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PARLIAMENTARY DEBATES
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# HOUSE OF LORDS
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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

*Tuesday, 1 December 2015.*

*2.30 pm*

*Prayers—read by the Lord Bishop of Derby.*

## Introduction: Baroness Bowles of Berkhamsted

*2.38 pm*

*Sharon Margaret Bowles, having been created Baroness Bowles of Berkhamsted, of Bourne End in the County of Hertfordshire, was introduced and took the oath, supported by Lord McNally and Baroness Falkner of Margravine, and signed an undertaking to abide by the Code of Conduct.*

## Introduction: Lord Livermore

*2.43 pm*

*Spencer Elliot Livermore, Esquire, having been created Baron Livermore, of Rotherhithe in the London Borough of Southwark, was introduced and took the oath, supported by Lord Falconer of Thoroton and Baroness Nye, and signed an undertaking to abide by the Code of Conduct.*

## Sustainable Development Goals: HIV

*Question*

*2.48 pm*

*Asked by* ***Lord Cashman***

To ask Her Majesty's Government, in order to help achieve the Sustainable Development Goals, how they plan to invest in key populations in middle-income countries where it is expected that by 2020, 70 per cent of people living with HIV will live.

**The Parliamentary Under-Secretary of State, Department for International Development (Baroness Verma) (Con):** My Lords, the UK is proud to be the second largest international funder of HIV prevention, care and treatment. We have pledged up to £1 billion to the Global Fund and £9 million to support key population groups through the Robert Carr civil society Networks Fund. The UK's support to the Global Fund will prevent approximately 8.4 million new malaria, HIV and TB infections.

**Lord Cashman (Lab):** I thank the Minister for that Answer. Today is World AIDS Day. AIDS is the biggest killer of women of reproductive age. AIDS is the second-biggest killer of adolescents. In 2014, 1.2 million people died of an HIV/AIDS-related illness. There are 36.9 million people living with HIV, and most people living with HIV are in middle-income countries. Therefore, it is vital that when addressing the possible withdrawal of programmes and funding from middle-income countries, the Government look at indicators other than the blunt instrument of GNI.

**Baroness Verma:** My Lords, I reassure the noble Lord that approximately 50% of Global Fund resources are directed to middle-income countries. We use our seat on its board to encourage it to focus on key populations, as the noble Lord is aware. As middle-income countries graduate from aid, we work with the Global Fund, UNAIDS, national Governments and civil society to encourage stronger national responses and greater domestic resource mobilisation.

**Lord Fowler (Con):** My Lords, there are 36 million people around the world living with HIV, yet WHO estimates that half of them are untested and undiagnosed. Is not the reason why people do not come forward the prejudice against them and the criminal law against gay people and lesbians in so many countries? Given that so many of these countries are inside the Commonwealth, should not the British Government take the lead in campaigning against such injustice?

**Baroness Verma:** My Lords, my noble friend raises a really important point. Stigma and discrimination drive key affected populations underground. At the recent CHOGM talks in Malta, we very much had that conversation. I reassure my noble friend that we spend £6 million a year on research programmes–including understanding how social drivers increase HIV infection—and on supporting people in those countries.

**Lord Chidgey (LD):** My Lords, 35 out of 121 low-income and middle-income countries have increased their spend on AIDS by more than 100%, with all domestic spending on AIDS amounting to some 60% of the total. Does the Minister agree that this confirms the long-standing role of communities in addressing the epidemic in the years ahead, and the critical importance of investing in a strong community health presence to broaden the reach of their services? Can she assure us that these vital services will not be threatened by DfID's planned withdrawal of budget support?

**Baroness Verma:** I need to reassure noble Lords that there is no withdrawal of budget support. However, we do need to ensure that the support we are giving is to those people who are in most need and are unable to self-finance. The low-income, high-burden countries need our support the most but we continue to work in middle-income countries. So there is no withdrawal—just smarter, more focused delivery of services.

**Lord Lexden (Con):** Is not the criminalisation of homosexuality simply incompatible with the Commonwealth charter, which all its members have signed up to?

**Baroness Verma:** My noble friend is of course right: universal rights must apply to all people. That is one of the key messages we must keep reinforcing, whether at Commonwealth level or outside the Commonwealth.

**Lord Loomba (LD):** My Lords, how will the money be targeted to help women who become widows through this appalling disease so that they are not left to become destitute and poverty-stricken?

**Baroness Verma:** My Lords, the noble Lord knows that the UK Government have put women and girls at the heart of all their development assistance work. We know that women are disproportionately affected by not just HIV/AIDS but a number of other complex issues. In the programmes we are working through at country level, we are therefore focusing on ensuring that, as the SDGs rightly say, no one—no one—is left behind.

**Baroness Corston (Lab):** My Lords, is the Minister aware that there are now many thousands of AIDS orphans, particularly in Africa? They frequently find that other family members take their parental possessions, and they are destitute. Do the British Government have any programmes in Africa to support such children?

**Baroness Verma:** My Lords, this is a really important question. On a recent visit to Zambia, I saw some of those orphaned children being taken care of predominantly by grandparents, particularly grandmothers. We found that, through programmes such as social cash transfer programmes, we are helping to keep children in school and receive an education. However, that does not really respond to the wider issue of ensuring that those children are supported throughout their childhood, and we work very closely with a number of NGOs on the ground to ensure that children have access to good healthcare and education.

**Lord Winston (Lab):** My Lords, does the Minister agree that these questions are rather predicated on the notion that HIV will remain a fatal illness? Does she not agree that one of the key issues is to improve research into retroviruses and viruses such as HIV, for which, in time, there is every chance of finding effective cures?

**Baroness Verma:** The noble Lord is right that we should look for zero HIV infection, but while we are working towards that—investing and researching—we still of course have the wider issues to comprehend.

## Women and Girls: HIV

*Question*

*2.55 pm*

*Asked by* ***Lord Collins of Highbury***

To ask Her Majesty's Government how they plan to incorporate HIV as a priority in their work to improve the lives of women and girls, given that HIV is the biggest killer of women of reproductive age globally and of adolescents in Africa.

**The Parliamentary Under-Secretary of State, Department for International Development (Baroness Verma) (Con):** My Lords, every two minutes an adolescent girl is infected with HIV, which is of course unacceptable. We are therefore proud to be the second largest funder of HIV prevention, care and treatment and have pledged up to £1 billion to the Global Fund. Nearly 60% of the fund's resources are invested in programmes that reach women and girls.

**Lord Collins of Highbury (Lab):** My Lords, one of the most common dangers of mainstreaming an issue is the potential lack of focus. Can the Minister assure the House that any reduction in HIV-specific DfID programming will not result in reduced resourcing or reduced focus on HIV?

**Baroness Verma:** My Lords, yes, I can reassure the noble Lord that integration is at the core of DfID's approach. Our bilateral programmes work with Governments and civil society to ensure that HIV programmes are delivered within an integrated health service for women, girls and beyond. I am sure the noble Lord will be pleased that, with UK support, we have reached 3.1 million women with services to prevent transmission of HIV to their babies. A lot is going on within the programming.

**Baroness Northover (LD):** My Lords, does the noble Baroness recognise—I am sure she does—that the Global Fund has been transformative in tackling HIV/AIDS? If she recognises that, how will the Government ensure that their Ross fund on infectious disease, which they announced last week, will complement rather than compete with the Global Fund?

**Baroness Verma:** Of course we recognise the great strength of the Global Fund, but we are also excited about the Ross fund, a £1 billion research initiative that will focus on malaria and other infectious diseases. At this moment, I do not have enough detail of the initiative to tell the noble Baroness more but, as always, I am open to her speaking to me about it once I have more details.

**Baroness McIntosh of Hudnall (Lab):** My Lords, while it is obviously appropriate today to focus on the very large populations with HIV outside this country, will the noble Baroness agree that it is important that we remember that HIV/AIDS is a public health issue in this country, where there are groups that are significantly at risk? Could she therefore encourage her colleagues to make sure that as, for example, funds to local authorities reduce, public health campaigning towards getting people tested and ensuring that treatment is available does not diminish?

**Baroness Verma:** My Lords, the noble Baroness is right to bring the question back home. It is a mandatory duty for local authorities to ensure that the services are available and accessible to those who require them. If the noble Baroness would like further detail on that, I will be more than happy to write to her.

**Lord Crisp (CB):** My Lords, the noble Baroness is well aware that many young people and young people's organisations are active in advocacy, on both the prevention and treatment of HIV/AIDS, and they are, of course, very well placed to influence those most at risk. What are Her Majesty's Government doing to support the work of young people in this field?

**Baroness Verma:** My Lords, the noble Lord and I enjoyed a very good session earlier today at which we listened to very eloquent testimonials from three young people who are not only living and dealing with HIV

infection themselves but doing the broader work they are trying to deliver for others. It is important that, through the work I do with my department, DfID, and the FCO, we collectively ensure that we are engaged with all organisations across the civil society base and Government to Government.

**Lord Lexden (Con):** The new UN sustainable development goals set a target of eliminating the AIDS pandemic by 2030. How is DfID planning to achieve that target?

**Baroness Verma:** My Lords, my noble friend is right: we want to see the pandemic eliminated by 2030. We know that we are a long way from achieving that but we have to do so. When I answered an earlier question, I alluded to the need to focus very much on low-income, high-burden countries that are unable to self-finance. We have to make treatment accessible to the very people who need it and who do not always know the best route to it. We are working with our partners globally, through all the various institutions, to try to eliminate HIV infections by 2030.

**Baroness Lister of Burtersett (Lab):** My Lords, turning to the Answer to the Question from my noble friend, my understanding is that public health funding is being cut. Therefore, can the Minister explain how the Government will ensure that local authorities meet the duties that she spelled out?

**Baroness Verma:** My Lords, I think I made it clear in my earlier response that local authorities have a mandatory duty to ensure that those services are accessible.

## Channel Tunnel: Migrants

*Question*

*3 pm*

*Asked by* ***Lord Berkeley***

To ask Her Majesty's Government what action they are taking with the Government of France to deal with the organised groups assisting migrants seeking to use the Channel Tunnel to enter the United Kingdom.

**The Minister of State, Home Office (Lord Bates) (Con):** My Lords, we continue to work closely with our French counterparts. The joint declaration signed on 20 August cements a comprehensive programme of work between our two countries.

**Lord Berkeley (Lab):** I am grateful to the Minister for that Answer. Is he aware that rail freight services through the tunnel have been virtually decimated—I declare an interest as chairman of the Rail Freight Group—and that road freight is being equally badly hit because people are still climbing into lorries? There may be a fence round the terminals and there may be a few more guards, but dogs are not allowed to bite—I suppose that that would be against the Health and Safety at Work etc. Act if it applies to Calais. Surely more should be done to direct attention at the gangs that are organising these migrants into armies with chain-saws, blankets, mattresses and bolt-cutters to climb the fence. Could there not be more intelligence? Are the Government going to use some of the 1,900 new spies that the Minister announced in November—although they might need a bit more training—to help them?

**Lord Bates:** The noble Lord is absolutely right: that is why the Prime Minister announced in July that the Organised Crime Task Force will concentrate specifically on immigration crime. At the Valletta summit in November he announced an expansion of the task force. Through new legislation in the Serious Crime Act, that work has already led to the disruption of 174 organised immigration crime groups. But we are very conscious that more needs to be done and are working very closely on that with our French counterparts.

**Baroness Ludford (LD):** My Lords, does the Minister agree that a twin-track approach is needed? First, refugees and asylum seekers need to be offered safe and legal routes through humanitarian visas and, secondly, all EU states need to participate fully in European police co-operation, including through a strengthened Europol, which the UK is not opting in to. Does he not therefore have to acknowledge the truth, which is that the present Government are failing on both those tracks?

**Lord Bates:** No. On Friday there will be a Justice and Home Affairs Council meeting, which the Home Secretary will be at. At the emergency meeting on 20 November following the Paris attacks, a whole new raft of initiatives was set out on which we are going to co-operate. These include the Schengen information systems, which exchange information on people who represent a potential threat across Europe. The noble Baroness was absolutely right in her first point, which is why we set up the Syrian vulnerable persons programme. We have said that checks on the 20,000 additional refugees who will come in over the lifetime of this Parliament will take place in the camps so that they do not have to make dangerous journeys and can be verified by the UNHCR and by us.

**Lord Naseby (Con):** Is my noble friend aware that Bedfordshire, where I live, seems to be blessed with having more illegal immigrants disgorging at motorway service stations, allegedly because that is the first place where the lorries refuel? In those circumstances, why is it impossible to undertake a check on the ferries once they have left Calais en route to the United Kingdom and before people disembark at Dover?

**Lord Bates:** It is certainly an issue to which we have to find a solution. Part of that solution lies with the border force arrangements on both sides at the juxtaposed controls in Calais, and we are working very closely with our French counterparts on that. There is also a huge role for the hauliers to play—not necessarily the UK hauliers but some of the continental ones. They need to take the most basic security steps in relation to their vehicles to ensure that this does not happen. That is why we have introduced the accreditation scheme, together with civil penalties for people who fail to abide by it.

**Lord Alton of Liverpool (CB):** My Lords, does the Minister recall the case that was raised in the House just two weeks ago about Rob Lawrie and his attempt to rescue a child from the aptly named "jungle camp" at Calais? Can he say whether it has been possible for the Government to have the meeting with Save the Children that they committed to during Question Time? Can he also tell the House how many people are in that camp today and how many of them are children?

**Lord Bates:** I know that specific case: it was a very difficult one and we have offered some consular support on that issue. Of course, when we are dealing with vulnerable children, it is absolutely critical that they are recorded, that their records are taken and that they are closely supervised. On the specific point about how many people are in that camp, which is a terrible facility, one of the things in the joint declaration was that we wanted to reduce the number from 6,000. The number is now about 4,500, and that is a tribute to the French, who have started relocating people from that camp into what are called respite settlements in places such as Picardy. On the specific matter of Save the Children, the noble Lord will be aware of the UNHCR's reservations on that. That still remains our position, but we are very much open to meetings.

**Lord Rosser (Lab):** My Lords, according to a national newspaper report, a government Minister told the Home Affairs Select Committee in the other place last week that small airports and ports around the UK were a weak link because those coming to this country intent on acts of terrorism would chose to use them to enter the country rather than the bigger airports and ports where stricter measures are in place. Since the Minister went on to say that urgent work was under way to address this issue, are the Government really telling us that they have only just woken up to the fact that security at small airports and ports now needs to be as effective as security at larger airports and ports? If that was not the inference of what the Minister concerned said, what was that Minister trying to tell us?

**Lord Bates:** There is a certain displacement happening here. As the security at Coquelles gets stronger and tougher, and as we then provide greater security around the port of Calais and move along to Dunkirk, Le Havre and other places, there will be displacement. People are going to be forced into the smaller ports and airfields that have been mentioned. That was the reason why we said that there was an increased threat there that needs to be responded to. Part of that was announced by the Chancellor last week when he announced £9 million for additional aviation security just to tackle that problem.

**Lord Tomlinson (Lab):** My Lords—

**Baroness Jones of Moulsecoomb (GP):** My Lords—

**Baroness Manzoor (LD):** My Lords—

**The Lord Privy Seal (Baroness Stowell of Beeston) (Con):** My Lords, I suggest that it is the turn of one of the minor parties. I propose that the noble Baronesses from the Liberal Democrats and the Green Party decide between themselves who would like to give way.

**Baroness Manzoor:** My Lords—

**Baroness Jones of Moulsecoomb:** My Lords, thank you very much. Could the Minister tell us, for those people who are currently suffering in the "jungle camp" in Calais, what the Government are doing to enable them to get to Britain if they have every right to be here? I have asked this as a Written Question; I had a response but I did not get an answer.

**Lord Bates:** Under the Dublin regulations, they have to apply for asylum in the first safe country that they arrive in. If that is France, that is where they must apply for asylum. There are regulations under Dublin III, which the noble Baroness will be familiar with, that deal with family reunification. Where the individual applies for asylum in France but actually has strong family links in the UK, we will enter into discussions with our French counterparts to see how that arrangement can be resolved in a way that keeps the family together.

**Lord Tomlinson:** Would the Minister agree that it is about time that he changed the Answer he gave the House recently and revisited the role that identity cards can play in the fight against terrorists and illegal immigrants, and, by doing that, in the fight against the gangs that are organising these activities?

**Lord Bates:** The answer I gave to the House, which I acknowledge it did not fully accept—perhaps that was to do with the way I presented it—was that we had tried that before.

**Noble Lords:** Oh.

**Lord Bates:** Well, we did try it; investment was put in place for it. We are now saying that we believe that the best security is achieved through a stronger, intelligence-led approach to tackling serious and organised criminals who have dealings in immigration crime or terrorists seeking to do us harm. We believe that the solution should be intelligence led, which is why we have announced an additional £2 billion for the security services over the lifetime of this Parliament.

**Lord Mawhinney (Con):** In an earlier reply, my noble friend said that, over a period of time, the very good work done by the Government and the French had thwarted 174 organised attempts to use the Channel Tunnel. Can he tell your Lordships' House how many organised attempts were not thwarted over the same period?

**Lord Bates:** I am not sure about that, but the specific answer that I gave was not so much about attempts at incursions into the tunnel as about the organised criminal groups that are at the heart of this evil trafficking which is happening across borders throughout Europe and particularly into our country. My answer was that the work of the Organised Crime Task Force that the Prime Minister had set up, which will receive funding over this Parliament, had led to the disruption of 174 organised criminal groups and gangs over that period.

## Paris Attacks: Violence Against Muslims

*Question*

*3.11 pm*

*Asked by* ***The Lord Bishop of St Albans***

To ask Her Majesty's Government what steps they will take to prevent violence against Muslims and other minority groups following the attacks in Paris on 13 November.

**The Parliamentary Under-Secretary of State, Department for Transport and Home Office (Lord Ahmad of Wimbledon) (Con):** My Lords, the Government take the safety of all our citizens and communities very seriously; indeed, this is at the core of counterextremism strategy. Following the tragic events in Paris, we are working to take all necessary action: police have increased their presence at important locations and events; advice has been given to places of worship; and we are working with organisations such as Tell MAMA to confront anti-Muslim hatred. The Prime Minister has also announced new funding for the security of mosques.

**The Lord Bishop of St Albans:** I thank the Minister for his reply and am grateful for all that Her Majesty's Government are doing already. Perhaps I may focus on one particular area. Since those terrible events on 13 November in Paris, some of our national newspapers have run some very disturbing stories about the treatment of British Muslims and minority groups, such as asylum seekers, here. Does the Minister agree that, in modern, democratic Britain, there is no place for misleading headlines and scurrilous cartoons designed to demonise minority groups? Many of us on these Benches have been involved in face-to-face meetings during the past three weeks with members of the Muslim community, who are deeply dismayed and angry at what has happened. What are Her Majesty's Government doing to counter such unhelpful stories and narratives and to strengthen community relations between minorities and the wider British public?

**Lord Ahmad of Wimbledon:** I agree with the right reverend Prelate that, at a time which is very sensitive, to see the headlines that we have seen in certain newspapers is, frankly, appalling. They do not help and they certainly do not add to community cohesion. Notwithstanding the freedoms of press that we enjoy, it is important that we see responsible press reporting. On what steps we have taken, perhaps I may first say how greatly encouraged I have been by the efforts on the part of the communities themselves, particularly the Muslim community, and their reaction to the Paris attacks. Let it be clear that no Government of whatever colour, previously or today, have ever asked any community or faith group to apologise for their faith, and that should be on record. However, what is required is that all communities come together to condemn such atrocities as we have seen in Paris and elsewhere around the world. The Muslim community has been at the forefront at that, not just here in Britain but across the globe—I am sure that many noble Lords will have seen the advert which was taken out by many Muslim community leaders and mosques condemning the actions in Paris and saying quite clearly, "Not in our name".

**Lord Singh of Wimbledon (CB):** My Lords, the Minister will be aware of numerous attacks on Sikhs as a result of mistaken identity. While hate crimes against the Muslim community have been monitored by every police force in the country, not a single penny is being spent on monitoring hate crimes against Sikhs. The American Government are well aware of this problem which Sikhs suffer from and are taking steps to monitor that hate crime. When will the British Government catch up?

**Lord Ahmad of Wimbledon:** Let me assure the noble Lord that the British Government take all hate crime seriously. That is why, in October, the Prime Minister announced a new hate crime initiative, which will be published in January, against all forms of hatred and bigotry. On the recording of anti-Muslim hatred, all religious hate crime and bigotry from anywhere in the country will be recorded officially by all police forces across England and Wales from April next year.

**Lord Paddick (LD):** My Lords, following the London bombings in 2005 there was a similar increase in Islamophobic hate crime. The then most senior Muslim officer in the UK said that this,

"can lead to these communities completely retreating and not engaging at a time when we want their engagement and support".

What guidance have the Government given to police forces on engagement with Muslim communities in order to maintain their trust and confidence?

**Lord Ahmad of Wimbledon:** My Lords, the noble Lord referred to the tragic events of 7/7. In Britain today, no community, including the Muslim community, has retreated. We are a thriving democracy—multifaith and multicultural—where we celebrate the diversity of our country as a strength. However, the noble Lord is right to ask what the police are doing. We are working hand in glove with the police to ensure that reassurance is conveyed to all communities, irrespective of whatever faith they may be, that the police, the Government and all of us stand with them against all forms of bigotry.

**Lord Pearson of Rannoch (UKIP):** My Lords—

**Lord Morgan (Lab):** My Lords—

**The Lord Privy Seal (Baroness Stowell of Beeston) (Con):** My Lords, I think we should go to the Labour Benches.

**Lord Morgan:** My Lords, is this not a two-way affair? I recently chaired a committee on student radicalism in our universities and I was saddened and appalled at how the Islamic societies there form themselves into self-created ghettos. I would like to discuss this with the Minister, and perhaps the noble Lord, Lord Bates, as well. They isolated themselves from, and in many ways were hostile to, the outside student community, not to mention sexual minorities and women groups. Muslims should not be attacked, obviously, but should they not also make their own positive commitment to community integration?

**Lord Ahmad of Wimbledon:** The noble Lord referred to a report, which I have seen, and he is right to say that. No one needs to see division within our communities wherever they may be, including within a university setting. That said, the noble Lord will also recognise that the Muslim community, as I have said, has been at the forefront of condemning not only the actions in Paris but those elsewhere globally. It is a strength of our country that, in the face of such bigotry, venom and vicious attacks against humanity, we come together, irrespective of our backgrounds or faith, to say we stand together against all bigotry, united as a nation. We should commend all groups which have done just that.

## Arrangement of Business

*Announcement*

*3.18 pm*

**Lord Taylor of Holbeach (Con):** My Lords, with the leave of the House, it may be helpful if I make a brief business statement regarding our proceedings tomorrow.

Following discussion in the usual channels, we propose to postpone the first day in Committee on the Welfare Reform and Work Bill and arrange in its place a debate on the Government's proposals for action in Syria. The debate, which in this House would be on a take-note Motion, would start after Oral Questions and we intend that it should conclude before the House of Commons vote on the Government's proposals. A speakers list is already open in the Government Whips' Office. The list will close at 11 am tomorrow, at which time we will also communicate an advisory speaking time.

I hope that these arrangements will commend themselves to the House.

## Scotland Bill

*Order of Consideration Motion*

*3.19 pm*

*Moved by* ***Lord Dunlop***

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

Clauses 1 to 12, Clauses 34 to 41, Schedule 2, Clauses 42 to 64, Clauses 13 to 18, Schedule 1, Clauses 19 to 33, Clauses 65 to 70, Title.

**Lord Forsyth of Drumlean (Con):** My Lords, I thank the Minister for agreeing to take Parts 1 and 2 of the Bill at the end, but could he give us an assurance that we will have the fiscal framework by the time we get to Parts 1 and 2, as recommend by both the Economic Affairs Committee and the Constitution Committee of this House?

**The Parliamentary Under-Secretary of State, Scotland Office (Lord Dunlop) (Con):** I know that this is a matter of great importance to my noble friend and the whole House. We debated the fiscal framework very fully at Second Reading, and there is nothing further that I can add. However, I can confirm that the relevant parts of the Bill will not be taken in Committee until after the new year, and that gives us space to make progress with the fiscal framework negotiations.

*Motion agreed.*

## European Union Referendum Bill

*Third Reading*

*3.20 pm*

***Schedule 1: Campaigning and Financial Controls***

*Amendment 1*

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

**1:** Schedule 1, page 12, line 44, at end insert—

*"Designation of organisations: designation of one organisation only*

8A (1) Section 108 of the 2000 Act (designation of organisations to whom assistance is available) has effect for the purposes of the referendum with the following modifications.

(2) Subsection (2) has effect for those purposes as if for the words from "the Commission" to the end there were substituted "the Commission may—

(a) in relation to each of those outcomes, designate one permitted participant as representing those campaigning for the outcome in question; or

(b) if the condition in subsection (2A) is met as regards one of those outcomes ("outcome A") but not the other ("outcome B"), designate one permitted participant as representing those campaigning for outcome B.

(2A) The condition in this subsection is met as regards an outcome if either—

(a) no permitted participant makes an application to be designated under section 109 as representing those campaigning for that outcome; or

(b) the Commission are not satisfied that there is any permitted participant who has made an application under that section who adequately represents those campaigning for that outcome."

(3) For the purposes of the referendum subsections (3) and (4) are to be treated as omitted.

8B Accordingly, for the purposes of the referendum, section 109 of the 2000 Act (applying to become a designated organisation) has effect as if—

(a) in subsection (4) paragraph (b) (and the "or" before it) were omitted, and

(b) in subsection (5) paragraph (b) (and the "or" before it) were omitted.

8C (1) This paragraph applies if the Electoral Commission designate only one permitted participant under section 108(2) of the 2000 Act in respect of the referendum.

(2) If this paragraph applies, section 110 of the 2000 Act (assistance available to designated organisations) has effect for the purposes of the referendum as if—

(a) in subsection (1) —

(i) for "any designations" there were substituted "a designation", and

(ii) for "the designated organisations" there were substituted "the designated organisation",

(b) subsections (2) and (3) were omitted, and

(c) for subsection (4) there were substituted the subsection set out in sub-paragraph (3) below.

(3) That subsection is—

"(4) The designated organisation (or, as the case may be, persons authorised by the organisation) shall have the rights conferred by paragraphs 1 to 3 of Schedule 12."

(4) If this paragraph applies, section 127(1) of the 2000 Act (referendum campaign broadcasts) has effect for the purposes of the referendum as if the words from "made" to the end were omitted."

**The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con):** My Lords, in moving Amendment 1, I shall also give the Government's view on Amendments 2 and 3, which stand in the name of my noble friend Lord Hamilton.

Government Amendment 1 would allow the Electoral Commission to designate a lead campaigner on just one side. This would override the current provisions in the Political Parties, Elections and Referendums Act 2000, which require the Electoral Commission to designate on both sides or on neither. This amendment has the same purpose as an amendment previously tabled by the noble Lord, Lord Hannay. The Electoral Commission has indicated that it supports the government amendment, but it does not support the amendments in the name of my noble friend Lord Hamilton.

For there to be full public confidence in the outcome of this referendum, it is vital that the rules in place for campaigning are fair, and are seen to be fair. The noble Lord, Lord Hannay, identified that the rules in the Political Parties, Elections and Referendums Act meant that a campaigner on one side could deliberately decline to apply for designation in order to deprive the other side of the benefits of this status. The desire of the noble Lord, Lord Hannay, to address this situation was met with widespread support in this House. I am therefore pleased to present Amendment 1 as a sign of the Government's willingness to listen.

However, the amendment goes a little further than that proposed by the noble Lord, Lord Hannay. It does so because while the amendment of the noble Lord, Lord Hannay, sought to address deliberate "gaming" of the system, it introduced the possibility of a referendum campaign taking place in which only one side of the argument had access to a range of publicly funded benefits. Although perhaps unlikely, there could be circumstances where a campaigner, which is the only applicant for one side, applies in good faith but is not designated because it fails to satisfy the Electoral Commission that it is adequately representative. In that event, if single-sided designation is possible, a large range of publicly funded benefits could be available to just one side of the campaign when there had been no deliberate gaming tactics on the other side.

As a result, the Government have looked at whether each of the benefits of designation should apply in the event of only one side being designated as a lead campaigner. This requires a difficult balancing act, since if these benefits are pared back too much, that would merely reinstate an incentive to game the system—something that all noble Lords are seeking to avoid. The government amendment therefore establishes that in the event of only one lead campaigner being designated, it will not be entitled to a publicly funded grant or to make a referendum campaign broadcast. In terms of the referendum broadcast, I hope that noble Lords will appreciate that, as well as being a sensible balancing of the benefits available, it is also necessary to remove this right in the event of single-sided designation as it could undermine the capacity of broadcasters to act with due impartiality.

The grant available to the designated lead campaigners can be up to a maximum of £600,000 each and comes from public funds. It is a statutory maximum. The grant is administered by the Electoral Commission and can only be used subject to conditions that the commission sets. As an example, for the AV referendum in 2011, the grant available was a maximum of £380,000, but in the end, neither of the lead campaigners spent more than £150,000 of the available grant. The Government are clear that the perceived fairness of this referendum would be significantly undermined if the publicly funded grant is given to support one side of the campaign but not the other. Amendment 1 will therefore provide that, in the event of single-sided designation, this publicly funded grant will not be available to either side.

The Government have considered whether it would be appropriate to restrict any of the other benefits of designation where there is just one lead campaigner. However, we consider that further restrictions would simply reinject an incentive for campaigners to game the system as there would be limited advantages to being designated at all.

Amendments 2 and 3, tabled by my noble friend Lord Hamilton, would provide that the power to designate for just one outcome should be available only where there are no applications for designation from campaigners in support of the other outcome. I appreciate and understand my noble friend's approach. Indeed, the Government had considered this very approach in preparing Amendment 1. However, we realised that Amendments 2 and 3 would undermine the intent of Amendment 1, which is to prevent gaming. Amendments 2 and 3 would merely alter the means by which a campaigner could seek to frustrate the designation process and prevent the other side gaining the benefits. Campaigners could do this simply by putting in an intentionally substandard application that would not meet the statutory test. My noble friend's amendments would therefore enable campaigners to game the system, albeit in a different way. I know that that is certainly not what my noble friend seeks to do.

I will add one final reassurance to the House and to my noble friend Lord Hamilton. Amendment 1 does not affect the fundamental principle of the rules on designation. Where there is an application for designation that meets the statutory test, the Electoral Commission must designate a lead campaigner. Where there are two campaigners for one outcome that both meet the statutory test, the Electoral Commission must then designate the applicant that represents "to the greatest extent" those campaigning for that outcome. The Commission cannot refuse to designate where that test has been met. I beg to move.

*Amendment 2 (to Amendment 1)*

*Moved by* ***Lord Hamilton of Epsom***

**2:** Schedule 1, line 16, leave out "either"

**Lord Hamilton of Epsom (Con):** My Lords, in moving this amendment I will speak also to Amendment 3. I will withdraw Amendment 2 at the end of these proceedings. As my noble friend reminded us, the noble Lord, Lord Hannay, in a previous amendment, tried to prevent one side sabotaging the referendum by not applying for designation. The big problem with the noble Lord's amendment was that this made it possible to end up with the designation of the "remain" campaign and not the "leave" campaign, which would have made things extremely uneven. Those of us who have come to know and love the noble Lord's amendments are not too surprised by that.

The Government have gone to great lengths to try to address this problem. As my noble friend said a minute ago, this has been a very difficult balancing act indeed. Key to her amendment is new subsection (2A). There is no problem with new paragraph (a),

"no permitted participant makes an application to be designated under section 109 as representing those campaigning for that outcome",

but there is a problem with new paragraph (b), which is why my original amendment advocated that it should be withdrawn. Since then, I have had conversations with my noble friend's office and suggested that it might be better to put in a designation of frivolous and vexatious application. That would be a test of whether the application for designation was genuine.

*3.30 pm*

The difficulty with all of this is that there is only one remain campaign, and it seems to have had a few management problems. We were originally told that it would be led by my noble friend Lord Rose. If he was going to be in charge of the campaign we would have expected to find him in your Lordships' Chamber watching what was going on, but the trouble was that he had a terrible outburst of honesty and told the world that it would not make any difference to our trading arrangements if we left the EU. The remain campaign could not live with that sort of thing, so I suspect he has now been removed. I am told that my noble friend Lord Gilbert of Panteg has now been drafted on to the team. Noble Lords will know that he claims great responsibility for the Conservative victory at the last election. I hope he is not being paid by the Conservative Party for this task because, as we know, the party has decided not to contribute funds to the campaign one way or the other. I suppose it is hoped that he will pull off the same miracle in the referendum on Europe as he did in the general election. However, it is a sign of desperation among those in the remain campaign that they are having to change their management and bring in new people because things are not going terribly well for them.

The leave side is also in a bit of a quandary because there are so many people who want to leave the EU that there are two campaigns. Needless to say, there is a problem getting them both to see life in the same way. I think my noble friend would admit that it is quite difficult to game the system by not applying for designation, thus making it impossible for the other side to have an application to campaign, when you have two organisations, in hot competition, vying with each other to be designated as the official campaign for leaving the EU. The problem is that there are threats of legal action. If one leave organisation is designated and the other is not, one may apply to the courts for judicial review. This could create a lot of confusion in the eyes of the Electoral Commission and is why there are worries on that side of the argument. We might end up with neither of the leave campaigns being designated because there would be so many writs flying in different directions that nobody would know which organisation was best. We would like a bit of reassurance on this from the Minister. However, she has gone to great lengths to try and meet our concerns and I am grateful to her.

**Lord Hannay of Chiswick (CB):** My Lords, as the Minister was kind enough to refer to the paternity—or maternity—of this amendment, and as the one I tabled at an earlier stage was the start of this story, I thank her for the great care she has taken in looking at this extremely complex matter. Unlike the noble Lord who preceded me, I shall address only the amendments on today's Marshalled List and not spend a lot of time on amendments that are not being moved and are not, therefore, appropriate for discussion today. Nor will I claim the credit for this not very likely eventuality being made a lot less so. That should go entirely to your Lordships' Constitution Committee, which first spotted the risk of gaming and asked for it to be addressed by the House; I responded to that request.

As regards the amendments that we are discussing, I know that the noble Baroness has worked extremely hard on this very tangled subject. She knows that, in my view, the distinction she has made concerning the broadcasting rights is absolutely right: they should not be one-sided under any circumstances, and I made that clear when she discussed the matter with me informally at an early stage. As to the government-funded portion that follows designation, I am entirely prepared to follow her wisdom in this matter. I think the balance has been very carefully crafted and achieves the maximum deterrence to gaming, whether deliberate or inadvertent. That is an important issue because gaming could happen inadvertently or deliberately, and the noble Lord, Lord Hamilton, referred to that. We probably now have a text which, if and when the House approves it, will make it extremely unlikely that this will happen, and far more unlikely than the text of the original Bill, unamended, would have done. Therefore, I commend that. I am glad that the noble Lord, Lord Hamilton, will withdraw his amendment. This amendment would merely muddy the waters yet again, and therefore make the risk of gaming, or inadvertent events, more likely. I am delighted that he will withdraw his amendment and offer my support to the Minister.

**Lord Forsyth of Drumlean (Con):** My Lords, I am very disappointed that my noble friend will withdraw his amendment but relieved to find at least something during our discussion on this Bill on which I disagree with him. I very much appreciate the way my noble friend the Minister has listened to the debate and brought forward amendments, although, at this last stage, I am very disappointed that she has brought forward this particular amendment, and even more disappointed by the briefing from the Electoral Commission—a body that costs more than half the cost of the entire Royal

Family and therefore is very well resourced indeed. The Electoral Commission suggests that this amendment is helpful. The reason I am disappointed by its response is that it is suggesting that, in the event of there being only one campaign, the amount that that campaign can spend should be increased even further. Even at this late stage, we are faced with a Bill that allows one side—the stay side—to spend more than twice as much as the leave side. To my mind, that entirely defeats the purpose of having expense limits, which are meant to ensure that people are not able to buy a result. My noble friend said in her opening remarks that it was very important that the Bill was seen to be fair. Indeed, in moderating the original amendment that the noble Lord, Lord Hannay, put forward, she has made some progress in that direction. However, the Bill remains extremely unfair in that one side is able to spend considerably more, although this amendment takes away the state funding and the broadcasting funding in the event of there being one campaign. I entirely accept that that is a sensible change.

However, I am concerned that the Electoral Commission is judge and jury in its own court. It decides what is a designated campaign. In the event that it decided that none of the campaigns that was in favour of, say, leaving the European Union was suitable, we would be faced, as a result of this amendment, with one side being a designated campaign and having very considerable resources. Everyone who has spoken so far has said it is very unlikely that that would happen. I congratulate the noble Lord, Lord Hannay, on having spent the entire time that we have spent discussing the Bill trying to amend it to make it one-sided to help his particular cause.

**Noble Lords:** Oh!

**Lord Forsyth of Drumlean:** He has, indeed. If anyone wants to challenge that, I am very happy to give chapter and verse. Every single amendment that has been put forward has sought to improve the position of those who wish to stay in the European Union. Whichever side of the argument you are on, it is absolutely essential that, if we get a narrow result, people are able to say that it was a fair campaign and it was properly funded.

**Baroness Ludford (LD):** Does the noble Lord accept that it is not about giving one side an advantage but about stopping the gaming of the system, which would prevent a fair exercise? That was the point made by the Minister in introducing her amendment, which I think is generally much welcomed.

**Lord Forsyth of Drumlean:** I am most grateful to the noble Baroness, who, with her great experience in the European Parliament, knows all about gaming the system. I am coming on to the point about gaming the system because we have already had examples. My friend and former colleague from the other place, Sir Eric Pickles, has already written to the Electoral Commission saying that the leave campaign should not be designated because it had upset the CBI at its conference and sought to expose that it was one-sided.

If we have those sorts of games being played, where people try to knock out one campaign in order to allow another campaign an advantage, that is gaming the system. This amendment makes it effective because it means that if people were able to persuade the Electoral Commission not to designate a campaign on one side, the other side would have considerable advantage, including even more expenses to spend on the campaign than are already provided in the Bill.

I am disappointed that my noble friend is not seeking to press his amendment. It is of course a matter for the House but I look forward to hearing from my noble friend the Minister how she believes it will be possible to deal with complaints if those who wish to stay win by a very narrow margin and people argue that it was an unfair campaign because one side was allowed to spend far more than the other.

**Lord Collins of Highbury (Lab):** My Lords, I, too, welcome the government amendment. It addresses the specific issue of gaming in the unlikely event that a group of people tried to disadvantage one side or the other, by addressing the facilities that are given to designated lead campaigns. Under PPERA, those lead campaigns are given certain opportunities to communicate to the electorate. What the amendment does not do, quite rightly, is stop other voices.

I get the impression from the debates we have had on the Bill that somehow we are all going to be corralled into one campaign or the other. I think it very unlikely that the leave campaign will stop UKIP—or any other political, campaign or community group—expressing its opinions. I hope the referendum will result in a multiplicity of voices that cannot be legislated for or corralled. I welcome the amendment and the way in which the Government have addressed this particular risk, which is now minimised.

**Lord Spicer (Con):** I will make one very brief point in support of my noble friend Lord Forsyth's point that the amendments in the name of the noble Lord, Lord Hannay, have been on a roll over the past several occasions. We had the example where it was said that something called objective data could be put out about the whole thing, and that of course is the deception enabling one side to put across its point of view. That amendment was not accepted. Now we have this, which again is done in the guise of fairness, but as my noble friend has pointed out, could have the effect of being very unfair. So it is the case that the noble Lord, Lord Hannay, has been on a roll with his amendments and we should bear that in mind when we come to further amendments.

*3.45 pm*

**Lord Wallace of Saltaire (LD):** My Lords, I am sure that the noble Lord, Lord Forsyth, is too young to remember the 1975 referendum but while there was a decisive victory then, it did not stop those who lost the referendum from arguing within six months that it had been unfair and that the people had not really spoken, so they would continue their efforts. We have to recognise, sadly, that referendums do not solve matters for a generation and that the side which loses, even if it is defeated by a very large majority, is highly likely to say that it has been unfair.

**Baroness Anelay of St Johns:** My Lords, I am grateful to my noble friend Lord Hamilton for his analysis of how the government amendment has developed. It is

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not the amendment tabled by the noble Lord, Lord Hannay, who pointed out that he was reflecting very much on the view of the Constitution Committee of this House. Noble Lords throughout the House of course respect the Constitution Committee, and therefore gave their support at Report.

Both my noble friend Lord Hamilton and the noble Lord, Lord Hannay, have recognised the difficult balancing act that has to be achieved. This is indeed a complex matter. We have had to look carefully at how to craft the amendment so that we meet this House's request that we discourage gaming the system, while avoiding penalising the person who is trying to avoid gaming and is actually the victim of it. We are also meeting the point made by the noble Lord, Lord Collins: that voices should be heard. My amendment has two aspects: broadcasting, and the maximum grant of £600,000. It is clearly up to the political parties to spend up to their limits, and others can of course spend up to £700,000. I will not rehearse in detail the whole panoply of what the spending limits comprise, but it was important to respond to the view of the Constitution Committee. We have sought to do that in a way which enables people clearly to see that it is better to take part, and take part honestly, than to try to game.

The Electoral Commission has indicated that, when looking at the designation of lead campaigners, it will expect campaigners to demonstrate the following: how the applicant's objectives fit with the referendum outcome it supports, and the level and type of support for the application; how the applicant intends to engage with other campaigners; the applicant's organisational capacity to represent those campaigning for the outcome; and the applicant's capacity to deliver their campaign, including its financial probity. These are all matters we would expect the Electoral Commission to take into account.

I am sure that all noble Lords will join me in wanting this process to be firm and fair, so that the organisations representing views on either side can organise themselves such that they can present to the Electoral Commission a case which can be judged on its merits, and so the process can proceed with expedition. I urge my noble friend to do as he said and withdraw his Amendments 2 and 3 when they are called.

*Amendment 2 (to Amendment 1) withdrawn.*

*Amendment 3 (to Amendment 1) not moved.*

*Amendment 1 agreed.*

*Amendment 4*

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

**4:** Schedule 1, page 15, line 9, leave out "commencement of this Schedule" and insert "day when section 3 of this Act (application of Part 7 of the 2000 Act to the referendum) is brought into force for the purposes of applying section 117 of the 2000 Act to the referendum"

**Baroness Anelay of St Johns:** My Lords, I shall also speak to Amendments 9 to 25 inclusive, which are all in my name. Government Amendments 4 and 9 to 25 relate to the reporting requirements that apply to donations received by, and loans and certain other transactions involving, permitted participants other than non-minor registered parties.

One of the reasons why there are so many amendments in this group is that the Bill, like legislation for previous referendums, deals separately with donations and loans. Therefore, Amendment 4—along with Amendments 16, 17 and 18—is minor and technical. These amendments make it clear that different paragraphs in the schedules may be commenced at different times. Amendments 9 and 15 are also minor and technical, and would ensure that there is no conflict between two provisions in the Bill about the reporting of donations and loans that apply and modify the Political Parties, Elections and Referendums Act for different purposes.

I now turn to Amendments 10, 11, 12, 13, 19, 21, 22 and 23, which are the main focus of this group. The Government have tabled these amendments as a result of an undertaking I gave on Report to the noble Lord, Lord Jay. The noble Lord had tabled an amendment, following discussion with the Electoral Commission, to address concerns that the rules in the Political Parties, Elections and Referendums Act 2000 requiring campaigners to return donations from ineligible sources applied only to permitted participants. At the time, I set out clearly why the Government could not accept the noble Lord's amendment as drafted, and I will not rehearse those arguments now, as they are on the record from Report stage in some detail.

However, I noted that the Government had already taken steps to address the concerns identified by the noble Lord's amendment. These are provided by the introduction of pre-poll reporting requirements in relation to loans and donations. These provisions require permitted participants to be transparent about the sources of their funding before the vote takes place. In these pre-poll reports, campaigners are also required to detail certain donations received and loans entered into before they become a permitted participant. I gave an undertaking on Report to consider whether the level of transparency provided as part of the pre-poll reports was adequate. On that basis, the noble Lord, Lord Jay, withdrew his amendment at that stage. The government amendments I have brought forward today represent the result of consideration and discussions with the noble Lord. We believe they will provide for greater transparency, but without imposing an unnecessary burden on campaigners.

Government Amendments 10, 11, 13, 19, 21 and 23 establish that the first pre-poll reporting period for donations and loans will begin on commencement of the relevant provisions and end after the first week of the referendum period. I note that the Electoral Commission supports all the amendments in this sub-group. The actual length of the referendum period is as yet uncertain, as noble Lords are aware, simply because we do not know the date of the referendum itself, but noble Lords will recall that we agreed earlier to an amendment stating that the referendum period should be at least 10 weeks. Setting the first period through this amendment enables the starting of the first pre-poll reporting period without waiting for the regulations setting the subsequent reporting periods to be made.

Government Amendments 12 and 22 make further progress by increasing the scope of donations and loans that need to be reported. The Electoral Commission supports these amendments too. Under the Bill as it stands, the pre-poll reports need to include only donations or loans for the purpose of meeting referendum expenses that are to be incurred during the referendum period. This would be difficult to apply in practice, especially if the referendum period has not yet been set—as it cannot be, because the negotiations have not yet concluded and we are not yet able to bring to the House a statutory instrument inviting the House to consider a date for the referendum.

These amendments will require the reporting of donations and loans that were for the purpose of meeting referendum expenses generally. This approach means that, once these provisions are commenced, if campaigners are receiving funding from foreign sources to help meet any referendum expenses, they will have to declare this before the referendum. The campaigning rules that will apply to the EU referendum do not expect people to anticipate that they may seek at some future stage to become registered as a permitted participant and return money they receive. This is clearly the fair approach to regulation.

However, the pre-poll reporting rules recognise that there is a risk that, in certain circumstances, a campaigner might delay registering as a permitted participant so that they can receive otherwise ineligible funding. The pre-poll reports therefore seek to shine the light of transparency on the sources of funding campaigners seek to use. Through government Amendments 12 and 22, we have therefore increased the scope of the pre-poll loan and donation reporting requirements. I hope the House will recognise that the additional transparency the amendments provide is indeed a benefit, and that the Government have delivered on the commitment I gave at Report. I am very grateful indeed to the noble Lord, Lord Jay, for his constructive amendment at Report and his engagement on this point. It has helped us to arrive at this outcome.

I now turn briefly to government Amendments 14, 20, 24 and 25, which are all minor and technical. Amendments 14, 20 and 24 will correct a cross-reference, insert an additional definition and set out more clearly how existing reporting requirements under PPERA will function when applied to this referendum. Finally, Amendment 25 clarifies that the pre-poll loan reports must cover third-party security arrangements, referred to in the Bill as connected transactions, as well as loans and other regulated transactions to which the committed participant is a party. I beg to move.

**Baroness Ludford:** My Lords, I rise with some hesitation, because this is not an area that I know much about. I find the briefing from the Electoral Commission slightly confusing. It is probably a bit unfair to ask the Minister whether I should be confused, but is she satisfied that the concerns expressed by the Electoral Commission have been fully addressed? Its briefing states that it supports the amendments, which will increase transparency of information, but it is not clear from the last two paragraphs of the briefing whether those concerns applied before Report and have now been cleared up by the new amendments today. The last sentence states that,

"in addition to these amendments we will use our guidance for referendum campaigners to strongly encourage them to only accept donations from permissible sources prior to registering with us".

Is it the Minister's understanding that that has been overtaken by events and that her amendments now fully satisfy the concern that some donations would escape the permissibility requirements and post-poll reporting obligations? Do her amendments close all those loopholes? I apologise for asking her to clear up my confusion, but I would none the less be grateful.

**Lord Wigley (PC):** My Lords, I follow that intervention with regard to the position of the Electoral Commission. I understand from what the noble Baroness said that it agrees with the content of what the Government are doing. Is it also entirely happy with the timing implications? If I understand it correctly, the commission has said that, in practice, it needs a minimum of 16 weeks' notice after the last regulations have been approved. Is there an implication in the Minister's statement for that timescale? If that is the case, is the Electoral Commission relaxed that it can work within those implications on the overall timescale arising from the amendments?

**Lord Kerr of Kinlochard (CB):** My Lords, I shall speak briefly to Amendments 12 and 22, which, as the Minister said, were made in response to a point raised by the noble Lord, Lord Jay. I have to say, although it may increase the paranoia of the noble Lord, Lord Hamilton, that the noble Lord, Lord Jay, is abroad today—indeed, I am sorry to have to say, in France.

The concern that the noble Lord, Lord Jay, was speaking to is in my view, although I have heard the noble Baroness, Lady Ludford, at least half met by the changes that the Government have made. My understanding is that the Electoral Commission recognises that that is as far as it is possible to go. As I read its briefing, it is saying that, in addition to the amendments, it will use its guidance for referendum campaigners strongly to encourage them only to accept donations from permissible sources prior to registering with the commission. That is very good advice, and the House should encourage that. I welcome the government amendments, as at least they will have the effect of increasing transparency and, backed by such guidance from the Electoral Commission, should discourage inappropriate donations.

*4 pm*

**Lord Flight (Con):** My Lords, how will these measures deal with contributions from overseas? This might not be a big issue, but obviously there is the thought that there may be significant contributions from the EU itself.

**Baroness Anelay of St Johns:** My Lords, I am particularly grateful for the intervention of the noble Lord, Lord Kerr of Kinlochard, because it encapsulated the issue. The noble Lord, Lord Jay, is content that we have gone as far as a government amendment, or indeed any amendment, can go—I think that is the point—within the statutory system. The Electoral

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Commission in its briefing, to which the noble Baroness, Lady Ludford, referred, is saying that, beyond legislation, there is the whole issue of people behaving properly. Clearly, we want to ensure that those people who are receiving donations carry out their best efforts to ensure that they come from a source from which they should receive them. But also there are those issues that I mentioned in opening, such as the fact that some people who are receiving donations will not know at that stage that later on they will want to register to be a permitted participant. Therefore, we have to be cautious not to overload them with regulation, because they cannot guess what they are going to do as the sums of money rise and how they will feel as their activity increases. The noble Lord, Lord Kerr of Kinlochard, encapsulated that position very well.

My noble friend Lord Flight asked about overseas moneys. I referred during my presentation of the amendment to how that might be affected. I made it very clear in earlier stages of this Bill how money from overseas may be part and parcel of permitted donations. I do not think that it would be appropriate for me at Third Reading to go through the detail of that again, but perhaps it would be right for me to respond to my noble friend by making it clear that we have always set out that permitted participants cannot accept donations of more than £500 from the EU institutions, as these are not eligible donors under PPERA. With companies based in Europe, as long as a campaigner does not spend any other money campaigning during the referendum period, it would be possible for campaigners to receive up to £10,000 from a foreign company and use it to campaign. That is a necessary function of proportionate controls on low-spending campaigners. I went into this in some detail in Committee, so I shall not try to do so now. It is important that we have transparency in all these matters, and that is exactly what we have tried to put at the heart of this group of amendments.

*Amendment 4 agreed.*

*Amendment 5*

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

**5:** Schedule 1, page 15, line 39, at end insert—

"( ) In this paragraph references to "common plan expenses" of an individual or body are to referendum expenses which are incurred by or on behalf of that individual or body—

(a) as mentioned in sub-paragraph (1)(a), and

(b) in pursuance of a plan or other arrangement mentioned in sub-paragraph (1)(b)."

**Baroness Anelay of St Johns:** My Lords, in moving Amendment 5, I shall speak also to Amendments 6 to 8, which are in my name. These are technical amendments relating to the "acting in concert" rules that will apply for campaigners at the referendum.

The acting in concert rules apply when two or more campaigners work to a common plan, incurring expenses during the referendum period to promote a particular outcome at the referendum. These rules are intended to prevent a campaigner setting up multiple bodies to campaign for the same referendum outcome, thereby circumventing the spending limits. When a designated lead organisation is involved, all spending incurred as part of that plan counts against the lead campaigner's spending limit only. None of the spending counts against the spending limits of the other campaigners in the common plan. When two or more campaigners work together as part of a common plan without the involvement of a designated lead organisation, the Bill ensures that the total spending incurred as part of that common plan counts against each of the campaigner's spending limits.

Government Amendments 5 to 8 are minor drafting changes to make clear the original policy intent that campaigners do not have to account for expenditure by other participants in the common plan which have been incurred independently of the arrangement. I conclude these groups of amendments with technical matters, but they, as all others, have shown the complexity of trying to deliver legislation that should be as fair and balanced as possible.

Before I proceed to other matters in this group, as we come to a close I ought to take this opportunity to give a short expression of thanks. I made clear at Second Reading that the Government's aim is to deliver a robust and fair referendum on the UK's membership of the European Union. Noble Lords across the House have helped to achieve this aim with their usual careful attention and contributions. I am grateful to all noble Lords who spoke during the passage of the Bill, and to those who took the time to attend various meetings across summer and autumn outside the Chamber.

It is always a dangerous business to pick out individuals, but I am going to be dangerous. I hope noble Lords will permit me to name a few names. I am particularly grateful to the noble Lords, Lord Hannay and Lord Kerr of Kinlochard, who brought their great expertise to bear, as did others, such as the noble Lord, Lord Wigley, who in particular made it possible to focus on matters that affect the devolved Administrations.

The Opposition Front Benches have been unfailingly constructive, and I am very grateful to the noble Baronesses, Lady Morgan of Ely and Lady Smith of Newnham, and their colleagues for their work and engagement and for testing us from time to time. Of course, I should like to pay particular tribute to my noble friends Lord Forsyth, Lord Blencathra and Lord Hamilton, among others, who have certainly kept me on my toes in the best possible spirit—I wish I wore heels as it would be easier to be on my toes.

From a personal perspective, I am very grateful to my noble friend Lord Faulks. His support throughout this Bill has been invaluable to me. I am particularly grateful for his sensitive handling of the important debates in this House about the referendum franchise which, of course, will be continued in another place. I am also grateful for the counsel of my ministerial colleagues, David Lidington, the Minister for Europe, and John Penrose, the Minister for Constitutional Reform.

It has always been of the utmost importance to the Government that the referendum process should be fair and be seen to be fair. I am confident that the

European Union Referendum Bill is all the stronger for the detailed scrutiny it has received in this House. The Bill will now return to another place, which will express its view. As noble Lords will be aware, the other place has consistently voted against lowering the voting age, and I expect it to repeat that decision with regard to this Bill. As I said at Second Reading, this Bill sets the stage for one of the most important decisions that the people of these islands have been asked to make in a generation. Our work gives them the opportunity to do that. I beg to move.

*Amendment 5 agreed.*

*Amendments 6 to 13*

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

**6:** Schedule 1, page 15, line 40, leave out "expenses" and insert "common plan expenses of the individual or body which is"

**7:** Schedule 1, page 16, line 13, leave out from "any" to "of" in line 14 and insert "common plan expenses"

**8:** Schedule 1, page 16, line 17, leave out from "any" to "of" in line 18 and insert "common plan expenses"

**9:** Schedule 1, page 23, line 45, at end insert—

"( ) In paragraph 10(1)(c) of Schedule 15 to the 2000 Act as it applies for the purposes of the referendum, the reference to paragraph 2 of Schedule 6 to that Act is to be taken as a reference to that paragraph without the modifications of that paragraph made by this Schedule."

**10:** Schedule 1, page 27, line 12, leave out from first "of" to end of line 13 and insert "—

(a) the period ("the first reporting period") beginning with the commencement day and ending with the 7th day of the referendum period, and

(b) such other periods ending before the date of the referendum as may be prescribed by regulations made by the Minister;

and in paragraph (a) "the commencement day" means the day on which that paragraph comes into force."

**11:** Schedule 1, page 27, line 31, leave out from "Commission" to end of line 32 and insert "—

(a) in the case of the report for the first reporting period, within 7 days beginning with the end of that period;

(b) in the case of the report for a period prescribed under sub-paragraph (2)(b), within such time as may be prescribed by regulations made by the Minister."

**12:** Schedule 1, page 27, line 38, leave out sub-paragraph (7)

**13:** Schedule 1, page 28, line 3, leave out "(2)" and insert "(2)(b)"

*Amendments 6 to 13 agreed.*

## *Schedule 2: Control of loans etc to permitted participants*

*Amendments 14 to 25*

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

**14:** Schedule 2, page 41, line 19, leave out "6A," and insert "6A (reading references in that paragraph to an authorised participant as references to a qualifying person who is a party to the transaction)"

**15:** Schedule 2, page 41, line 37, at end insert—

"( ) In sub-paragraph (1), the reference to paragraph 2 of Schedule 6A is to be taken as a reference to that paragraph without the modifications of that paragraph made by Schedule 2 to the European Union Referendum Act 2015."

**16:** Schedule 2, page 46, line 9, after "of" insert "paragraph 1 of"

**17:** Schedule 2, page 46, line 18, after "of" insert "paragraph 1 of"

**18:** Schedule 2, page 46, line 42, after "of" insert "paragraph 1 of"

**19:** Schedule 2, page 47, line 3, leave out from first "of" to end of line 4 and insert "—

(a) the period ("the first reporting period") beginning with the commencement day and ending with the 7th day of the referendum period, and

(b) such other periods ending before the date of the referendum as may be prescribed by regulations made by the Minister;

and in paragraph (a) "the commencement day" means the day on which that paragraph comes into force."

**20:** Schedule 2, page 47, line 8, leave out paragraphs (a) and (b) and insert—

"(a) the nature of the transaction (that is to say whether it is a loan, a credit facility or an arrangement by which any form of security is given),

"(b) the value of the transaction (determined in accordance with paragraph 3 of the Schedule treated as inserted by paragraph 1 of this Schedule ("Schedule 15A")) or, in the case of a credit facility or security to which no limit is specified, a statement to that effect,

"(ba) the date when the transaction was entered into by the permitted participant,

(bb) the same information about the transaction as would be required by paragraph 18(3) and (4) of Schedule 15A to be recorded in the statement referred to in paragraph 15 of that Schedule,

"(bc) the information about each qualifying person who is a party to the transaction which is, in connection with recordable transactions entered into by registered parties, required to be recorded in weekly transaction reports by paragraph 3 of Schedule 6A to the 2000 Act (reading references in that paragraph to an authorised participant as references to a qualifying person who is a party to the transaction), and"

**21:** Schedule 2, page 47, line 24, leave out from "Commission" to end of line 25 and insert "—

(a) in the case of the report for the first reporting period, within 7 days beginning with the end of that period;

(b) in the case of the report for a period prescribed under sub-paragraph (2)(b), within such time as may be prescribed by regulations made by the Minister."

**22:** Schedule 2, page 47, line 31, leave out sub-paragraph (7)

**23:** Schedule 2, page 47, line 43, leave out "(2)" and insert "(2)(b)"

**24:** Schedule 2, page 48, line 31, leave out paragraph (b) and insert—

"(b) the following expressions—

"qualifying person", and

"regulated transaction",

**25:** Schedule 2, page 48, line 37, at end insert—

"( ) Paragraph 23 of the Schedule treated as inserted by paragraph 1 applies for the purposes of this paragraph as it applies for the purposes of the provisions of that Schedule relating to the reporting of transactions."

*Amendments 14 to 25 agreed.*

*Bill passed and returned to the Commons with amendments.*

# Education and Adoption Bill

*Report*

*4.09 pm*

*Amendment 1*

*Tabled by* ***Baroness Pinnock***

**1:** After Clause 6, insert the following new Clause—

"Scrutiny of education provision

(1) The Education and Inspections Act 2006 is amended as follows.

(2) After section 70C insert—

"70D Scrutiny of education provision

(1) This section applies where more than 10 per cent of schools in a local education authority area are eligible for intervention under section 60B as inserted by section 1 of the Education and Adoption Act 2015 (coasting schools).

(2) The relevant local authority may establish, under section 21(2) of the Local Government Act 2000 (overview and scrutiny committees), a committee of that authority to review and scrutinise matters relating to the provision of education in such schools in the authority's area, and to make reports and recommendations on such matters in accordance with regulations under this section.

(3) Regulations shall make provision—

(a) as to the matters relating to the provision of education in such schools in the authority's area which the committee may review and scrutinise;

(b) as to matters relating to the provision of education in such schools in the authority's area on which the committee may make reports and recommendations to local Academy sponsors;

(c) as to information which local Academy sponsors must provide to the committee; and

(d) requiring Regional Schools Commissioners to attend the committee to answer questions.""

**Lord Hunt of Kings Heath (Lab):** My Lords, I suspect that the movers of the amendment have been rather taken by surprise by the speed with which the European Union Referendum Bill completed its Third Reading, which on past counts was rather unexpected. My congratulations to the Minister, the noble Baroness, Lady Anelay, on the speedy way in which she dispatched the business. I think it would be fair to the noble Lord, Lord Storey, to allow him to arrive.

This is clearly an amendment about the role of local authorities. Obviously the specific details are contained in the amendment, but I want to take this opportunity to ask the Minister whether he is able to say something more about the role of local authorities in education in the future, because that is very much contingent on the amendment before us. He knows that we have debated whether the Government's real intention is for all schools in the maintained sector to become academies. The Minister has rather dissembled on that point, but he will know that it was very clear from what his right honourable friend the Chancellor of the Exchequer said only last week in the Autumn Statement that it is essentially the Government's intention that at least all secondary schools should become academies. Mr Osborne said:

"Five years ago, 200 schools were academies: today, 5,000 schools are. Our goal is to complete this school revolution and help every secondary school become an academy. I can announce that we will let sixth-form colleges become academies, too, so that they no longer have to pay VAT. We will make local authorities running schools a thing of the past, which will help us save around £600 million on the education services grant".—[*Official Report*, Commons, 25/11/15; col. 713.]

As the amendment talks about local authorities, it is entirely reasonable for me to ask whether that is an enunciation of a new government policy. If it is, and my impression is that when the Chancellor makes a Statement in the other place it is an enunciation of policy, clearly it is the Government's intention to take local authorities completely out of the schools sector.

The point that I put to the Minister is this: why are we going through the charade of this Bill when it is the clear intention of the Government to phase out maintained schools completely? Why are the Government not prepared to be open and honest about this? Why do they not come forward with the appropriate legislation? I would oppose that legislation, but let us at least have an honest debate. I know that we are on Report and I guess that I am pressing against the boundaries of what is allowed, but it is none the less a very interesting amendment.

*4.15 pm*

**Baroness Pinnock (LD):** My Lords, I apologise for missing the opening part of this discussion on Report. Amendment 1 in my name and that of my noble friend Lord Storey has a distinct purpose, which is one that I raised in Committee. Schools are a locally delivered service and that will not change, even with the implementation of the Government's desire that all schools become academies. Consequently, once school-specific processes have been exhausted, parents tend to seek redress for their concerns about a particular school from a local body. Currently, parents see their local authority as that body. Already, in my experience as a local councillor, parents seeking to take a complaint about their local school to the next level turn to the council only to find, where it is an academy, that this is no longer within the remit of LAs.

The second reason for tabling this amendment is that schools are a major spender of public money. More than 50% of a local authority's revenue spending is on schools. Where is the local accountability for that expenditure, especially as the number of academies increases and their diversity grows? Sadly, there have been a number of high-profile failures of financial governance in the academy sector, which includes some serious allegations of fraud, some of which have been proven; for instance, in schools in Bradford and County Durham. They are not the only ones. The Education Funding Agency has issued financial notices to improve on several academy chains, including the Academies Enterprise Trust, which was served with a notice only last year. Therefore there are already examples of the failure of local accountability to highlight issues of concern about public expenditure on something as important as education and schools.

Multi-academy trusts, which seem to be the current favoured way forward, are accountable only to the Education Funding Agency and the Secretary of State for their strategic and financial performance. Governance models in multi-academy trusts ensure that the sponsor or sponsoring body controls the trust. The strategic direction and decisions on the school's budget are, crucially, in the hands of the directors of the trust and the trust members, who are self-appointed and accountable

for their actions only via agreements signed with the Department for Education. In this model there is no accountability to the local community, which the academy and the academy trust serves, and no accountability to local parents for the investment in the education of their children. This amendment seeks to address some of those concerns.

In 2006, the Government established local authority health scrutiny committees. The scrutiny committees comprise both elected councillors and co-optees with relevant experience in the health sector. The purpose is to provide a public forum where local NHS bodies—hospital trusts or commissioning groups—can present policy changes which are discussed and are subject to questioning from the perspective of the local community. In other forums they are questioned as regards their financial position or their general direction—as regards trusts—from a clinical commissioning point of view. However, the local community has the opportunity through the scrutiny committee to raise issues of concern, such as access to the services that are going to be provided. In my experience, health scrutiny committees can add value by providing access to strategic leadership across the sector and by enabling generalised complaints and concerns about the service to be given a local and public hearing. I suggest that local education scrutiny committees would fill a vacuum by providing a process, based on this sort of model, to have a forum for discussing issues pertinent to the local community.

One of the keys to success in schools is harnessing the support of the local community they serve. The risk in the multi-academy trust model is that the schools become more remote from the communities they serve. I suggest that a successful multi-academy trust would welcome the opportunity of a public platform where it could demonstrate transparency in its decision-making and respond to questions from local people regarding performance. A scrutiny model would also enable the regional schools commissioner to report back via a local public forum. I hope that the Minister will be able to respond positively and constructively to this proposal. I beg to move.

**The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con):** My Lords, responding to the original remarks of the noble Lord, Lord Hunt, I am glad that he used the word "dissembled" over the question of the future of the academy programme and local authorities. I think that it is a better word than "dishonest", which he used in Committee. I have made it absolutely clear on a number of occasions that the default position for a coasting school is not to become an academy. However, the Prime Minister has been clear that our ambition is that, in time, every school will have the opportunity to become an academy. Given that ambition, it is right that we look at how we might reform the role of local authorities in education, although there is no intention of taking them out of education totally. Obviously their role in school improvement will reduce as regional schools commissioners take more responsibility.

**Lord Hunt of Kings Heath:** I hear what the Minister says but what did the Chancellor mean by saying:

"We will make local authorities running schools a thing of the past".—[*Official Report*, Commons, 25/11/15; col. 1370.]?

What does that mean in relation to what the noble Lord has said? He may not like my use of the words "dissembling" or "dishonest" but I come back to the core point. Is it the Government's intention that, willy-nilly, all schools will be academies, as the Chancellor said last week?

**Lord Nash:** Perhaps the noble Lord will let me finish. In a situation at some stage in the future where all schools were academies, obviously local authorities would not be running schools. However, we certainly anticipate them continuing to have a role in the sufficiency duty, admissions, SEN and safeguarding. Perhaps I may make it absolutely clear that it is not about making every school an academy overnight at the stroke of a pen. That is not what we are after at all; we are about organising schools so that through academies and the multi-academy trust programme many more of them can, by working with each other, take advantage of the benefit of economies of scale efficiencies and deliver career enhancement, better CPD and leadership development. Given that ambition, it is right that we look at how we form the role of local authorities, as we have discussed.

The noble Baroness, Lady Pinnock, referred to financial irregularities in academies. I think that we have covered this before but I re-emphasise that academies are subject to far greater financial scrutiny than local authority maintained schools. They have to publish annual accounts which are audited by third-party accountants, something local authority maintained schools do not have to do. They are subject to the scrutiny of the EFA and the Charity Commission, and they are also subject to company law. I do not wish to make comparisons—

**Baroness Pinnock:** My Lords—

**Lord Nash:** Perhaps I may finish before the noble Baroness gets on her feet. I do not wish to make comparisons but a couple of years ago the Audit Commission found in, I believe, one year alone nearly 200 cases of financial irregularities in local authority maintained schools.

**Baroness Pinnock:** In response to the proposal that I made in Committee, the Minister said that academies' accounts undergo greater audits than those of local authority maintained schools, but I suggest that that is probably not the case. I am the governor of a school in the local maintained sector. The school's accounts are published as part of the local authority's accounts, which are audited by a senior auditing company—KPMG in this case. Therefore, the internal and external audit of the accounts is carried out by the council's own internal auditor and by external auditors. I am not suggesting that they are any better than the audited accounts of academies in terms of overall performance, and I think it is erroneous to suggest that one is better than the other.

**Lord Nash:** I am sure that anything the noble Baroness is involved in is very well scrutinised financially but, as a rule, all academies have their accounts audited but not all maintained schools do.

[LORD NASH]

Turning to the subject that we are here today to discuss, I shall speak to Amendment 1 tabled by the noble Lord, Lord Storey, and the noble Baroness, Lady Pinnock. This proposed new clause would allow a local authority to establish a committee to review and scrutinise the provision of education in coasting schools where coasting schools make up more than 10% of the schools in the local area.

From our debate on a very similar amendment in Committee, I know that the noble Lords' concerns are that, where a local authority has a number of coasting schools, the education provision in these schools is monitored and reviewed at a local level, with direct intervention happening where necessary.

I share the noble Lords' desire to ensure that coasting schools are subject to robust oversight and intervention but, in the past, too many local authorities have made little use of their intervention powers, as we have discussed in earlier debates. The Bill now gives regional schools commissioners working on behalf of the Secretary of State the powers to work with and intervene in any school that is coasting. The Bill provides RSCs with additional intervention powers for maintained schools so that they can tackle schools directly that have been allowed to fail, or indeed coast, under the local authority's watch. This means that all coasting schools will come under the scrutiny of the RSCs.

The revised *Schools Causing Concern* guidance, which is currently out for consultation, will set out what steps RSCs will take when schools in their area have been identified as coasting. Initially, the RSC will make contact with coasting schools in their area to identify whether the school has the capacity to improve sufficiently by itself. If the RSC deems that additional support or intervention is needed, there are a variety of intervention options, such as bringing in additional support from a national leader of education, temporary support from a local school or becoming a sponsored academy.

I emphasise that, throughout this process, no coasting school will go unchecked. RSCs will not wait until more than 10% of schools in a local authority have been notified that they are coasting before they start reviewing the education provision in these schools. The work of RSCs in relation to coasting schools will be continuous and thorough, with the aim of intervening swiftly where necessary. It is just not fair on the pupils in a coasting school to have to wait for an extraneous event, such as more than 10% of schools in their LA to be coasting, for support to take place.

RSCs are based in the regions that they serve, which means that they will make decisions on coasting schools based on their knowledge of the local area and with the input from their head teacher board. Head teacher board members are recruited from across the region and so bring local intelligence to RSC decision-making. I welcome the positive comments made today in Ofsted's annual report about the appointment of RSCs as overseers of school performance.

RSCs are already successfully scrutinising academies in their region when they have concerns, and intervening where necessary. The proposed powers for them to do the same for maintained schools are an extension of this and they will be resourced up to enable them to do so.

RSCs are already working closely with local authorities, meeting them regularly to discuss schools of concern. Since their appointment, RSCs have been proactive in using their intervention powers in relation to academies and encouraging local authorities to do the same for maintained schools. We know that some local authorities have been positive about the introduction of RSCs, and have found that this partnership working can result in a joint understanding of local priorities, a new energy and an effective approach to tackling underperformance in their areas. In some areas we have seen a marked increase in local authorities issuing warning notices to their poorly performing schools.

Noble Lords will be aware that the Chancellor's spending review speech restated the Government's position on reforming the role of local authorities, as we have discussed. They will remain responsible for the maintained schools for which they are accountable, but the local authority role will, as I said, have to change in the light of the growing number of schools becoming academies. I therefore do not consider this amendment, which proposes additional responsibilities for local authorities in respect of non-maintained schools in their area, appropriate in that context.

I hope I have been able to reassure noble Lords that RSCs will be actively monitoring and reviewing all coasting schools, not just ones in areas where they are in bad company, and intervening when appropriate. I therefore urge the noble Lords to withdraw their amendment.

*4.30 pm*

**Baroness Suttie (LD):** My Lords, I believe that we have made our concerns on this matter very clear, but we are happy that there will be robust oversight and scrutiny for all schools. With the assurances from the Minister that all schools will be dealt with fairly on this matter, I beg leave to withdraw the amendment.

*Amendment 1 withdrawn.*

### *Clause 13: Local authority adoption functions: joint arrangements*

*Amendment 2*

*Moved by* ***Lord Watson of Invergowrie***

**2:** Clause 13, page 8, line 25, after "authorities" insert "and voluntary adoption agencies operating in the area jointly"

**Lord Watson of Invergowrie (Lab):** My Lords, I shall speak also to Amendments 6 and 7, which I thought would be treated as individual amendments but, to my surprise, have been grouped. So here we are.

Amendment 2 has been resubmitted, because we share the concerns of the professionals in the field about what the future might hold for voluntary adoption agencies after the full establishment of the regional adoption agencies. Having said that, I think that moving Amendment 2 should be a formality, because, within the past few days, the Minister has to all intents and purposes already indicated—in writing no less—his tacit acceptance of it.

In moving what was then Amendment 32ZA in Committee, I highlighted the fears of many voluntary adoption agencies that they could be squeezed out with the establishment of the regional agencies and that considerable difficulties remained as far as their involvement was concerned. I went on to say that we owed a duty to them to air those views and seek the Government's help in prioritising them. Well, we did, and the Government did. In fact, those of us involved with the Bill received letters from Ministers in both Houses, and both responded positively. The Minister of State for Children and Families, Edward Timpson, clearly stated the Government's commitment to making sure that voluntary adoption agencies are involved in regional adoption agencies. He stated that,

"the excellence in practice of VAAs is at the heart of the regionalised system",

and that he wanted VAAs to be leading players in the design of that system, which was why,

"I have not approved a proposal to set up a regional adoption agency without a clear commitment to involving voluntary adoption agencies in the design of the service—and I will make sure local authorities keep that commitment".

That is very welcome—so far, so good—but it leaves the umbrella body for voluntary adoption agencies, the Consortium of Voluntary Adoption Agencies, with concerns, because it believes that the Minister's commitments do not go far enough in explaining how the Government will achieve that aim. In the letter of the noble Lord, Lord Nash, the paragraph on the matching process is important—and this refers also to Amendment 7. The Minister states that a regional adoption agency will have one pool of adopters that it will draw on when matching children in its area and that this will minimise sequential decision-making.

However, the issue of concern is that, within that single pool of adopters, those approved by a voluntary adoption agency will have a price attached to them in some way. Voluntary adoption agencies somehow have to cover the cost of recruiting, training and approving those adopters, as well as supporting them after placement. This may be through the current inter-agency fee of £27,000, through "block purchase" arrangements where a regional adoption agency pays for a set number of VAA adopters a year, or through other arrangements. It is not yet known how this will be arranged in the various regions; the point is that individual regional arrangements will decide it, and that is an area of uncertainty for the voluntary agencies.

If that means that voluntary adoption agency-approved adopters will be seen as coming with a cost attached to them in a way that adopters approved by the regional adoption agency will not, that is potentially an issue. Of course, adopters approved by the regional agency also come with a cost, although that is less visible. The evidence also suggests that, despite perceptions of voluntary adoption agency-approved adopters being expensive, the costs of providing an adopter are virtually the same across both the statutory and the voluntary sector. There are further concerns, as it is accepted that the inter-agency fee does not cover this full cost. Indeed, the CVAA, the consortium, estimates a shortfall of at least £10,000 per placement, which suggests that local authorities get excellent value for money from using voluntary adoption agency adopters.

In Committee, I raised the issue of what is known as sequential decision-making. In his letter to noble Lords, the Minister said:

"A regional adoption agency will have one pool of adopters that it will draw on when matching the children in its area. Individual local authorities will therefore no longer have their 'own' adopters to match their children with 'in house' as they do currently. This will ensure that sequential decision making is minimised".

Yes, it will be minimised, but not ruled out. That remains an issue for the voluntary adoption agencies.

Part of what drives that behaviour, understandably, is the fact that local authorities often have a preference for adopters they have approved. This, in addition to the perception that voluntary adoption agency-approved adopters involve an additional cost, causes a mindset that leads to sequential decision-making. There is no reason to suppose that this mindset would be any different in a regional adoption agency. Voluntary adoption agency-approved adopters would still have to be paid for by some means, and that would not be approved in-house by the statutory part of the regional agency.

The basic issue is that, within regional agencies, voluntary adoption agency-approved adopters will still be the second preference of those deciding on matches. This is bad for children because it causes delay, and bad for local authorities because delay in placing children incurs huge costs. I was surprised—I wonder if Ministers are aware—that providing local authority-based residential care costs more than £100,000 per child per year. That is why there is a need to reform the matching process to ensure that those making the decisions are focused solely on finding the best match for the child as quickly as possible. This would be better for all parties involved and would help the Government achieve their aims of reducing delay for children and involving voluntary adoption agencies in regional adoption agencies.

Further, there is the issue of voluntary adoption agencies having to divert resources towards administrative and governance processes during the transition. We know that the Department for Education has allocated £4.5 million for this purpose but can the Minister say whether any further funding will be made available? Voluntary adoption agencies are already saying that the funding is beginning to dry up and, with the transition likely to be spread over a number of years, the problem can only intensify.

The final reason why the ministerial letters have not assuaged the concerns of those involved at the front line is that it is unclear how the Department for Education will influence the role for voluntary adoption agencies and a given regional agency. That is where typically smaller specialist voluntary agencies would be contracted to regional agencies. The assumption is that it will be for a regional agency to decide when to contract out and to which agencies. Given such uncertainties, there is clearly an issue about predictability of income for smaller voluntary agencies, some of which have already expressed fears that they will be at risk. Can the Minister offer any encouraging words to the voluntary adoption agencies to meet those worries?

Amendment 6 aims to clarify whether the Secretary of State's powers in relation to adoption functions could be used in respect of a particular group. The key

[Lord Watson of Invergowrie]
concern is about accountability and ensuring that the new system results in meaningful improvements for vulnerable children, especially the harder-to-place ones, and specifically those in the categories listed in the amendment.

The overhaul of the adoption system introduced by this amendment to the 2002 Act will have failed in its objective if it does not meet the challenges inherent in the current system. There is universal agreement that where adoption is in the best interests of the child, that child should be placed with a suitable family at the earliest opportunity. That must not mean a wait of more than two years, which it often does.

Overall there is not a shortage of prospective adopters. In March of this year, across England there were 2,810 children waiting to be matched and 3,350 approved adopters. The mismatch between these figures highlights the need for an improved system and the introduction of regional adoption agencies may in time produce that. However, there is an existential shortage of prospective adopters for certain groups of children. These groups contain harder-to-place children and include those over the age of four, those with disabilities, black, Asian and minority ethnic children and sibling groups.

The length of time between the decision being made that adoption is in the child's best interests and the adoption taking place is, of course, key. According to the Adoption Leadership Board, in June of this year no fewer than 71% of children waiting more than 18 months between the placement order and the placement fell into a harder-to-place category; more than half of children from black, Asian and minority ethnic backgrounds waiting to be placed had been waiting 18 months or more since the placement order was made; and 64% of disabled children had been waiting 18 months or more, as had 47% of sibling groups. These indicate the scale of the problem, the extent of the improvement needed in the adoption system and the need for greater emphasis to be given to harder-to-place children.

For the new regional adoption agencies to be deemed a success, it is essential that the time these children spend waiting to be adopted is reduced, and quickly. Understandably, it will always be more difficult to find prospective adopters willing and able to adopt children in the groups to which I already referred. Part of the rationale offered by the Government for the introduction of the regional agencies is that they will lead to a larger pool of adopters from which it will be easier to find a match for harder-to-place children. There is some justification for that, and I certainly hope it proves correct. There is, however, no automatic link between creating regional adoption agencies and improving outcomes for these groups. In fact, there is a risk that the new agencies might feel under pressure to increase the overall numbers and speed of adoptions, creating an incentive to concentrate on the most straightforward matches which, of course, involve babies.

The Prime Minister's speech on 2 November mentioned new measures to double the number of children placed with adoptive families sooner, halving the time they spend in care waiting to move into their new home. That was greeted with caution among professionals, who have serious doubts that the necessary resources will be forthcoming to allow that increase to become reality. I hope the Minister might be able to offer some reassurance to them in his reply. Equally, concern has been expressed that what I call this "hell-for-leather approach" might contravene the legal duty of local authorities under Section 17 of the Children Act 1989. That legislation states that it is the general duty of every local authority to,

"safeguard and promote the welfare of children within their area who are in need; and … so far as is consistent with that duty, to promote the upbringing of such children by their families by providing a range and level of services appropriate to those children's needs".

Therefore, for the Government to prioritise more and quicker adoption is questionable both morally and legally, unless local authorities are providing a good Section 17 service to families. As a consequence of the cuts that local authorities are required to make—ironically, not least in Oxfordshire, about which the Prime Minister himself has been moved to complain—there is major concern among professionals that this is not so.

Equally, there is real concern that the process of creating new regional adoption agencies will divert existing resources, leading to an undermining of current relationships. The new system will inevitably take some years to become fully effective, and there are concerns among the various agencies as to whether they will have the necessary resources during the transitional period to invest in effective services and support for children and adopters.

The £30 million made available by the Government to assist harder-to-place children is welcome, but it will not last long. It was disappointing that the Autumn Statement seemed to have nothing to say regarding additional resources for these children. Without that, it is not clear how the Government can ensure that the system will improve the waiting time for harder-to-place groups. That brings us back to voluntary adoption agencies, which have particular expertise in working with harder-to-place children; perhaps that is another aspect of their invaluable work that should be recognised.

In Committee, the Minister stated that regional adoption agencies would be,

"incentivised to find the right family for a child as quickly as possible".—[*Official Report*, 17/11/2015; col. GC 47.]

Can he outline what form these incentives might take? Returning to Amendment 6 specifically, the Government must prioritise and ensure that these groups do not continue to be left on the fringes of the adoption system. One means of achieving that would be to accept the addition to Clause 13 contained in this amendment, to allow them to become a full part of the Secretary of State's powers under that clause. As I stated at the outset, this seems to be very much in line with the content of the Minister's letter, so I hope he will not find any reason not to accept this amendment. I beg to move.

**Lord Storey (LD):** My Lords, I will speak to Amendment 4, which is in my name and that of the noble Earl, Lord Listowel. I think that the noble Earl has withdrawn from that, so I am now—

**The Earl of Listowel (CB):** If it would be helpful to the noble Lord, I think that Amendment 4 is in the next group.

**Lord Storey:** My apologies.

**Baroness Pinnock:** I would like to add my support to what has been said about the amendments relating to establishing regional bodies for adoption. Just to give some local examples, in Yorkshire they have already set up a pilot for regional adoption, involving a hub for the whole of the region and then three spokes: one for the north and east of the country, one for the south and one for the west. Each of those hubs includes all the voluntary agencies currently operating in the Yorkshire and Humber region.

*4.45 pm*

The reports I have had from that pilot are that it is broadly welcomed by everybody concerned, because being in a larger group enables groups of local authorities and groups of providers with a narrow focus—in particular the voluntary groups that the noble Lord, Lord Watson, referred to, which focus on children with specific disabilities or backgrounds who they find hard-to-find families for—to have a larger look across the region, with better support for them to achieve their objectives. All that has been very positive.

The noble Lord, Lord Watson, also pointed to one of the elements of this regionalisation of adoption that is drawn into sharp relief: the additional funding that ought to be made available to support voluntary agencies in particular to find the right matches for the children. All of us want to ensure that children who require new families have them found as rapidly but as appropriately as possible.

In my professional life, I have had one or two very sad local incidents. In one, I was teaching a young boy of 11. He was new to the class, so I asked him his name. "James", he said. I asked, "What's your second name?". He replied, "I don't have a second name". Why? It was because his family had unadopted him. As your Lordships can tell, that that has stuck with me for a long time.

What is more important than speed for the children concerned is an appropriate family that will stick with them through thick and thin. The children placed in adoption are often not the easiest children to go into a new family. While I welcome the broad approach that the Bill describes, I hope that we will put more emphasis on finding the right family for the right child than on speed. Mistakes will be made if we put the speed of the adoption process first, as happened in the very sad case I came across.

**Lord Nash:** My Lords, I will speak to Amendments 2, 6 and 7, which aim to ensure that voluntary adoption agencies play an important role in the move to, and the future services provided by, regional adoption agencies. Broadly, the amendments in the names of the noble Lords, Lord Watson and Lord Hunt, and the Government's intentions are in the same place.

First, I take this opportunity to again set out our commitment to the voluntary adoption agency sector. Its expertise and the services that it provides have already been central to the improvements we have seen in the adoption sector. We absolutely want this to continue. As I have previously told the House, these organisations have a central role to play in regionalisation, as referred to in the letter that my honourable friend the Minister of State for Children and Families recently sent to the chief executives of all VAAs, reiterating our commitment to their involvement.

Voluntary adoption agencies have knowledge and specialist skills that will be crucial in ensuring that the new regional agencies provide the high-quality services we expect to see. That is why all the projects we are funding this year include VAAs. We have also been clear with projects that VAAs should not simply be involved once decisions about the design of the new regional adoption agency are made. We have required all projects to commit to involving voluntary agencies in the early design phase of their work.

Amendment 2 would mean that local authorities and VAAs would jointly decide who should deliver the adoption functions on behalf of the local authorities being directed. I absolutely agree that it is important that VAAs have a role in any conversations about using the power introduced through the Bill, and I assure noble Lords that this will be the case. As I set out in our last debate, where the power is needed, decisions about its use will be made following extensive discussions with all those involved or affected, including VAAs. All relevant agencies will have the chance to comment on the proposal before a final decision is taken. In addition, the Adoption Leadership Board, of which the Consortium of Voluntary Adoption Agencies is a key member, will have an important role to play in shaping any decisions about regionalisation.

It would, however, be impractical and unbalanced to give a VAA joint decision-making power with the local authority in relation to the question of which agency should carry out the functions on the authority's behalf. The local authority has statutory responsibility for delivering its functions. Although it is appropriate for the Secretary of State to make a decision, instead of a local authority, about who should carry out those functions in the limited circumstances where this proves necessary, it is not appropriate to give a VAA the power to make that kind of decision on behalf of a local authority or to veto a local authority's proposed course of action. Instead, we need to use the mechanisms I outlined above to ensure that the views of VAAs are taken into account when decisions are made about how the power will be used.

Amendment 6 would allow the Bill to be used in relation to particular groups of children. This would enable the legislation to be used to make specific arrangements relating to hard-to-place groups of children. Over the last few years we have made significant strides to improve things for this section of children but there is a lot further to go. I completely agree with the motivation behind this amendment. We know that certain groups of children wait much longer for adoption than others. In 2014-15, hard-to-place children waited, on average, almost seven months longer for adoption than other children.

I am pleased to be able to clarify that subsection (5) of the clause is intended to enable it to be used in exactly this way. Subsection (5) enables a direction to be made in relation to certain categories of children. If, for example, arrangements between a group of local authorities are not working well enough for disabled children, this legislation could be used to

[LORD NASH]
direct those authorities to make different arrangements for them. This could, for example, include requiring local authorities to make arrangements for their family-finding functions in relation to those children to be undertaken by a specific, specialist VAA.

Finally, I turn to Amendment 7. When we discussed this issue previously, and again today, the noble Lord, Lord Watson, expressed his concern that VAA adopters would not be used by regional adoption agencies in the future because of financial considerations, and that this would lead to a continuation of the practice of sequential decision-making, which we are all keen to see end. First, I can clarify that VAA adopters do not represent a higher cost than adopters recruited by a local authority. A report by the University of Bristol in 2009 found that interagency fees were perceived as excessive by local authorities, despite the fact that they were found to be lower than what local authorities spend on placing children internally. It is crucial that we address this myth, as it is damaging to VAAs and drives the poor practice of sequential decision-making. I emphasise again that one of the key objectives of the policy is that each regional adoption agency will have a single pool of adopters. This is key to ensuring that swift, non-sequential matching decisions can be made. This is what we all want to see.

The local authorities and VAAs which make up a regional adoption agency will need to come to an agreement about which adopters are part of their central pool, and how the VAAs are remunerated for their investment in recruiting and approving adopters. The department is not prescribing the financial arrangements that will underpin new regional agencies, as we want to be led by what VAAs and local authorities think works. However, we are providing a comprehensive package of support to help local areas work through issues such as these, and come up with models which enable VAAs and local authorities to work together seamlessly and fairly.

Some regional adoption agencies may have the VAA partners doing all the adopter recruitment, given their skill and track record in this area. This would certainly be an interesting model. We will be working with VAAs and local authorities to develop fair and robust financial models which ensure that VAAs are not disadvantaged. However, I note the concerns of the noble Lord, Lord Watson, about the financial drivers in this. He raised a number of points that we want the sector not to be nervous about. I think that it would be helpful—if the noble Lord is willing to do this—if I organised a meeting with the noble Lord, the Consortium of Voluntary Adoption Agencies, Minister Timpson and officials, to discuss these issues in greater detail. I am glad to see that the noble Lord is nodding in agreement to that.

Finally, I remind noble Lords that regional adoption agencies will not be, and are not intended to be, entirely self-sufficient. There are, of course, some children for whom even a regional agency's larger pool of adopters will not suffice, either because the child has particular needs or because the agency does not have an appropriate approved adopter ready at the point the child needs a match. Social workers in regional agencies will be expected to identify these children quickly and act promptly on their behalf by engaging with the national pool of adopters using national matching tools.

In view of my comments, I hope that the noble Lord will feel reassured and will withdraw the amendment.

**Lord Watson of Invergowrie:** I thank the Minister for that comprehensive reply, much of which I welcome. The noble Baroness, Lady Pinnock, commented on the Yorkshire pilot and the support for voluntary adoption agencies. Given the very sad episode that she related, I could not agree more that permanence has to be the aim when children are being placed. It is not just a question of finding a place fairly quickly but of finding one that both the child and the family have a good chance of making sustainable and, ultimately, permanent. That is what we are looking for. That is why I raised concerns about the Prime Minister's comment that we should simply look to double the number. It is not a numbers game in that sense. I will raise this issue again in the next group of amendments, but I point out that Clause 13, on the terms of adoption, concerns only 5% of the children in care.

I was pleased to hear the Minister stress what he called the essential role of voluntary adoption agencies—those agencies will also be pleased to hear that—and that he foresees them having a role at the early design phase. That is what they are looking for. I do not doubt the Government's will in this regard, and nor do the voluntary adoption agencies, but it is a question of how they intend to make it happen. This is a case of walking the walk and talking the talk, and doubts remain about how they will match the intention with the reality. Of course, it is not me, my colleagues or, indeed, the other opposition parties that the Minister needs to reassure on this point, but the CVAA and its member organisations. The CVAA was obviously centrally involved in the Adoption Leadership Board and those discussions can—and I am sure do—take place, but I simply reiterate that that the voluntary adoption agencies need that reassurance.

The Minister said that he agreed with the motivation behind Amendment 6. It is helpful to have his comments on the record that subsection (5)—if I am quoting him correctly—is designed to enable the measure to be used in the way the amendment suggests. That is useful and will be welcomed by organisations such as Barnardo's, which has real concerns about harder-to-place children and the fact that the numbers are increasing and the resources to tackle that are at least in doubt, although the hope is that additional resources will be made available. The Minister may be able to reveal that in the near future.

I understand what the Minister is saying on the sequential decision-making issue but am slightly puzzled when he says that there is no difference in cost between voluntary adoption agencies and local authorities in this regard. He referred to the Bristol University study. I had not heard of that but, even more surprisingly, it seems to have eluded the Consortium of Voluntary Adoption Agencies, which is saying there are situations where local authorities may have—I will put it no more damagingly than this—a back-scratching operation whereby there might be a bit of a trade-off, such as the whole interagency fee not being required to be paid in

certain situations or an understanding about some future arrangement between the two. Voluntary adoption agencies are effectively excluded from that. The new arrangements will certainly make that more difficult but they may not rule it out and that needs to be taken into account. I will look at the Bristol University survey and see what it says. I very much hope that that is the case but it may not be. Finally, I thank the Minister for the offer of a meeting and I would certainly be pleased to take that up.

*5 pm*

Turning to the three amendments, the Minister has conceded much of what we are looking for, in his letter and the comments he made. I must repeat one comment that I made in Committee: it is not really me he has to convince but the people involved in this on a day-to-day basis, and only time will tell whether he has done so or can do so in future. But on the basis of our discussion, I beg leave to withdraw the amendment.

*Amendment 2 withdrawn.*

*Amendment 3*

*Moved by* ***Lord Watson of Invergowrie***

**3:** Clause 13, page 8, line 35, at end insert "including but not limited to mental health support for children and adolescents prior to the making of a placement order;

(f) the provision of a mental health assessment prior to the making of a placement order."

**Lord Watson of Invergowrie:** My Lords, we turn now to mental health support, which is very important indeed. Amendment 3 follows on from what was Amendment 33 in Committee, to which I spoke. I emphasised then that the issue of support once a child is placed in adoption can be crucial to whether that adoption becomes permanent—the point we were making a few moments ago in response to the noble Baroness, Lady Pinnock. Often, specialist support is needed to care for a child appropriately.

I also quoted figures supplied by the NSPCC which I think bear repeating because they show that 45% of children in care have a mental health disorder, compared with only 10% of the general child population. The mental health needs of children in care were debated thoroughly in relation to that amendment and those in the name of the noble Earl, Lord Listowel. The NSPCC has now met with Ministers, yet the organisation still believes that specific measures need to be included in the Bill to provide mental health assessment and support as early as possible during a child's time in the care system. Amendment 3 sets the placement order as the milestone point by which children should have received that assessment.

What is needed is to prioritise vulnerable children, particularly those who have experienced abuse or neglect, which includes a significant majority of looked-after children. The Government must give a commitment to create the earliest possible provision of automatic assessment and support for those children within the adoption system. I will not repeat the point I made in Committee—that Clause 13 aims to provide for only 5% of children in care. We believe that the Bill is wrongly skewed in favour of adoption to the exclusion of all other forms of care. The vast majority of professionals in the field want nothing more than good provision for all looked-after children, whether their welfare be met by adoption, special guardianship, a child arrangements order—what used to be a residence order—long-term fostering or kinship care.

I say in passing that Sir Martin Narey's announcement that he will be standing down as chair of the Adoption Leadership Board next year offers the Government an opportunity to demonstrate that they value all forms of care equally. The arrival of a new person to head the board should be used as an opportunity to broaden its remit to include all forms of permanency.

Recent research carried out by the NSPCC highlighted that one-fifth of children referred to local specialist NHS mental health services are rejected for treatment. This was described by the NSPCC as creating,

"a 'time bomb' of serious mental health conditions".

Children in care not being able to access the mental health support they need to rebuild their lives represents a serious gap in provision—one that I highlighted in Committee—but I am afraid the Minister did not provide an answer as to how that gap might be filled. I ask him again: does he grasp the extent of the problem being set out for him by the professionals, the people working daily with children with mental health problems? If so, does he believe that sufficient resources will be made available to meet the needs of children in care who are not currently receiving the support they desperately need? Ultimately, the care that can be provided in mental health and other areas for children in care comes down to resources.

In Committee the noble Baroness, Lady Evans, referred to the £1.25 billion that the Government have made available to improve mental health services for children and young people over the next five years, through the implementation of the report *Future in Mind*. She also mentioned that clinical commissioning groups were involved in that process, although how that huge sum of money is being spent continues to be something of a mystery. Although *Future in Mind* makes a number of recommendations, there is real doubt as to where we are in the delivery of those recommendations or detailed plans for spending the promised funds. With the majority of that money being spent through clinical commissioning groups, and given all the layers of devolution that there are in the National Health Service, it remains unclear just how that report's priorities will be met.

The answer to those questions seemed to become less, rather than more, clear last week with the Autumn Statement, when the Chancellor said that "we build on that"—the £1.25 billion—

"with £600 million of additional funding, meaning that by 2020 significantly more people will have access to talking therapies, perinatal mental health services and crisis care".—[*Official Report*, Commons, 25/11/15; col. 707.]

The question is: what might this mean for the mental health needs of children in the care system? The Chancellor did not indicate whether the extra resources

[Lord Watson of Invergowrie]
were for children, but—let us look on the positive side—he did not rule out children being prioritised within its reach either.

In response to a Question from Luciana Berger in another place as to how that £600 million will be prioritised, the Minister of State at the Department of Health, Alistair Burt, confirmed that the sum is to be spread,

"over the next five years … and … is additional to current spending. The levels of funding in individual years and the specific mental health service improvements it will fund will be determined in the new year, once the Mental Health Taskforce has reported".

We know that there are to be additional resources available, so my question to both Ministers today is: what representations will they and their officials in the DfE be making to ensure that a proportion of that money is earmarked to fund the improvements required in mental health services for children and young people in care over the five-year period that is meant to be covered?

In conclusion, given the spending pressures which councils face and a situation that can only deteriorate still further as a result of the Autumn Statement, surely the Government should now be prepared to acknowledge that all children entering the care system should receive an automatic mental health assessment, in addition to the physical assessment that they currently receive. Why on earth should that not happen? Children in care should then immediately receive the report that the assessment shows is necessary to enable them to deal with their condition. Thereafter, common sense surely dictates that there must be regular monitoring of children's mental health while in care to ensure that the support they are being given is contributing to their improved state of health. I suggest that these demands are not unrealistic and should become expectations on behalf of children who need support to enable them to develop into adulthood. I beg to move.

**Lord Storey:** My Lords, I shall speak to Amendments 3 and 4. I was taken with the comments made by the noble Baroness, Lady Evans, in Committee when, speaking for the Government, she said:

"I absolutely agree that the mental health of adopted children is a key issue".—[*Official Report*, 17/11/15; col. GC 38.]

She went on to say that the £1.25 billion would be available and how the *Future in Mind* report would be implemented. Of course, we all want to see children who are in adoption find the right parents to adopt them as quickly as possible, but we also want to make sure that that adoption works. It is no good children being adopted if the adoption then breaks down.

One of the reasons that adoption regularly breaks down is that we have not properly assessed the children, particularly in relation to mental health. If we want to make sure that adoption works, we must put this crucial area right. I will not—well, I will—repeat the figures that 45% of children in care have a mental disorder, which is a huge number, while 60% of those who come into care have experienced neglect or abuse.

How do we ensure that we get this right? To me, it is very simple; to use an old expression, it is not rocket science. It is about providing the expertise and the resources but also about making sure it happens, which is why these amendments actually specify how it should happen. Like the noble Lord, Lord Watson, I cannot understand why the Government would not agree to that. It will be to their credit, and to the success of the Bill, that children who are adopted or who go into care are in the right situation and getting the right support.

We have come a long way in terms of mental health issues in the last few years—and it literally is only in the last few years. One of the areas I am concerned about is that we say, "Oh, there's a strategy; there's X amount of money available", but often those resources do not go to the right people. I know from experience and from talking to other teachers that getting CAMHS into schools now is much harder than it was a few years ago. Never mind a few weeks' wait, it can often be several months before that support is given. So I wonder whether, when the Minister replies, we might hear how mental health support might be given to schools in a more orderly and speedy way.

I repeat that I want it enshrined in the Bill that we do the assessment for children and young people as soon as possible so that we get it right. In replying, perhaps the Minister could say whether, if the mental health strategy comes out and says that, the Government will agree to it and implement it as well.

**The Earl of Listowel:** My Lords, I will speak to Amendment 3 first, which I think is an excellent amendment. I wish to be very brief at this stage because I found the Minister to be most helpful in addressing my concerns in Committee and since then. Before I speak further about that, I thank noble Lords who have spoken on all sides of the House in support of amendments that I have tabled previously in this area to better address the mental health needs of looked-after children. I am most grateful to the noble Lord, Lord Storey, the noble Baroness, Lady Benjamin, and the noble Lords, Lord Hunt of Kings Heath and Lord Watson, for their support over those concerns.

Since Committee, I have received a letter from the Minister on the mental health needs of young people. I have heard that the office of Edward Timpson MP, the Minister for Children, will be contacting me about a meeting, which will be very helpful in this regard. I also heard him speak yesterday at the Nuffield Foundation at the launch of a report into the educational achievement of looked-after children. I was very much struck by his recognition that the mental health needs of looked-after children had not been properly addressed in the past and heard, in what he said, his real commitment to addressing these issues for them. We have yet to learn the specifics of what he intends to do, but I feel that the direction of travel is just right, and I look forward to meeting him to discuss the specifics of what needs to be done.

I will not speak to my amendments, and nor do I expect the Minister to respond to them. Being as brief as possible may be the most helpful thing I can do at this point, unless the Minister would like me to speak

briefly to my amendments—if that would be helpful to him—in which case I would be glad to do so. But my feeling was that the Government have been very helpful and I do not wish to push things any further or take any more of your Lordships' time at this moment. I look forward to the Minister's response.

*5.15 pm*

**Baroness Massey of Darwen (Lab):** My Lords, I shall speak briefly on three points on this group. The first is about the assessment of children, the second is about the monitoring of children and the third is about the local authority spending lottery.

Assessment has been discussed before, so I shall be very brief. It seems to me, supported by the NSPCC, that the mental health assessment should not rely solely on the strengths and difficulties questionnaire, the SDQ screening tool. Children need direct contact—interviews—they need to be accompanied by a carer to assess mental and emotional health needs, and the assessment needs to be carried out by a qualified mental health professional. On monitoring, clearly, if a child is assessed as having a difficulty, they should be monitored the whole time they are in care to inform carers and professionals about what support the child is receiving and how it can and should contribute to their well-being.

Thirdly, I believe that there is a spending lottery between local authorities in terms of both overall spending and what to spend the money on. Will the mental health strategy cover that? For example, some local authorities that I know are very poor at spending anything on CAMHS for children in care. Perhaps the Minister would comment on that. Will the Government and the mental health strategy consider the outcomes of not providing mental health support for children? The risk of poor outcomes is a risk for life. We know that for children with mental health problems who do not have support in care, the outcomes are poor in relation to criminal or anti-social behaviour, drug and alcohol abuse, teenage pregnancy and very poor academic performance. What is the Minister's response on how the mental health strategy will address some of those concerns?

**Baroness Howarth of Breckland (CB):** My Lords, I apologise that I was unable to speak in Committee on this issue; I had to attend another committee at the same time. I just want to ask for clarity on a very narrow point—which is actually a wide point.

The amendment adds mental health services for children in the adoption process. The noble Lord, Lord Watson, made a very clear statement about the large number of other children in care who face the same needs—children in kinship care, long-term fostering, or hostels for children with special difficulties. Is the thinking clearly about basing the provision of services on the actual needs of the children as they are seen, rather than the bit of the system they are in? My concern is that we see adoption as a better placement than many others when often it is not; kinship care can be a much better solution for a child. As the noble Lord, Lord Watson, said, permanency is what actually matters. I hope that mental health services can be clearly focused on children to ensure permanency, whatever that permanency looks like.

It makes very good economic sense to ensure that money is clearly targeted to children in care—and, sometimes, children in their own families who are showing special needs. Economically, if you can get to those children early, you will improve their life chances. If they are targeted, that can be measured. Those are the things that the Government want to do at the moment: target services to see what works and makes good economic sense, because people will be able to make better sense of their own lives. Will the Minister ensure that there are adequate mental health services—we know that there is a great difficulty at the moment—and that they are targeted at need rather than at category?

**Baroness Benjamin (LD):** My Lords, I rise to support Amendment 4. As I have said at all stages of this Bill, with the support of the NSPCC, every single child entering care should receive an automatic mental health assessment in addition to the physical assessment they currently receive. Children in care should then immediately receive the subsequent necessary support to help them to deal with the issues of mental health identified in the assessment. There should be regular monitoring of children's mental health while in care to inform what support that child receives and ensure that it contributes to their improved well-being. These provisions are essential to strengthen the Bill because they will help towards making significant savings for the NHS, the prison services and society in general.

The NSPCC, myself and many others welcome the Government's announcement of an additional £600 million for mental health and see it as a great opportunity to make sure that more of the most vulnerable children get access to the mental health support that they need to overcome the trauma they have experienced. As I have said time and again, childhood lasts a lifetime, so let us give all children the best start in life, including children in care and children in the adoption system. They need to be cared for and looked after in every way possible. We owe it to them, so I hope that the Minister will include these provisions in this important Bill.

**Baroness Evans of Bowes Park (Con):** My Lords, I shall speak to Amendments 3, 4 and 5, tabled by the noble Lords, Lord Watson and Lord Hunt, the noble Earl, Lord Listowel, and the noble Lord, Lord Storey, which focus on improving the mental health needs of children adopted from care. I thank noble Lords for raising these issues. As the noble Lord, Lord Watson, said, we had a detailed discussion in our previous debate in Committee, when I set out that improving the mental health of both looked-after and adopted children is a key issue for the Government. Following the debate, the Parliamentary Under-Secretary of State for Schools sent a letter to the noble Earl, Lord Listowel, and the noble Baroness, Lady Benjamin, describing in more detail the actions that we are taking to improve the assessment and support that these vulnerable children receive.

As the noble Lords, Lord Storey and Lord Watson, said, I set out that the Government have committed £1.25 billion to improve mental health services for children and young people over the next five years through the implementation of *Future in Mind*, the report resulting

[Baroness Evans of Bowes Park]
from the Government's review of child and adolescent mental health services. I can give noble Lords an assurance that we are now working closely with the Department of Health and NHS England on the implementation of *Future in Mind*. The NHS England guidance on completing local transformation plans stipulates that they should cover the needs of the most vulnerable children, such as looked-after and adopted children. Key to this is that local areas must work together to understand the vulnerabilities of these children and young people and transform their services accordingly. We are absolutely committed to looking at the needs of children and making sure that they are properly addressed. This will include addressing the important point made by the noble Lord, Lord Watson, about filling in the current gaps in services.

Local NHS clinical commissioning groups, in developing their local transformation plans, have worked closely with their local health and well-being boards and partners in local authorities, youth justice and education. All clinical commissioning groups have now submitted their plans, which are currently being assessed by NHS England. Improving the assessment of and support for looked-after children will be a key priority for our programme of work. I agree with all noble Lords and with the NSPCC, which has been cited a number of times in this debate, that getting the assessment right when children enter and leave care for adoption is important.

All looked-after children already have a health assessment at least once a year which must include an assessment of their emotional and mental health as well as their physical health. That assessment, which informs the development of their health plan, should take account of the information provided from the strength and difficulties questionnaire that is completed by their carer. I accept the point made by the noble Baroness, Lady Massey, that for some young people with a range of problems, a follow-on referral to a specialist health service is required.

Turning to the provision of a mental health assessment prior to adoption placement, when an agency is considering adoption for a child, it should immediately consult its medical adviser to determine whether the health information obtained through the most recent health assessment is sufficient, up to date and as broad-ranging as it needs to be. Where a new health assessment is needed, this should be organised in time for the medical adviser to complete their part of the child's permanence report. That is because, as a number of noble Lords have mentioned, permanence is key.

**Lord Watson of Invergowrie:** I hesitate to break the noble Baroness's flow. She mentioned that a new health assessment will be undertaken, but she did not specifically mention a mental health assessment. That is the point. The physical assessment is always done, so why should the mental health assessment not always be done at the same time or immediately afterwards to make sure that any problems are spotted at the earliest opportunity?

**Baroness Evans of Bowes Park:** The broad health assessment will include those elements. It must include a summary by the agency's medical adviser of the child's current physical and mental health, so both are included. When an application is made to a court for a placement order, the agency is required to submit the summary as part of the application. Local clinical commissioning groups should use these assessments of looked-after children and adopted children to inform their local transformation plans to ensure that they can meet the needs of their local population.

At the national level, the Department for Education hosted a roundtable event last month bringing together children's social care and mental health stakeholders to discuss how to improve mental health services for looked-after children and adopted children. As a result, we are considering how centres of excellence, possibly linked to regional adoption agencies, might enable the mental health needs of looked-after children and adopted children to be better met. Following that roundtable event, Edward Timpson, the Minister of State for Children and Families, met Alistair Burt, the Minister of State for Community and Social Care, to discuss how to ensure that mental health services can meet the particular needs of these children and young people in an effective and timely way. I should like to reassure the noble Lord, Lord Watson, that the two departments are working closely together.

In addition, we are providing £4.5 million of funding in this financial year to accelerate the development and implementation of regional adoption agencies. Adoption support, including mental health, is a key element of that. We are clear that regional adoption agencies should have a focus on improving the assessment of adopted children's mental health needs and the provision of appropriate mental health support services. I should also mention the government-funded adoption support fund. More than 2,000 families have already benefited from £7.5 million of therapeutic services provided by the fund for adopted children and their families. We know that getting a high-quality assessment of need is critical, and local authorities are increasingly using the fund to pay for specialist assessments and, where appropriate, specialist therapeutic support.

The noble Lord, Lord Watson, raised concerns about this Government's focus on adoption. We are engaged in comprehensive reform, but we are also doing a number of other things. For instance, we have established a programme of reform for social work, including the development of new assessment and accreditation systems for three levels of professional practice for children's social workers in England. We have created the children's services innovation programme and we have introduced "staying put" to allow children to remain with their former foster carers after the age of 18. We are engaged in reform across children's services that will benefit all looked-after children.

The noble Lord, Lord Storey, asked about getting CAMHS into schools. We heard from head teachers who came to the briefing a few weeks ago that one of the benefits of multi-academy trusts is being able to recruit professionals to work across a number of schools, so we are seeing improvements in that. Alongside this, the *Future in Mind* report says that there will be mental health training for health professionals and others who work with children and young people, such as staff in schools, to help them to identify problems

and ensure that young people get the help that they need. So it is something that is on our agenda and we are continuing to look at how we can improve that.

I hope that the explanations I have given will reassure the noble Lord that we are committed to meeting the objectives of these amendments, and that he will be feel reassured enough to withdraw his amendment.

*5.30 pm*

**The Earl of Listowel:** In welcoming what the Minister said, and in noting that the noble Lord, Lord Prior, is sitting next to her, which is comforting in this current discussion, I ask her whether she has quite recognised the nub of the concern of Peers all around the House. While current practice is that a GP, a generalist, will give a health assessment that will include mental health elements when a child comes into care, many of us believe that that is inadequate, and we have been trying to communicate this to the Government. While there is a strengths and difficulties questionnaire, which is useful, it simply does not meet the need for a mental health professional to undertake an initial assessment of all children coming into care so that their mental health needs can be identified early on and they can then be met with services following. I listened with great care to what the Minister said and it was very helpful, but I hope that she can assure us that the Government recognise that that is the concern that many noble Lords are raising—the need for a specialist mental health professional to do that initial assessment for every child coming into care.

**Lord Watson of Invergowrie:** My Lords, I thank the Minister for her reply, along with all other noble Lords who have contributed to the debate on this group of amendments on this important area.

I was very pleased that the noble Earl, Lord Listowel, had received a letter from the Minister for Children and Families, I think he said, subsequent to our last sitting in Committee. I wonder whether he might be prepared to share that with us because it might have information of general interest to those of us who have been involved with the Bill and are looking to take these issues forward.

My noble friend Lady Massey raised an important point about what the outcomes of not providing this proper mental health care could be. You do not need a very vivid imagination to foresee that there will be many effects, once children reach adulthood, if some of the issues with which they are trying to deal in childhood are not adequately cared for and are allowed to get worse as they approach adulthood, not least at a time when they have to go out into the world and live on their own. That is an important point and it was well made.

The noble Baroness, Lady Howarth of Breckland, if I noted her point down correctly, talked about the resources being targeted at need rather than category. I very much agree, as she will know. Despite what the Minister said, I do not doubt that the Government are committed to other forms of care but it looks as if this is given a disproportionate amount of attention; it is the only one involved in the Bill, and then there were the remarks—attributed to, I think, the Prime Minister in his speech in November—that further legislation was somewhere in the pipeline,. Those working in the other categories would value something of substance from the Government to say, "We've looked to beef up the ability of the adoption sector; now this is what we are doing for the other sectors". I hope that the Minister will bear that in mind and that the Government will come forward with that in due course.

The Minister said that mental health care for children in adoption was a key issue for the Government. I am perfectly willing to accept that, but I come back to the point made on Amendment 2 that there should be an assessment prior to placement. In response to that, the Minister said that assessments were carried out prior to placement but she seemed to say, and I hope that I am quoting her correctly on this, that both types of assessments—that is, physical health assessments as well as mental—were included. That is very welcome, but it is not understood by the organisations involved in adoption, judging by the comments they have made to me and other noble Lords as the Bill has progressed through its various stages. It therefore might be helpful if she could write to me, perhaps to expand a bit about what mental health assessments are given prior to placement, as I think everyone involved sees that as a key issue.

The Minister also mentioned the £4.5 million that the Government have provided to accelerate the establishment of the regional adoption agencies. While that is welcome, I made the point in moving the amendment that that is seen to be if not running dry then already running a bit thin, and I wanted some assurance of what might follow that. She mentioned another sum of £12.5 million. I do not know whether that will be used in the same way. Some of it might be, but certainly the feeling among the adoption agencies is that £4.5 million will get things started but will not take the whole process very much further, and that additional resources will be necessary.

When the Minister assured me that the Department for Education works closely with the Department of Health, I thought, "Well, of course you would say that, wouldn't you?". However, a serious point is: how will the progress of implementing the recommendations of *Future in Mind* be reported? How can they be monitored and made available to organisations in the field that are involved in their delivery to some extent but which also care about being able to trace the effectiveness of those recommendations that are put into place? Some form of reporting would therefore certainly be valuable. Again, I ask either of the Ministers whether they would be prepared to write about that, because £1.25 billion, which is over a five-year period, is a huge sum of money—although I am not sure when the five-year period started. I think I am right in saying that *Future in Mind* was published in 2012 but I do not know whether that was the start of the five-year period. However, that is one of the questions that may well be answered in the Minister's response.

We have had a number of helpful comments from the Minister. Those involved will be happy to take some of them forward and, I hope, to build on them, but at this stage I beg leave to withdraw the amendment.

*Amendment 3 withdrawn.*

*Amendments 4 to 7 not moved.*

***Clause 17: Commencement***

*Amendment 8*

*Moved by* ***Baroness Pinnock***

**8:** Clause 17, page 9, line 33, at end insert—

"( ) A statutory instrument under subsection (2) may not be made until the Secretary of State has laid before Parliament a report on the funding of the costs of conversions under this Act."

**Baroness Pinnock:** My Lords, I am a relative newcomer to your Lordships' House, and just one of the features of the legislative process that has amazed me is that substantial changes can be made without there being any publicly stated budgetary provision. Therefore, here we are again today, legislating for an increase in the number of academy conversions without any stated provision for funding the changes.

Every school that seeks or is forced to become an academy is given a grant of £25,000, so if 1,000 schools are converted into academies, as the Minister stated in Committee, the Government will need to set aside £25 million. I accept that this is small change in the Government's big budgetary process; nevertheless, £25 million can go a long way in other sectors of the education service.

This is just the upfront, visible funding. A report by the National Audit Office in November 2012, *Managing the Expansion of the Academies Programme*, stated that the additional cost of the academy programme to the Department for Education was £1 billion. The programme had by this stage involved just over 1,000 schools. Although there have been reductions in the costs of conversions since then, as reported by the NAO, there are undeniably costs in addition to the upfront £25,000 per school grant.

In response to the amendment tabled in Committee, the Minister said:

"I will be delighted to comment more on the DfE's total settlement on Report".—[*Official Report*, 17/11/15; col. GC 51.]

I look forward to hearing the specific details from the Minister. If no budget is identified, I, for one, will have to conclude that the funding is being top-sliced from other areas of the schools budget. If so, I will be very disappointed, because schools' budgets are already being squeezed and further cuts would put some of them in considerable financial difficulty.

Therefore, the amendment is tabled with a purpose, which is to try to discover how much the Bill is going to cost the education sector and where the money is coming from. If, as I hope, the Minister is able to clarify all those points, I will indeed be very satisfied.

**Lord Hunt of Kings Heath:** My Lords, I am sure that we will all be interested to hear from the noble Lord the answers to the noble Baroness's questions, particularly his response to her suggestion that the money for the implementation of the education parts of the Bill will be top-sliced, presumably from money that would have gone through local authorities to maintained schools. I would be very interested to know the answer to that.

I am going to tempt fate by asking the Minister the same question again, referring to what the Chancellor of the Exchequer said about the education budget in the Autumn Statement and his announcement that all schools in the secondary sector will become academies. He said:

"We will make local authorities running schools a thing of the past, which will help us save around £600 million on the education services grant".—[*Official Report*, Commons, 25/11/15; col. 1370.]

I would like to know how on earth that £600 million is going to be saved. Does he think that the £600 million used by local authorities is simply a waste of money? All those central services provided by local authorities are to be destroyed but presumably most maintained schools think they are pretty helpful. I assume that, when they all become academies, the schools will be given some element of the budget to make up for the services they would have received from local authorities.

Understanding education finances these days is a conundrum but I certainly hope that the Minister will clarify what exactly his right honourable friend the Chancellor of the Exchequer meant by what he said last week. Perhaps the answer to the noble Baroness's question is that the finances are going to come directly from the money that would have gone to local authorities, which may be what she meant by top-slicing.

**Lord Nash:** My Lords, Amendment 8, tabled by the noble Lord, Lord Storey, and the noble Baroness, Lady Pinnock, requires that the Bill cannot be commenced until a report on funding the costs of the academy conversions resulting from the Bill has been laid before Parliament.

As noble Lords may recall, this amendment was also tabled during Grand Committee, when I agreed to say more on the outcome of the spending review in relation to the Bill. I hope the noble Baroness will be delighted to hear that I can now do so. I am pleased to say that, following the Chancellor's Statement last week, total spending on education will increase in cash terms in this spending review period from £60 billion in 2015-16 to nearly £65 billion in 2020. The exact budget for the academy programme will be finally determined following our internal business planning process, now that we know the exact spending review settlement. But I would like to reassure the House that the Department for Education's overall settlement clearly recognises the potential costs of academy conversions as a result of this Bill and has been very much part of the detailed conversations we have had with HMT. I hope that the noble Baroness is pleased to hear that.

*5.45 pm*

The settlement reflects our bold ambitions for education and provides a firm basis from which to deliver our goal of securing educational excellence in every corner of the country. As the noble Baroness mentioned, and as I have outlined during previous debates, we anticipate approximately 1,000 inadequate schools converting to academy status over the course of this Parliament. This represents a continuation of the trend we have seen over the last five years, with over 1,200 sponsored academies opening during the last Parliament. Alongside this, we expect to identify hundreds of coasting schools that can be challenged and supported to improve. It is important to emphasise, however, that, as I said before, not all coasting schools will become academies.

As noble Lords may be aware, details of grant rates for schools converting to academy status are already published and are available on GOV.UK. We have no plans to change this. Overall, in the academic year 2014-15 the department paid nearly £20 million to academy trusts in pre-opening grants. We are committed to ensuring that funding for academy conversion ensures maximum value for money, and funding amounts are regularly reviewed to ensure that grant levels are appropriate. On value for money, we have reduced the cost of a school becoming a sponsored secondary academy by almost two-thirds since 2010.

The noble Lord, Lord Hunt, asked about the £600 million in the ESG. Efficiency savings in 2016-17 have been done on the basis that all local authorities can reduce spend on ESG functions to the level of the median, based on planned expenditure data reported in the Section 251 data. This is the same approach that we use for calculating the new general funding rate for 2015-16. We recognise that the general funding rate currently funds local authorities for some of the statutory duties that they carry out on behalf of maintained schools. We will be consulting on a mechanism for local authorities to recoup the costs of delivering these services from maintained schools. Local authorities should continue to consider how to deliver services as efficiently as possible in preparation for the removal of this funding.

In the light of the assurances I have given about the number of schools we anticipate will become sponsored academies, the existing transparency of conversion costs and the fact that all this has been carefully taken into account in negotiations with HMT on the spending review, I hope the House will agree that a report on the future costs of conversion is not necessary. I urge the noble Baroness to withdraw her amendment.

**Baroness Pinnock:** I thank the Minister very much for his response. Two things occur to me. He stated that education spending in the Autumn Statement was going to rise over the four-year period from £60 billion to £65 billion, which is an 8% increase over the period or 2% per annum. That will barely cover the cost of inflation in the education area, let alone the increasing numbers of children in the sector. Although any increase is to be welcomed in these times, we should not over-egg the sums involved. The second interesting thing is that the Government intend to recoup costs from the maintained schools for the loss of the ESG at local authority level. That clearly reduces even further the amount of money the maintained sector has to invest in the learning of the children in its care.

Departmental budgets have yet to be determined, so it is understandable that we have not had an answer but could the Minister write to me in response to the questions I have raised once the internal budget has been determined so that there is transparency in the process and we all know how money is to be allocated for this particular part of the Bill? I am delighted that the Minister is nodding to show that he will be able to do that.

With that in mind, I beg leave to withdraw the amendment.

*Amendment 8 withdrawn.*

*Consideration on Report adjourned.*

# National Health Service (Licensing and Pricing) (Amendment) Regulations 2015

*Motion to Approve*

*5.49 pm*

*Moved by* ***Lord Prior of Brampton***

That the draft Regulations laid before the House on 2 November be approved.

*Relevant documents: 9th Report from the Joint Committee on Statutory Instruments, 14th Report from the Secondary Legislation Scrutiny Committee*

**The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con):** My Lords, I am grateful to the noble Lord, Lord Hunt, for his interest in this matter, and I know he has great knowledge through his work at the NHS Confederation, in healthcare and as a Minister. Naturally, I am disappointed to understand from his amendment that he feels that the draft regulations are fundamentally unfair and in contradiction to the assurances given by my predecessor, my noble friend Lord Howe. I will take this opportunity today to reassure him—I hope—and wider stakeholders that this is not the case.

I want to begin by giving some context to the regulations. They seek to rebalance the objection mechanism that exists within the statutory processes of setting the national tariff for healthcare services. They increase the objection percentages for clinical commissioning groups and relevant providers of services. They will also remove the prescribed objection percentage for providers weighted according to their share of the supply in England of such services as may be prescribed.

Everyone knows the scale of the financial challenge facing the NHS. That is why the Government have committed to investing £10 billion by 2020-21 to fund the NHS's own plan for the future, with £6 billion frontloaded in the first two years of the six-year period.

Along with the implementation of a range of provider support measures we have available, this will help to ensure the health and care system remains on a sustainable footing over the longer term. But as Simon Stevens made clear in the *Five Year Forward View*, the NHS must play its part in delivering these efficiencies.

Delivering a financially stable NHS is a key priority for the new chief executive of NHS Improvement, Jim Mackey, working closely with the department and NHS England to support the system at a local level to deliver the transformational changes needed to drive efficiencies.

Nevertheless, we do not underestimate the challenges facing the system from an increasingly ageing population with more complex needs, which I am sure all noble Lords are aware of. This is why we support the ambition of the *Five Year Forward View* set out by NHS England to ensure we protect the model of universal coverage free at the point of delivery for future generations.

But to realise this vision, we need to support the whole health system. This will not be easy, but this principle lies at the heart of the regulations, which we believe will ensure sufficient stability and timeliness in

[Lord Prior of Brampton]
publication of the national tariff but also ensure that as much as possible of the additional funding that this Government have provided for the NHS reaches patient services, rather than being tied up in processes or reinforcing acknowledged barriers to transforming health and care.

Let me give noble Lords some background to the regulation—where this refers to statutory duties, I will use the name Monitor rather than NHS Improvement. The Health and Social Care Act 2012 introduced a new independent, transparent and fair pricing system that requires Monitor and NHS England to collaborate to set prices and further develop new payment models across different services. The intention of this system was to create a more stable, predictable environment, allowing providers and commissioners to invest in technology and innovative service models to improve patient care.

Monitor has the specific duty of promoting healthcare services that represent value for money and maintain or improve quality. It achieves this by working with NHS England to regulate prices and establish rules for local pricing and flexibilities. NHS England defines the "units of service" for which prices or rules will be specified. Units of service include, for example, the pregnancy-related services that a woman may need through antenatal, delivery and postnatal care, with levels of payment aligned to clinical factors—often complexity. At all stages, Monitor and NHS England have to agree elements of the tariff with each other.

The Act also includes a statutory basis for providers and commissioners to raise formal objections to the methodology that Monitor proposes for calculating national prices rather than the price itself. It is vital that tariff proposals reflect wider views across the sector but, as NHS providers acknowledge:

"The ultimate responsibility for setting NHS tariffs must lie with Monitor … and NHS England as the statutory price-setting bodies".

Following comprehensive engagement with commissioners and providers, Monitor is required to publish a final draft of the national tariff and allow 28 days for commissioners and providers to consider the proposals. Commissioners and providers may formally object to the proposed methodology for calculating tariff prices for specified services. This draft instrument seeks to amend regulations made in 2013. Those regulations exercise a duty to prescribe two objection thresholds and a power to prescribe a third. Thus, under the current rules, Monitor will calculate the following after the consultation: the percentage of commissioners objecting; the percentage of providers objecting; and the percentage share of supply held by the objecting providers, which allows the objections of providers to be weighted proportionate to the nationally-priced services.

Each threshold is currently set at 51%. If any of these are met, the unexpired tariff remains in force. Monitor cannot publish the national tariff and has to either put forward alternative proposals and publish them for consultation, or refer the method and the objections received to the Competition and Markets Authority.

I shall now explain the outcome of the two tariff processes that took place in 2014-15 and 2015-16 under these new arrangements. No objection threshold was met when the first proposed national tariff was consulted on in 2014-15 and the tariff was published on time. For 2015-16, the objection tariff mechanism was triggered as the share of supply objection threshold was met as 73.7% of providers by share of supply objected. As a result, the unexpired 2014-15 tariff remained in place.

A key motivation for providers' objections to the tariff proposals was the efficiency requirement of 3.8%. A further significant trigger for formal objections related to a variation to the payment of national prices for specialised services rather than the underlying method for the price, which is the only ground on which objections can be made. As a result of the objection mechanism being triggered, the 2015-16 tariff was not published and the unexpired 2014-15 tariff remained in place at a potential considerable cost to the health service.

Following further engagement, a large majority of providers agreed a local variation to the 2014-15 tariff prices while a minority have continued to be paid the unvaried 2014-15 tariff prices. Overall for 2015-16, this has meant an additional cost pressure estimated at £0.5 billion. We cannot afford this and any repetition would ultimately affect patient care and prevent crucial investment in front-line care. This cannot be right. It would also distract the system from implementing the five-year forward view which would place the NHS on a sustainable footing.

The objection mechanism is intended to be a process that is triggered in exceptional circumstances. When the thresholds were prescribed in 2013, it was made clear in the Explanatory Memorandum:

"The Department also intends to review the objections thresholds in due course once the new system beds down".

The circumstance that national prices in the tariff are set predominantly for acute care rather than mental health and community services means that objections from acute providers then carry most weight in calculations against the share of supply threshold. While the larger acute providers have perhaps exercised their own role in using the objection mechanism in a broadly reasonable manner, the share of supply mechanism cannot fairly reflect the balance of wider interests across the healthcare sector. This should not be read as the Government placing less value on the crucial role played by the acute sector, but as a greater emphasis on the interests of the NHS as a whole. Indeed, we welcome the role that the acute sector is playing in new collaborative roles within its health economies.

*6 pm*

The share of supply element of the objection mechanism has allowed larger acute providers to use the objection threshold as a veto to protest if and when they disagree with a particular aspect of the method, or changes to the pricing system outside the method. We also consider that more certainty on pricing is needed in advance of each financial year for the benefit of all providers and commissioners. Therefore, in order to avoid future potential for disruption and consequential cost to the taxpayer and the system, the objection thresholds and share of supply have been revisited to provide a process that is as fair and stable as possible for all NHS providers and commissioners.

We consulted on our proposals to change the objection thresholds, including the option of removing the share of supply threshold, and increasing the objection percentages for clinical commissioning groups and relevant providers to either 66% or 75%. The department made particular efforts to contact by email all commissioners, all relevant providers and their representative bodies. We received a total of 221 responses to the consultation from a range of stakeholders within the four-week period. This is a positive response rate and we thank everyone who took the time to respond.

Some 46% of respondents to our consultation, including many commissioners and mental health providers, agreed with our proposal that the objection mechanism should be revised to provide greater clarity in the system ahead of the coming financial year. The NHS Confederation said:

"We recognise the practical necessity to improve the processes around the objection mechanism",

along with reservations about the need for significant improvements in engagement within the system. Some 52% of respondents opposed this proposal, the majority of whom were providers, with 123 responses. Respondents argued for delay before making any change. There were also further calls for more timely and deeper engagement with and transparency on tariff proposals.

The tariff development process is still evolving, and Monitor and NHS England continually evaluate how to improve their processes, including engagement, and will work to continue this going forward. We welcome the proposals put forward by sector representative bodies about improving engagement. I will return to that point later in my remarks. We considered in detail all responses to the consultation, including new proposals. For example, we considered and then discounted proposals to create a more complex form of the share of supply threshold, which would have been even more difficult to calculate accurately.

The Secondary Legislation Scrutiny Committee has informed our debate with a thorough report. Its conclusion draws attention to the opposing views held by the department and the major providers. It is precisely that difference of views which I seek to explain here. We recognise that a number of providers feel strongly that their opportunities to object should be left unchanged, but we believe that the regulations will ultimately strike the right balance for the interests of the NHS as a whole, including those of patients and particular types of institution.

However, our main concern must be the financial sustainability of the overall system to ensure the collective system focus is on delivering the vision set out in the Five Year Forward View. Our focus must be on securing a tariff settlement for 2016-17 that is fair to the NHS as a whole, that supports the implementation of the Five Year Forward View, and that is reached in enough time to be effectual for the coming year. NHS England has indicated that if there is a repeat of the 2015-16 process, there could be a negative impact on planned investment in areas such as mental health and community services which would have serious implications for the health service. This cannot be acceptable for patients or taxpayers. However, we duly note the concerns raised by consultees and consider that the spending review settlement demonstrates this Government's commitment to building a sustainable NHS through supporting implementation of the Five Year Forward View.

It is also crucial that tariff proposals reflect the broader views held across the healthcare sector, not just the view of one part of it, however important that part may be. But as I explained earlier, the ultimate responsibility for setting NHS tariffs must lie with Monitor and NHS England, the statutory price-setting bodies. This means that difficult decisions can be made at a time of unprecedented challenge around finite resources, an ageing population and improvements in medical technologies and drugs. We continue to keep under review the need for any further changes to ensure that the system operates optimally in the interests of patients.

These regulations remove the share of supply objection threshold and increase the objection thresholds for providers and commissioners from 51% to 66%. These changes can be made by secondary legislation in the form of these regulations, and there is no need to revisit primary legislation. We must also make these changes now because, as I mentioned, we cannot have a repeat of the process in 2015-16 as that could have a negative impact on planned investment in areas such as mental health and community services, which would have serious implications for the health service.

The Act provides the Secretary of State with a power to prescribe a share of supply threshold that takes into account a relevant provider's scale and share of supply. I want to be clear that removing the share of supply threshold maintains a fair balance as a whole, as this will give small providers the same voice as larger ones. As I have explained, a significant trigger for formal objections related to a variation to the payment of national prices for specialised services rather than the underlying method for calculating the price. The largest trusts in the country are, in the main, the providers of specialised services. This means that disproportionate weight has been given to a small group of providers on relatively narrow issues, not all of which intentionally fall within the objection process. The draft regulations remove this bias. All providers of NHS services will continue to play a crucial role as part of the tariff development process. Furthermore, the changes made through the regulations will create the stability that is necessary for the tariff-setting process while retaining a comprehensive development mechanism that will allow for prices to be set in a fair, transparent and consistent way, taking into account the views of all providers.

The noble Lord, Lord Hunt of Kings Heath, has raised concerns about the 66% threshold: whether it is sufficiently fair; whether certain kinds of providers should by themselves be able to trigger the revised threshold, and whether our approach is consistent with that set out in 2012 by my predecessor. Our intention is that the revised 66% threshold will continue to give all relevant providers, regardless of their type, the opportunity to challenge the methodology where there is a widespread consensus about the existence of concerns. This includes relevant providers from all sectors, all of which make a valid and important contribution to the NHS and, ultimately, to patients.

[Lord Prior of Brampton]

The number of relevant providers increases year on year as increasing numbers of providers are covered by the national tariff. It is both fair and reasonable to set a threshold level that would reflect widespread serious concerns among the growing number of relevant providers that publication should be paused and adjudication possibly sought. It is therefore important to recognise that they should all have a part to play in a statutory process that may prevent publication of the national tariff, which would have a consequential impact on them. Therefore, where they are relevant independent sector or third sector providers, they can challenge the proposed methodology.

The noble Lord, Lord Hunt, has also raised concerns about whether these regulations are consistent with the Government's views as set out in March 2012 by my noble friend Lord Howe. Those remarks focused on how objections from a sufficient number of commissioners or providers might lead towards adjudication, noting that recourse might otherwise be made to judicial review. It is true, as I have explained, that our views about the sensitivity of the objection mechanism as a trigger have evolved since 2012. We now consider that a more widespread consensus is fairer in the interests of all. The role of the Competition and Markets Authority remains. As adjudication by the CMA can occur, this is entirely consistent with the Government's views as set out in March 2012 by my noble friend Lord Howe. The provisions in the Act enable Monitor to decide whether to make a referral to the CMA as the best course of action. We think that this is the right approach.

I must restate the importance of delivering the vision of the five-year forward view, including new models of care which providers and commissioners are collaborating to develop. In the interests of patients, those models of care are developing in a collaborative manner across organisational boundaries, or in services where national prices do or do not apply. Our concern, as we listen to proposals about improving engagement on the national tariff, is to capture that wider vision. The department, NHS Improvement and NHS England have read the proposals for better engagement from NHS Providers. It is clear that one of the things that went wrong around the tariff engagement process for 2015-16 was that one specific measure which had a significant impact on providers—specialist care—was proposed late in the day. This, quite understandably, was a very serious concern to many trusts and foundation trusts and contributed to their formal objection to the tariff proposals. To avoid scenarios like that in the future, but also more broadly to ensure that the tariff process produces an outcome in the interests of the NHS as a whole, my officials, NHS Improvement and NHS England will pursue more detailed conversations with NHS Providers to improve the process. As in other areas of NHS management, what is needed is transparency and understanding across the piece. As Jim Mackey, the newly appointed chief executive of NHS Improvement, said today:

"The development of the tariff needs to be done with the NHS, ensuring all views are heard and to avoid uncertainty from year to year. We now need to move past the distractions of technical changes to tariff rules and focus on the issues that really matter to patients and the providers who deliver NHS care".

This has been a long speech because it is an important issue and one which is somewhat arcane for some noble Lords. I beg to move.

**Lord Hunt of Kings Heath (Lab):** My Lords, I am very grateful to the noble Lord for his detailed and careful explanation of the reason for this statutory instrument. I still regard it as a flawed set of regulations and I am not surprised that your Lordships' Secondary Legislation Scrutiny Committee has reported it for the specific attention of the House on the grounds that the regulations may imperfectly achieve their policy objective. It is my contention that the regulations undermine a core part of the Health and Social Care Act 2012. They certainly run against the spirit, if not the letter, of what the noble Earl, Lord Howe, told the House during the passage of the Bill. Although the noble Lord has been very careful to differentiate between acute and non-acute trusts, the actual impact of what is being proposed is that NHS trusts and foundation trusts, which provide 96% of the tariff work for the NHS, are effectively disabled from using the tariff objection mechanism because it is mathematically impossible for them to trigger it alone. They would need some of the very small-scale, private providers to join in. The effective silencing of the voice of the NHS front line in the tariff-setting process displays a shocking degree of arrogance on the part of NHS England. It seems to be bent on punishing these providers for having the temerity to object, as they did in the last financial year.

The noble Lord has carefully described the national tariff. I suspect that noble Lords know more about it than they ever thought they wished to. As he says, it is very important in terms of the income going to most NHS providers. The 2012 Act provides for a statutory duty to consult on the proposals that NHS England and Monitor make. There is also a parallel right to object to the tariff proposal if they have insignificant numbers. The current threshold is 51% of commissioners or providers, either individually or based on the proportion of services they provide. This is called the share of supply. I do not think that 51% could be said to be not setting a pretty high threshold. I understand entirely that this mechanism is not meant to be used regularly, but current experience shows that it actually works. It was not used in the first year of its operation, but it was used in the 2014-15 financial year, with 75% of providers by share of supply making an objection. The reason they objected was that the tariff changes made, particularly for specialist services, would have an enormously negative impact on the providers of those services and, by definition, on the specialist services themselves.

*6.15 pm*

Specialist services are vitally important to the NHS and its patients and are often accessed only by a small number of people with some of the rarest and most complex conditions, ranging from cancer to congenital heart disease. Obviously, those services are expensive to provide. My understanding is that demand is hard to predict, and that there was a late amendment to the proposal in 2014-15 to introduce a marginal rate for those services whereby providers would be paid just 50% of the tariff price for services that exceeded their own projections of patient demand. The noble Lord

made great reference to uncertainty for the health service because of the tariff objection, but surely he would agree that the introduction of this proposed marginal rate would cause huge uncertainties for the organisations providing those specialist services. That is why they triggered the mechanism.

We know that the Government, NHS England and Monitor went back to the drawing board and returned with a solution, moving £500 million over to providers from the commissioning side, increasing the marginal rate for specialist services to 70%, and allowing providers the option of remaining on the previous year's tariff. The noble Lord seemed to find it quite shocking that this actually happened and that it caused a huge problem for his department and NHS England. I would have thought that it is evidence that the mechanism worked. The Government had to think again and had to find resources from somewhere else in their pot—which clearly they did.

I remain puzzled about the real rationale for why on earth NHS England—which is clearly the body that wants the change—wants to do this. The only rationale that I can see is that essentially NHS England is so offended by the fact that these providers could object to the mechanism that it is determined to rewrite the rules so that they can never again object in the way that they did in 2014-15.

I turn to the regulations, which to me seem unbalanced, risky and rushed. The imbalance is quite extraordinary. It gives every single licence provider in the country the same say over the tariff as a large-scale provider. One or two noble Lords in your Lordships' Chamber have chaired NHS foundation trusts, and we have a current chairman of such a trust. Taking Guy's and St Thomas' as an example, it would be extraordinary if a small-scale provider, providing services for a few thousand pounds, was given a similar weighting as Guy's and St Thomas' and other hugely important NHS foundation trusts. That does not seem a very fair approach.

Increasing the trigger threshold from 66% essentially means that, given the ability of providers to vote with the share of supply status being removed, even if all NHS trusts and foundation trusts were to object to a proposed tariff, they would account for only 62% of all providers. So clearly, NHS England designed this to ensure that NHS providers collectively would never be able to object to the tariff. This is a manipulation of the rules. It is not a statement of principle. It is underhand and completely unjustified. This level of democracy would make the North Korean Government proud. What is being proposed is outrageous and NHS England should be ashamed of itself. I wonder about the board of NHS England sometimes, as I try to understand what is in board members' minds when they agree to such a proposal.

It is clear from what the noble Earl, Lord Howe, said to me in debate in 2012 that he recognised that there needed to be a process for adjudication on Monitor's proposals if a sufficient number of those who would be affected by them objected; otherwise, they would have no way of disputing proposals other than by judicial review. I think it would have shocked the noble Earl, Lord Howe, at the time if a suggestion had been made that even if all the NHS providers objected to a proposal, they would in fact not have enough votes to trigger the arbitration mechanism. Quite clearly, for individual foundation trusts, the noble Earl, Lord Howe, has pointed them in the right direction. In future, because they cannot use this mechanism, it is an open invitation to go for judicial review.

If the Minister is so worried about the timing and the disruption to planning, there are two simple alternatives: either publish the tariff proposals earlier or accept that there are likely to be judicial review proceedings in the future, at enormous expense. I remind him of what is happening in Manchester with the JR proceedings in relation to the reconfiguration of specialist services, which is putting back changes for many months. So I really do not understand why the Department of Health agreed to this. Of course the financial situation facing the NHS is considerable, but it is as considerable for individual NHS trusts as it is for the department, and surely they can expect to be treated fairly. This is not treating them fairly.

I am also concerned about the way that this was rushed through, which was highlighted by your Lordships' scrutiny committee and the consultation process. I have to admit to past form but when a consultation document is issued on 13 August, to be completed by 11 September, your Lordships know that something fishy is going on. To sneak it out for just 29 days is not on. In fact, it is amazing that so many NHS providers were able to respond, and that is tribute to them and their representative organisations.

The Minister mentioned the consultation. This is the Department of Health at its very best. Some 82% of those responding did not want the objection threshold raised. Just under two-thirds also disagreed that the weighted vote of providers should be removed. What was the point of consulting? Clearly, there was no point: 29 days' consultation, August to September, and no notice taken of the comments coming back.

It really is disappointing that the Minister has brought this regulation before us, but I listened with great care to what he said at the end, because that was very important. He knows that NHS Providers has made a specific proposal to him, to which there were three elements: first, a far more transparent process for setting the national tariff through an open-book approach; secondly, a genuinely collaborative approach to developing the tariff each year—this is what is required—achieved through the set-up of a new form of strategic stakeholder group overseeing the development of the tariff; and, thirdly, the good offices of the Department of Health to exercise some oversight and scrutiny over whether the open-book approach and strategic stakeholder group are working effectively. The Minister went some way but not quite as far as I had hoped, so I hope that he might reconsider this within our debate tonight.

It is clearly important that there is ownership. If the Minister does not have NHS Providers owning this process, it will be unhappy. Judicial review proceedings are certainly a factor that would have to be considered. At the end of this whole sorry saga, I would have thought that it would have been much better if the department and the noble Lord agreed the elements that we need to see, going forward, which have been proposed by NHS Providers. I beg to move.

**Lord Patel (CB):** My Lords, perhaps I might start by suggesting to the Minister that this is another example of why the NHS might be unsustainable and that we probably need an independent commission to look at the whole of the NHS. I realise that neither he nor the Opposition Front Bench are likely to agree with me on that, but I make the point that this is yet another nail in the coffin, so to speak, which will get us to that end some day.

I find myself in agreement with some of the things that the noble Lord, Lord Hunt, has just said. We have an example here of where raising the tariff to 66% actually means ruling out the ability of the providers to engage in any kind of discussions relating to the tariff because the target is too high. If that is the case and the providers are therefore not able to engage with NHS England and Monitor, which sets the tariffs, what other mechanisms do they have? They cannot see the proposed tariffs until the consultation occurs, which is rather too late for them even to road test whether the tariffs are likely to be workable—particularly if they involve, for instance, any implications on pensions or proposals that the Government may have brought about pay deals, or any other issues that may impact on the cost. So how is the provider likely to get any input at an early stage and engage with the tariff-setting mechanism? There will be no such input, I suggest, through these proposals, which will make it impossible. They will therefore have to live with the tariff.

I realise that the big providers might be able to do that, because they might save some money from other aspects, but let us take the specialist providers. We can particularly imagine this in paediatrics and with some cancers, where providers work on small margins and the costs may escalate. Because of a few patients having highly complex issues, costs can overrun. That is why the top-up fees of some £300 million were introduced, 70% of which go to paediatric specialist services. Now the proposal is to remove those or reduce them considerably. In paediatrics, the top-up might go down from £217 million to £95 million. So these specialist providers have a choice: either to provide poor-quality service, which impacts on the patients, or to opt out. Who will then suffer? It will be not the commissioners, NHS England or Monitor but the patients—because they will not have a service or will have a poor-quality service.

I agree with the noble Lord, Lord Hunt, that there needs to be some kind of mechanism where there is early involvement of the providers, which can engage in the tariff-setting mechanism. They would not necessarily dictate it; they might disagree with it but suggest some proposals. One of the ways, as he suggests, would be a stakeholder forum involving all the parties at an early stage. The Department of Health can then have some accountability from all the people in the stakeholder forum, including the providers. I am attracted to that suggestion, and I hope the Minister will respond to it.

The Minister responding in the other place sounded sympathetic—or at least suggested that he understood the issues. I hope that we can go further today and that the Minister will say that it sounds attractive and that he might look at it.

*6.30 pm*

**Lord Warner (Non-Afl):** My Lords, I start by thanking the Minister for his briefing yesterday, which I found very helpful. I also declare a forthcoming interest in that I shall shortly be chairing a short-term commission to consider the approach to commissioning specialised services, which will report next April. That may well, in the light of the debate this evening, have some fairly uncomfortable things to say about the commissioning of these services in today's financially straitened NHS. It is very difficult to argue technically with the points made by my former noble friend—still my noble friend—the noble Lord, Lord Hunt, about this set of regulations, but in a sense that misses the bigger point raised by the noble Lord, Lord Patel.

I express my sympathy for the Minister. He is, to all intents and purposes, between a rock and a very hard place. He has to operate within the extremely clunky system provided for setting the tariff for specialist services in the Health and Social Care Act 2012—which, if I may say so, is one of the less distinguished pieces of legislation passed by Parliament. Trying to set a tariff using a system of objection thresholds is a somewhat bizarre way of doing it, even by the standards of the 2012 Act. That so-called new transparent system for reconciling the needs of commissioners and providers has clearly not worked. It is very difficult to see it working, not least because we end up leaving the decision on the tariff right up close to the start of the next financial year. If we want a five-year plan for reforming the NHS, that is about the daftest way to go about setting a national tariff. I understand why no one wants to go back to the 2012 Act and revise part of it but it is pretty bizarre, in a fast-changing world, to set the detail of how you negotiate the tariff in primary legislation. That is a fundamental flaw which we are now struggling with, as a result of that legislation. That is why we are getting into this tangle over the technicalities of this set of regulations.

If I was still the Minister trying to set acute hospital tariffs at a time of tight NHS finance and, at the same time, trying to prioritise community health services and mental health—as the Minister rightly suggests people are trying to do—I would probably be doing the same thing as the Minister, stuck as he is with this piece of legislation. I might even, if I was feeling particularly crotchety, go for 75% instead of 66%. But that is the fault of the system we have landed ourselves with, not because of a devious NHS England, devious Ministers or a devious Department of Health. We need to get to a different system. NHS providers have opened up some issues to talk about. It is certainly very difficult, in today's age, to argue with the idea of a more open-book approach. But it also requires the open-book approach to take place further back down the food chain, before we get close to the beginning of the financial year. That is the only way these specialised services can look ahead.

It is true when I look back on my time as a Minister —this is where I start to part company with the noble Lord, Lord Hunt—that there is a pretty strong track record of the big NHS acute hospital providers having everything their own way. Even when, as a Minister, I said that the commissioner's view should determine

the outcome, those providers went on pushing and pushing, way up to and past the start of the new financial year. Of course, I am not talking about trusts chaired by the noble Lord, Lord Hunt—I am sure nothing like that ever happened in Birmingham. However, let us be clear, that is how some of the big London providers, in particular, behave—not in our second city, of course; heaven forbid.

There is a long history, then, of big providers pushing the envelope on the price for the job and weak commissioners being unable to stand up to them and deal with them. We now move to a situation where that problem must be tackled, and quickly. We can quibble about the technicalities of the way NHS England and Monitor have handled this episode, but it does not get away from the point that the Minister made: at the end of the day, these guys and girls have to make the decision. They have to decide on a canvas that is much bigger than that being painted by the acute hospital sector.

We should be a bit more forgiving towards the Minister on that. It takes a bit of bottle to say that we are going to put more money into community services and give more money and parity of esteem to mental health, even in a difficult financial climate. That means taking some fairly tough decisions about how much of the collective resources you put into acute hospitals and specialised services. This is where commissioning must play its part. It may mean that we want a smaller number of providers for some of those service lines; it may mean that we have to concentrate them.

NHS providers may not have realised that an open-book approach means that we start to find out more about those who are less productive or effective. I hope the Minister will listen to some of those ideas, particularly the points made by the noble Lord, Lord Hunt, at the end of his speech and by the noble Lord, Lord Patel. We have a clunky system and we need to change how we set the tariff if we really want to deliver the vision in the *Five Year Forward View*. I hope the Minister will respond positively to some of those ideas for a new approach.

**Lord Turnberg (Lab):** My Lords, I must first apologise to the Minister for not appearing at his briefing yesterday and for coming late to his initial remarks. That will not stop me speaking, if I may.

The regulations are clearly designed to save money. They have little to do with correcting what is a major underlying defect in the tariff system: the perverse incentives that tariffs have introduced. My noble friend Lord Hunt has dealt pretty well with how the regulations were aimed at raising the threshold at which objections can be raised and, equally importantly, levelling the playing field to allow small providers with limited budgets to have the same voting power as very large teaching hospitals with billion-pound budgets, which provide more than 95% of the service. It is rather like non-league football clubs and those in the Premier League having the same voice in their commercial activities. The problem is that, to get 66% of all organisations, including all the small ones, puts those trusts that provide more than 90% of the service in hock to those who provide less than 10%. So it is not much wonder that the highly specialised hospitals—the Marsden and Great Ormond Street, the Institute of Neurology, the Christie hospital and so on—are voicing strong concerns about the impact on them. Of course, that is why the Government want to shackle them—to keep costs down—but that is at the risk of denying high-quality specialised care to those who need it.

All that has been well rehearsed by my noble friend Lord Hunt and other noble Lords. I really wanted to point out that the regulations do nothing to get round the unintended consequences and perverse incentives of the tariff system, which I raised with the Minister in a previous debate. That system encourages trusts to go down the route of using devices to gain higher incomes and discourages cross-referral between specialists within a hospital when a trust can gain two fees for two referrals from general practice. It discourages consultants from using phone-in follow-up out-patient clinics to save patients the need to travel in to be seen, as a visit to a hospital incurs a higher fee on the tariff. I agree with the noble Lord, Lord Warner, as he rails against the acute hospitals, but I do not necessarily agree with all his solutions.

I support my noble friend's amendment. The regulations are unwarranted and damage those who provide the vast majority of the service, while doing nothing to get at one of the major defects in the tariff system.

**Lord Kakkar (CB):** My Lords, I declare my interest as chairman of University College London Partners, an academic health science centre which has a number of important providers. The Minister made a very important point about the five-year forward view and the need to encourage new models of care working that ensure collaboration beyond institutional boundaries—and, indeed, to go further and look at new models of funding, including those of accountable care organisations. With a view to a potential journey towards more effective commissioning, and therefore more intuitive constructing of a tariff to support general acute services and more specialised services, will the proposals that the Minister brings to the House today aid that journey? Will looking at these regulations in the way proposed help institutions to work more effectively together, recognising the opportunity to look at tariffs that focus on pathways of care rather than individual segments of care, so ensuring the Government's objective to ensure that valuable resources committed to the provision of healthcare are used most efficiently? There is a recognition that there will have to be greater attention to these matters as we go forward, and every opportunity should be used to ensure that that objective is achieved. One of the most important is the approach to setting the tariff and, therefore, these regulations.

**Lord Prior of Brampton:** My Lords, as always in these debates, we have had some pertinent and useful contributions. I shall take some of the points raised in reverse order. On the very important point raised by the noble Lord, Lord Kakkar, a profound change is happening in how we will deliver care over the next five years, which will be very much more based around a system rather than the institution. I think that the noble Lord, Lord Hunt, would agree with that; we will move from a payment-by-results system that has been

[Lord Prior of Brampton]
very much based around individual pieces of care delivered in acute hospitals, to other payments systems, such as a capitation system or a whole pathway system. That is going to happen.

*6.45 pm*

I am always struck by a quotation from, I think, Warren Buffett—that you get what you incentivise for. Over the past 20 years, we have incentivised almost everything going into acute care, and that has got to be changed at a time when acute care facilities are very busy. It will be very difficult to make that change. Increasing the threshold from 51% to 66% will aid that journey because it will prevent NHS providers, which are currently taking most of the tariff income, being a possible brake on that change.

The noble Lord, Lord Turnberg, prefaced his remarks by saying that this was designed to save money. It is not designed to save money, but to reallocate money. We have a fixed pool of money. The noble Lord will be familiar with the concept of the tragedy of the commons. The problem with the tragedy of the commons is that when you have a fixed resource, be it fish, money or common land—where it is used in law the most—no individual user of that resource has an incentive to husband it. This is not about saving money. The specialised commissioning budget got out of control two or three years ago. It was running much higher than had been budgeted for. The appointment of Jonathan Fielden, who was a very distinguished medical director at UCL, to head the specialised commissioning role in NHS England is important because getting control of that budget will be vital.

The noble Lord also mentioned the unintended consequences of the tariff, which go beyond the debate today about the thresholds. I am very happy to speak to him further about that. The issue he raised related to gastroenterology, I think, and getting double payments. I have picked that up, and I think that issue has been resolved, but if there are other problems with the tariff, I will be very happy to address them with the noble Lord outside.

The noble Lord, Lord Warner, made some very important points. We are committed to the principle of a multiyear tariff that will remove a lot of the angst over these annual negotiations, which often happen at the end of the year, and make a big difference. The noble Lord made the point, which is true, that we have been very provider-centric and teaching hospital-provider-centric. I am guilty of that. Having been chairman of a provider for many years, I was very provider-centric. The commissioner, along with Monitor, must ultimately have the final say on the allocation of resources within the system. I will come back to the point that the noble Lord, Lord Hunt, made about the imperative need for proper engagement and transparency, but ultimately, as NHS providers recognised in their briefing note to noble Lords, NHS England and NHS Improvement must have the ultimate say on the allocation of resources within the system.

The noble Lord, Lord Patel, made a particular point about specialised providers. Monitor is currently devising HRG4+—that sounds rather technical—which is designed to get more money into more specialist procedures. For example, only last week Monitor briefed more than 100 providers on the specialised tariff proposals for 2016-17 as an example of its recognition that there must be a greater degree of consultation with providers. The noble Lord made a powerful speech, and of course I recognise the strength of a number of his arguments. It is critical that providers again have confidence in the process, as it is true that a number had to some extent lost confidence in it.

I should mention here the importance of the changes at NHS Improvement. I hope we are going to see an organisation that is culturally and strategically very different from Monitor. I know that Jim Mackey, the new chief executive of NHS Improvement, has already set up a group of chief executives from foundation trusts and NHS trusts from whom he will be taking regular advice.

We recognise the degree of consultation, engagement, openness and trust that was not there last year, and we are committed to rebuilding that. We note the comments made by NHS Providers and have taken them on board. I can tell the noble Lord that Simon Stevens, Jim Mackey, the Secretary of State and I are absolutely committed to rebuilding that confidence and to having a much higher degree of engagement and consultation in the tariff-setting process.

**Lord Hunt of Kings Heath:** My Lords, I am very grateful to all noble Lords who have taken part in this interesting debate. We perhaps went rather wider than the terms of the regulations. I agree with the Minister that payment by results was brought in essentially to drive through reductions in waiting times by providing the right incentives. By and large that has been very successful, but we are moving, and this is a very good thing, into thinking about systems and how they work. There is a clear need to develop a funding mechanism to ensure that there are proper incentives for system-wide working, and I absolutely agree with that.

However, I also agree with the noble Lord, Lord Warner, my fellow former Minister. Looking at the *Five Year Forward View*, it seems to me that essentially we are moving again to a planning model but we are still stuck with the 2012 Act, and the two do not seem to mesh together. The Minister is struggling with these regulations because they are trying to operate a system that is still based on payment by results, when in essence we are trying to incentivise people to work together to produce a much more effective system and that is very difficult. If he were to tell me that the NHS amendment Act was to be brought forward, I think he would find a warm welcome in your Lordships' House, but perhaps I dream too far.

I say to the noble Lord, Lord Patel, that I do not disagree at all with his idea of an independent commission; the funding challenges facing health and social care warrant that kind of independent consideration. I say to him, though, that all the work done by the King's Fund and the Nuffield Trust suggests that if you could maintain real-terms growth at 4% a year, which is the historic annual real-terms growth of the NHS, we would get a pretty good system without some of the pressures that we are facing at the moment. It is not a question of having to increase money to the NHS and social care hugely, but it needs some increase or we

will be faced with the kind of problems that we have at the moment. The Barker commission, which was sponsored by the King's Fund, shows some of the thinking that one might ask a royal commission to go into.

My noble friend Lord Turnberg mentioned the particular challenges of highly specialist providers, which of course are very much tied into the area that he knows so well: our whole R&D effort in this country and the link with the life sciences. While I understand the language of domination by specialist providers, we need to recognise that the link that these very same providers have with R&D and the life sciences is crucial to this country and to the lead that we often have in these areas. We have to be very careful not to undermine their financial viability because of the general financial challenge.

I am delighted that the noble Lord, Lord Warner, is working on, chairing or leading this work on specialised services, and I am sure he is right that we need to have much more effective commissioning. I certainly accept that that is likely to lead to a rationalisation of specialised services, which will not be universally popular. However, if we can show that by doing so we get more bang for our buck, getting better specialist services, and that they are a better investment, clearly, that has to be followed through. I hope that we will see the outcome of that work within the next few months.

I have no problem at all with putting more resources into mental health and community services—I entirely understand that. However, the regulations are a pretty poor show, and in effect disfranchising the providers, who get 96% of the tariff income, is not the way to go forward. However, I am very grateful to the noble Lord, Lord Prior, for what he said. I take his commitment to rebuilding the confidence, as he described it, of providers in the system, as a very strong one. He did not quite go as far as I would have wished with regard to endorsing the open book approach. Does that mean that that is still being considered, or has it been rejected? Can I take anything from that?

**Lord Prior of Brampton:** I will have to defer to Jim Mackey, the chief executive of NHS Improvement. It would not be fair for me to answer that question.

**Lord Hunt of Kings Heath:** I am sure of that, my Lords. I will just say to the Minister that I hope the spirit of this debate will be conveyed to him and NHS Improvement. I certainly have been very impressed by the chief executive's words since his appointment, and of course the chairman, Ed Smith, commands great respect and authority, not least for the work he has done on behalf of Birmingham University, for which those of us in the city are very grateful.

With that, I thank all noble Lords who have spoken. The point has been made, we look forward to a better approach in the future, and I hope that the spirit of the proposal regarding early consultation and an open book process will be acceded to. I beg leave to withdraw my amendment to the Motion.

*Amendment to the Motion withdrawn.*

*Motion agreed.*

*House adjourned at 6.57 pm.*

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