we speak again. However, we believe it is vital to exclude certain matters from the scope of the complaints scheme in order to ensure, as I have said many times, that the commissioner's work is targeted, does not duplicate and makes the best use of resources.

For example, a complaint will be excluded if it relates to the appropriateness of the price or proposed price for goods and services. The commissioner's function is not to consider whether either party is getting a good deal financially but whether the approach to payment matters is fair and reasonable. I also agree very strongly with what the noble Lord said about the importance of what I would call working capital. By reducing late payments, you increase working capital. The noble Lord, Lord O'Neill, made essentially the same point. That is the background to this, where I think we have a lot of common ground. We think it is good practice for such a scheme to set out certain parameters, as we are doing here.

Amendment 45 is about imposing a maximum payment term. Obviously, I understand the intention behind this amendment. It seeks to address, as we are trying to do, the misuse of payment terms by larger companies when contracting with smaller firms. It seems quite wrong for larger companies to use unduly long payment terms when dealing with smaller suppliers. Indeed, frankly, you would expect them to do the opposite, because small suppliers have less capital behind them and are forces for innovation.

In the UK, legislation mandates a 60-day payment term for private sector bodies, unless companies expressly agree to a longer payment term that is not grossly unfair. It is true that some EU member states have gone beyond this to impose a maximum payment length. However, at the end of 2013, when we consulted on whether to introduce a maximum payment term, responses showed very little support for this. The most common argument was that companies value freedom of contract, and they need the flexibility to allow for different circumstances, notably the different practices of different sectors. Instead of more draconian measures, our stakeholders wanted to see increased transparency on payment terms and practices.

The Small Business, Enterprise and Employment Act does just that: it enables us to introduce a new reporting requirement for the UK's largest companies. When implemented, this reporting requirement will see the UK's largest companies reporting six-monthly against a comprehensive set of metrics, including the proportion of invoices paid beyond agreed terms, and the proportion of invoices paid within 30 days, between 31 and 60 days and beyond 60 days. We can legislate so that the Small Business Commissioner, once the office exists, will monitor and enforce this requirement—I think somebody asked about that. The commissioner will also make inquiries about payment terms, where a small business makes a complaint.

Amendments 42 and 43 concern the duty to pay. I have outlined our powers to implement a new reporting requirement for the private sector. The Act sets out how we can use the reporting power in relation to payment performance and interest owed and paid in respect of late payment. As we discussed earlier, the Public Contracts Regulations 2015 have recently introduced a requirement for all public sector buyers to have 30-day payment terms in their contracts and through their supply chains. They must publish annually on their payment performance, including interest paid to suppliers due to late payments and, from 2017, debt interest payments.

None of this is easy but we are striking a balance between ensuring transparency in this area and placing burdensome requirements on private sector companies and public sector buyers that we fear could have perverse effects on the UK's largest companies and their supply chains.

The noble Baroness, Lady Byford, asked about the Groceries Code Adjudicator, who of course administers the Groceries Code, which was a remedy for a competition problem. The Groceries Code Adjudicator has adopted a similar approach to that which we intend for the commissioner. She has used informal approaches as a means of influencing behaviour and has had some success; for example, in retrospective forensic accounting.

The GCA, the pubs adjudicator and the new commissioner are each addressing particular issues identified after evidence-based research and full consultation. The Government have taken a proportionate

[Baroness Neville-Rolfe]
response to these problems in each case. The first review of the GCA will take place in March—unfortunately, a little late for the Bill but in good time for the emerging work of the commissioner—and will give us the opportunity to consider the lessons further. I am sure that there is some other learning, but those were some first thoughts.

In Amendment 41, there is an important issue about further payment legislation; I am grateful to the noble Lord, Lord Stoneham, for his explanation of the way he sees this working. It permits the introduction of further legislation to tackle payment practice, so it would allow for a maximum term to quibble an invoice, for example. It would prohibit unilateral changes to payment terms and payment to join supplier lists.

7 pm

The Government are wholeheartedly committed to tackling poor practice. However, we remain unconvinced that additional detailed legislation of this kind—detail rather than goal-based, as it were—is right. Let the commissioner get to work and make some well-judged decisions on payment issues, and that will quickly change the ground rules. In addition, bans on certain practices could be sidestepped and substituted with others, so you would get a whack-a-mole situation. They would apply economy-wide and could inadvertently prohibit mutually beneficial arrangements. Having said that, I should address the issue of retrospective changes to payment terms.

As a matter of law, it is not possible unilaterally to change contract terms; changes can be made, as I think we all know, only by mutual agreement. In practice, when companies complain of unilateral changes to contract terms they mean that they were put in a position by other businesses where they felt that they had no option but to agree to a change in contract terms. This means that prohibiting unilateral changes to contract terms will in practice not catch the very practices it might seek to prevent. However, that practice will be in the purview of the Small Business Commissioner if it is about payment and terms in the contract. That is an important area.

This is an important set of amendments. We are driving forward a suite of measures to tackle the payment issues. We are committed to achieving real change and to make it unacceptable for large companies to exploit their small suppliers. There will be a reporting power. I am not sure that I have made clear that a specific reporting power will allow the commissioner to report on an individual case—totemic decisions, for example. Then, under the annual reporting power he will draw his lessons together and improve the system and the culture. The change has to be wide reaching and long lasting. On that basis, I hope that the noble Lord will withdraw his amendment.

Lord Mendelsohn: My Lords, that was not entirely the response I had hoped for, but one I could have expected. There are a couple of elements here. First, we were asked about whether we had much to learn from the Groceries Code Adjudicator that is relevant to this. Indeed, we have learned a huge amount from that adjudicator that is entirely relevant to the Small Business Commissioner.

In the past couple of weeks, five years into its existence and two years into the current person responsible for it, the adjudicator has been shocked by suppliers' ignorance of the code and all aspects of it compared and contrasted to the knowledge that larger businesses have of what they can do and how they can get round it. We are dealing with a very small number of companies who are the target of the code, but still, suppliers in any survey, in massive numbers, talk about these problems. The largest and most recent survey may well have been on Tesco. Somewhere in the region of 30% to 40% of suppliers said that Tesco was failing more often than not to live up to its obligations under the code, when, by dint of what the Groceries Code Adjudicator said, it had had extensive department education on what it should be doing, but it still failed to comply. Indeed, we have the issue we will come to later about the fears of retribution. We continually have extensive surveys by the Groceries Code Adjudicator about the number of suppliers feeling mistreated. I think that that has reduced, in the entirety of its existence, by only 9%.

We took some of that into account and that is why the Small Business Commissioner should have a much more extensive role and this should be much clearer. If we hope for everyone to be happy, resourceful and feel comfortable, we need something with some teeth.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): My Lords, there is a Division in the House.

Lord Mendelsohn: Forgive me. I beg leave to withdraw the amendment.

Amendment 15 withdrawn.

Committee adjourned at 7.06 pm.

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