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

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House of Lords

Monday, 18 January 2016.

2.30 pm

Prayers—read by the Lord Bishop of Derby.

Higher Education: Disabled Students

Question

2.36 pm

Asked by ***Lord Addington***

To ask Her Majesty's Government what steps will be taken to ensure that from the start of the 2016–17 academic year all providers of higher education have fulfilled their obligation to provide non-medical provision for disabled students which was previously covered by the Disabled Students' Allowance.

Lord Addington (LD): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I draw attention to my declared interests.

Baroness Evans of Bowes Park (Con): My Lords, it is not the Government's intention that institutions are to be responsible for all non-medical provision, and the disabled students' allowance will continue to supplement institutional provision where students require a more specialist type of support. Officials are meeting with sector partners including the Higher Education Funding Council for England, the Quality Assurance Agency for Higher Education, the Office for Fair Access and the Equality Challenge Unit to discuss how best to monitor equality and inclusivity. This will include considering the provision of reasonable adjustments by HE providers.

Lord Addington: I thank the Minister for that reply. However, is it not clear that HE providers are taking on a new responsibility which they have not had hitherto? Also, is it not true that BIS in its own equality analysis has pointed out that there is no structure to make sure that the duties which are to be imposed will be carried out? As these are new duties which, if HE providers get it wrong will mean that students fail, why have not the Government got something ready in time?

Baroness Evans of Bowes Park: The noble Lord will be aware that higher education institutions already have a duty to make reasonable adjustments for disabled students under the Equality Act 2010. We are working hard with organisations to make sure that not only do they share best practice but also, importantly, to enable us to identify a baseline which disabled students can expect as a minimum level of provision in the duties that will be moved over to higher education institutions from this September.

Lord Low of Dalston (CB): My Lords, a *Which?* report produced last October found that higher education institutions are falling short in providing information on course design, choice and assessment, as required by law. This suggests that the expectations of BIS about its ability to transfer its responsibilities for disabled students to higher education institutions are not realistic, and that students will be severely disadvantaged and left to implement the Equality Act provisions on an individual basis. In order to hold higher education institutions effectively to account for their performance, would it not make sense for them to be required to report annually on their support for disabled students, and for those reports to be monitored and in turn reported on by the Office for Fair Access in its annual report?

Baroness Evans of Bowes Park: I thank the noble Lord for his question. As I have said, BIS officials are working hard with universities and organisations to make sure that disabled students receive the level of support they need. We are certainly going to be encouraging providers to publish data on their provision for disabled students. We have seen an increase in the number of disabled students accessing higher education, a trend that we are very proud of and want to see continue. We are determined to work with higher education institutions to make sure that disabled students continue to get the level of support they need.

Baroness Hayter of Kentish Town (Lab): I do not know what the Government have got against students. They take away their maintenance grant and now they are going to cut some £65 million which has been providing non-medical help for disabled students. What assurances can the Minister give that the smaller institutions, or indeed those like the Open University which have done the most to attract and service disabled students, will be able to continue providing help without that funding? Further, what assurances can she give that students of whichever organisation they go to will get the help they need at a consistent level?

Baroness Evans of Bowes Park: As I have already mentioned, our higher education institutions have a responsibility under the Equality Act 2010, and we are working closely with them to ensure that disabled students continue to get the high-quality support they need. We have seen the institutional income of universities go up from £23 billion to nearly £24.5 billion, and it is forecast to go to £31 billion by 2017-18. We believe that it is right that the responsibility for supporting disabled students, whom both we and universities want to encourage to attend, is spread between universities and the Government.

Baroness Garden of Frognal (LD): Following on from the question of the noble Baroness, can I press the Minister on support for disabled part-time students? There are real concerns that these cuts will have a disproportionate effect on them. What safeguards are the Government putting in place to ensure that these students are not disadvantaged from going on to further study?

Baroness Evans of Bowes Park: Disabled students' allowances are not disappearing; they are simply being refocused on more specialist help, with universities taking on some of the responsibility for some help. For the first time, we are instituting an exceptional

[Baroness Evans of Bowes Park]
cases process so that if a student is in dispute with the university about the reasonable adjustments they believe should be implemented, they are not disadvantaged. That is a new process to make sure that no student suffers.

Baroness Thomas of Winchester (LD): My Lords, has the Minister's department been in touch with the Department for Work and Pensions and talked to her honourable friend Justin Tomlinson, the Minister responsible for disabled people about this matter? It seems to me that government is not always joined up when talking about disabled people. As the noble Baroness will know, the Minister is in charge of the Disability Confident campaign to get more disabled people into work. This is a very important part of making sure that disabled students are not disadvantaged.

Baroness Evans of Bowes Park: We are doing a lot of across-government work in this area. In response to the consultation, we received a number of extremely useful suggestions on how our education providers might be able to ensure that they make reasonable adjustments and implement this well. Again, we are talking to university and sector partners to make sure that all these good ideas and best practice are spread.

Lord Addington: With the leave of the House, can the Minister give me a better idea of what exactly the universities will have to do in a formulated way to fill the gap to cover the individual funding package for students? That is the transition we are talking about.

Baroness Evans of Bowes Park: As I have said, students will continue to have their needs assessed. The disabled students' allowances will remain. Universities will be responsible for delivering some of that support. We are working with university partners to ensure that they are ready to deliver this and can do so to a high quality. We are looking to them to identify and baseline what disabled students can expect as a minimum level of provision and we are introducing a new exceptional cases process to ensure that where there is a dispute, students are not left without the support they need.

Education: Polish A-level

Question

2.43 pm

Asked by ***Lord Lexden***

To ask Her Majesty's Government whether they plan to preserve the A-level examination in Polish.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords—or Moi szlachetni Panowie—we remain committed to securing the future of the existing range of language qualifications, including the Polish A-level. We are therefore continuing to work closely with relevant organisations and others to explore how best to enable these qualifications to be offered in future years.

Lord Lexden (Con): Polish is the second most spoken language in our country. Deep historic ties exist between Great Britain and Poland. Is not the number of candidates sitting A-level Polish increasing, not falling, as is sometimes alleged? Does my noble friend agree that the Conservative Party has given an unambiguous commitment to preserve the Polish A-level exam? Does he also agree that the highly respected Polish Educational Society has put forward effective solutions to the small number of practical difficulties—such as the need to recruit more senior examiners—that have been raised by the AQA and Ofqual?

Lord Nash: Not only are A-levels increasing, but the number of entrants over the last five years for GCSE Polish has gone up by 50%. I agree entirely with my noble friend's sentiments. We have given a clear commitment. We are determined to ensure that these courses continue. They are very important to us as a trading nation and an outward-facing country, but as my noble friend says they are also particularly important for communities to enable their children to engage with their rich cultural history.

Baroness Ludford (LD): My Lords, of course it is important for immigrants, not just Muslim ones, to learn English, but is it not also important for this linguistically challenged nation to maximise its language resources? Do the Government have a strategy to support the retention and flourishing of what one might call family heritage languages as a source of strength for the economy and trade—indeed, the Minister just referenced that—as well as social, cultural and intellectual enrichment?

Lord Nash: We agree entirely that all pupils should have a rich cultural education. We have made it quite clear that it is particularly important for languages to expose them to a different culture.

Baroness Coussins (CB): My Lords, the Government's commitment to the continuation of Polish is welcome, but will the Minister also assure the House that the Government's injection of £10 million into teaching Mandarin in schools will not be at the expense of other languages identified by the British Council as the 10 most vital to the UK for economic, cultural and diplomatic reasons, including French, German and Spanish, as well as lesser-taught languages such as Arabic and Turkish?

Lord Nash: I am happy to give the noble Baroness that assurance. China is obviously a country of huge strategic importance to this country and education is very important in that. A great deal of activity is going on. In addition to the £10 million that we have given to boost Mandarin teaching in schools, excellent work is being done at the IOE Confucius Institute, supported ably by organisations such as HSBC and Swire.

Lord Sherbourne of Didsbury (Con): My Lords, will my noble friend the Minister tell us what progress has been made on teaching foreign languages overall at A-level? In particular, to what extent are we reversing the trend in the teaching of German, which has shown the sharpest decline in recent years?

Lord Nash: My noble friend makes a very good point about the decline in German, but as I said, we

believe that, with our expectation that 90% of pupils will take the EBacc, this will further increase the number of pupils taking GCSEs in modern languages. Certainly, the number of pupils taking languages in the EBacc has gone up by 25% over the last five years. We hope that this will have a compounding effect on A-levels.

Lord Taverne (LD): My Lords, do the Government not agree that, while traditionally our relations with Poland have been extremely close, one or two statements recently made by the Prime Minister have not improved them? Would not the encouragement of the learning of Polish by British, as well as other, students be of considerable importance at a time when our relations with Poland are so important?

Lord Nash: I agree entirely with the noble Lord that our relations with Poland are extremely important. We are determined to ensure that a wide suite of languages is available for students so that they have the freedom to choose whichever language they wish to study.

Lord Wallace of Saltaire (LD): My Lords, the noble Lord, Lord Lexden, spoke of the deep historic ties between Britain and Poland. I recall that the Poles produced the largest non-British contingent of pilots in the Battle of Britain, and several squadrons in the RAF and at least two armoured divisions in the Second World War. Britain seems almost entirely to have forgotten about that. I understand that the Prime Minister was unaware of it when he visited Warsaw last time. Could we not do something to symbolise the contribution that Poland made to the British victory in the Second World War, for example by encouraging a visible Polish presence at the next Remembrance Sunday commemorations?

Lord Nash: The noble Lord makes a very good point about the deep debt we owe all the pilots in the Second World War, particularly the Polish pilots who fought so ably, especially in the Battle of Britain. I will take back the point that he makes.

Lord Davies of Oldham (Lab): My Lords, most British citizens are likely to respect the Poles who live and work in this country not for having obtained A-levels in English, although that is greatly to be encouraged, but for providing the skill levels in crucial trades—plumbing is an obvious example, but there are many other such trades—which we are clearly not matching. Are the cuts in further education defensible, given that we clearly have low skill levels in this country in crucial areas?

Lord Nash: The noble Lord makes an extremely good point. Of course, we have a lot of Polish labour here, particularly in certain skills where there are shortages—partly as a result of the booming economy—such as construction. However, our apprenticeships programme is very much focused on rectifying this.

Lord Howell of Guildford (Con): My Lords, I do not think our war-time connections with Poland have been forgotten in any way, and they never will be. On the contrary, I think we are constantly reminded of them. However, in considering the teaching of the Polish language, does he agree that Poland recognises the need for the major reform that Europe is now undergoing, and that, despite some differences over the handling of migrant benefits, our relations with Poland are very close indeed and will form a major force in the reform of the European Union which we are now seeking?

Lord Nash: I entirely agree with the noble Lord, and may I congratulate him on his birthday?

Living with Difference

Question

2.51 pm

Tabled by ***Lord Harries of Pentregarth***

To ask Her Majesty's Government what is their response to the report of the Commission on Religion and Belief in British Public Life Living with Difference published on 7 December.

Baroness Butler-Sloss (CB): My Lords, on behalf of the noble and right reverend Lord, Lord Harries of Pentregarth, I beg leave to ask the Question standing in his name on the Order Paper.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford) (Con): My Lords, the Government note this report and its contribution to the debate on faith in Britain today. We continue to celebrate the role of faith in society, with a particular emphasis on co-operation between different faiths as a way of breaking down barriers and strengthening communities. The report raises a number of questions for a range of organisations. I will ensure that all government departments consider the recommendations relevant to their individual policies.

Baroness Butler-Sloss: I thank the noble Baroness. I declare an interest as chairman of the commission. Will the Government consider organising, or allowing to be organised, a meeting of senior civil servants from the relevant departments to discuss some of the implications of our report?

Baroness Williams of Trafford: I am certainly happy to volunteer my services, together with officials from different departments, and meet with the noble and learned Baroness.

Baroness Afshar (CB): My Lords, is it acceptable to talk of celebrating differences while, at the same time, Muslims in particular are being demonised at every turn? Is it not a question of celebrating differences but of recognising what all religions have in common and not choosing some as terrorists and others as friendly people?

Baroness Williams of Trafford: The noble Baroness makes a very good point. We can celebrate differences while also celebrating our similarities, particularly the values of faith that unite us in so many ways.

Baroness Whitaker (Lab): Can the Minister say how the Government will respond to the point made by the report that, UK wide, there has been a lack of movement in education policy to implement the Equality Act's requirement for all schools to foster good relations between people of different backgrounds? The noble Baroness's fine words do not talk about implementation.

Baroness Williams of Trafford: My Lords, while this is not an official report, I can certainly say that from my own department's point of view, and certainly from my personal point of view, there are very good examples of schools—particularly faith schools—that do much to foster understanding and relationships between other faiths. I am sure there may also be examples where schools could do that better.

Lord Cormack (Con): My Lords, I thank my noble friend for her comments about faith schools and for reinforcing the point that this report, welcome as it is as a contribution to debate, is not an official report. The Government have no obligation to respond to it, and many people feel that it does not have the balance entirely right.

Baroness Williams of Trafford: I thank my noble friend for that comment. He is right; it is not an official report but I have undertaken to meet the noble and learned Baroness, Lady Butler-Sloss, and officials to discuss it. However, the noble Lord is absolutely right that it is not an official report.

The Lord Bishop of Durham: My Lords, does the Minister agree that the recommendation around religious literacy is of particular note? Does she recognise that, at local and national government levels, there is a serious problem with religious literacy that the Government may seek to help address?

Baroness Williams of Trafford: The right reverend Prelate makes a very valid point, which was one of the recommendations of the report. I am very happy to work with him and other organisations and faiths to see whether we can make progress in this area.

Baroness Brinton (LD): My Lords, the focus of the questions so far has been very much around faith, but the title of the report is about religion and belief. What are the Government doing to ensure that all schools teach a wide-ranging RE and belief curriculum, including academies and free schools?

Baroness Williams of Trafford: My Lords, it is an expectation that at all key stages schools should have a curriculum around religion and belief. I can get back to the noble Baroness in due course on some of the details of that, if she wishes.

Baroness Sherlock (Lab): My Lords, while we are on that subject, when the Minister writes to the noble Baroness, Lady Brinton, will she also comment on the fact that it will be quite difficult for schools to tackle the important issue of religious literacy and literacy with regard to belief raised by the right reverend Prelate if we cannot improve access to a significant number of well-trained teachers in this area? What will the Government do to make that issue more of a priority?

Baroness Williams of Trafford: My Lords, I totally agree with the noble Baroness that, unless we have decent teachers, we cannot have high-quality education. I cannot disagree with that point.

Lord Popat (Con): Does my noble friend the Minister agree that the Prayers we have here before our business begins are not just energising but a stark reminder that we are here to represent something bigger than ourselves and our respective political parties? Therefore, the Prayers are not just complementary to other faiths but very much inclusive of them?

Baroness Williams of Trafford: My noble friend makes a very good point. When I stand at Prayers, my noble friend is often there, as are members of other religions and myself as a Catholic. I commend the fact that the Bishops conduct the Prayers in such an inclusive way. That is why I think so many Members of your Lordships' House attend Prayers, as it is a lovely time of reflection.

Lord Woolf (CB): My Lords, I declare my interest as patron of the Woolf Institute, which promoted the inquiry chaired by the noble and learned Baroness, Lady Butler-Sloss. Does the Minister agree that the inquiry is an excellent example of people of different faiths coming together to discuss critical problems which face this country, as differences between faiths are very complex? The inquiry drew representatives with different views from all sections of the community, who produced an excellent report.

Baroness Williams of Trafford: The credits at the back of the report—if you can call them credits—certainly indicate an incredible number of contributions of people, from across society, of all faiths and none.

Baroness Farrington of Ribbleton (Lab): My Lords, would the Minister please care to reply to the question about what the Government are doing to increase the supply of suitably qualified teachers? Among the considerations they ought to take into account is that no member of the Government should run down the many thousands of excellent teachers in all schools, not just free schools and academies.

Baroness Williams of Trafford: My Lords, I hope I have not run down any teachers, or given any notion of doing so. The schools in this country are very well served by teachers. I will certainly be replying to the noble Baroness.

National Health Service: In-Patients with Learning Disabilities

Question

3 pm

Asked by ***Lord Hunt of Kings Heath***

To ask Her Majesty's Government what is their estimate of the number of avoidable deaths of National Health Service inpatients with learning disabilities since 2011.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, this Government are committed to reducing the level of avoidable deaths. The learning disabilities mortality review, commencing this year, is piloting local reviews of premature deaths of people with learning disabilities. The Care Quality Commission will also be undertaking a wider review into the investigation of deaths in a sample of acute, mental health and community trusts.

Lord Hunt of Kings Heath (Lab): My Lords, I am grateful to the Minister for his Answer. He is clearly aware of the recent reports which have shown that there have been many avoidable deaths of people with learning disabilities within the care of the National Health Service. Indeed, some estimates have put it at more than 1,000 deaths per year. He is aware that Sir Bruce Keogh, medical director of NHS England, has very recently written to NHS and foundation trusts asking them to carry out a self-assessment of avoidable deaths. Given that the NHS seems to have a real problem with providing decent care generally to people with learning disabilities, how confident can we be that this self-assessment will actually identify people with learning disabilities who have suffered avoidable deaths within its care?

Lord Prior of Brampton: My Lords, this is a very important question. The fact that so many people with learning difficulties die much younger than people without them is of concern to everybody in this House. The review being conducted by Sir Bruce Keogh, to which the noble Lord referred, is a self-assessment tool. It is due to report quickly—by April—so is a short-term attempt to get the bottom of this. It is not a long-term effort, which would be much more comprehensive. We have two forms of looking at avoidable or excess deaths. One is the standardised system, which is a statistical basis for looking at the number of excess deaths. The other looks at avoidable deaths and is done by looking comprehensively at a wide sample of case reviews to give us a much more accurate picture of what is really happening.

Baroness Hollins (CB): My Lords, as the noble Lord says, we know a great deal about why people with learning disabilities die sooner than they should. What has been missing so far is a mechanism for taking that learning forward into practice. Such feedback mechanisms, and the fact that their reviews are mandatory, are the strengths of the other confidential enquiries. Will the Minister explain why the new national learning disability mortality review has not been established on the same footing as, for example, the national child death review?

Lord Prior of Brampton: My Lords, the noble Baroness is right. The national learning disability mortality review programme, which is being hosted by Bristol University, does not have the mandatory basis that other reviews have had. I am not sure why it was not set up on the same basis. It is being funded by NHS England, although it has the support of a wide range of different organisations. I will look into that aspect of the review and write to the noble Baroness.

Baroness Browning (Con): Does my noble friend agree that the failure in hospitals to assess the capacity of people with learning disabilities and those on the autistic spectrum is one of the great weaknesses in providing accurate and timely intervention for people who are in hospital and who have a learning disability? Will he make a particular case for assessing the ability of staff to accurately define capacity? Will he also take another look to see that hospital passports for people with learning disabilities and autism are a mandatory requirement, not just an option, for all inpatients?

Lord Prior of Brampton: My noble friend makes a number of very good points. I will draw them to the attention of Mike Richards, the chief inspector for acute care in England, who is about to embark on a thematic review of avoidable deaths. He will look in particular at those with learning difficulties and I am sure that he will take into account the words of my noble friend.

Lord Rennard (LD): My Lords, does the Minister accept that something is seriously wrong when two-thirds of the unexplained deaths of these highly vulnerable people with learning difficulties who die in NHS hospitals in England are not properly investigated? Does he accept that this is a much more serious scandal than that based upon some highly dubious statistics used by the Secretary of State for Health to talk about unexplained deaths in hospitals at weekends?

Lord Prior of Brampton: I tried to explain the difference between avoidable deaths and excess deaths earlier in my answers, without trying to make any political point about it. There is an important distinction to be made, and I hope that I made it. I agree with the noble Lord that this is a very serious issue, and the Government are approaching it in a very serious way.

Lord McColl of Dulwich (Con): My Lords, is the Minister aware that clinicians meet regularly to discuss all their complications, and that these meetings are extremely valuable and relevant? Have politicians considered the possibility that they might meet every week to discuss their mistakes?

Lord Prior of Brampton: My Lords, I am sure that it would be a very long meeting. My noble friend is right that mortality and morbidity meetings are extremely important in hospitals. It would seem that practice is very variable across hospital trusts and I know that part of what Sir Bruce Keogh, the medical director of the NHS, is doing is trying to develop, along with Monitor and the CQC, a governance structure around mortality that all hospitals can learn from.

Lord Crisp (CB): My Lords, the new learning disability strategy, *Building the Right Support*, proposes that people with learning disabilities should get their mental health treatment from mainstream mental health services—which as noble Lords will know are already under considerable strain. Can the Minister let us know what assessment the Government have made of the likely impact that this will have on mental health services and how they envisage that the financial and other implications will be managed?

Lord Prior of Brampton: The noble Lord refers to the paper *Building the Right Support*, which I think he will be very supportive of. It is designed to treat and look after many more people with learning difficulties outside institutional settings—in their own homes or in special purpose, much smaller homes. Where necessary, they will of course need to receive mental health services. I am not aware that we have done a particular impact study on that, but I will investigate it and write to the noble Lord.

Accessible Sports Grounds Bill [HL]

Third Reading

3.07 pm

Bill passed and sent to the Commons.

National Minimum Wage (Amendment) Regulations 2016

Motion to Approve

3.08 pm

Moved by ***Baroness Neville-Rolfe***

That the draft regulations laid before the House on 7 December 2015 be approved.

Relevant documents: 13th Report from the Joint Committee on Statutory Instruments, 19th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe) (Con): My Lords, I am rarely surprised by events in your Lordships' House but I must admit that I was taken aback to be confronted by a regret Motion on the statutory instrument before us, laid by the main opposition party. The policy thinking behind the regulations is to move to a higher-wage, lower-tax and lower-welfare society, one aspect of which requires building on the present national minimum wage. This thinking has been widely explained and debated here and in the other place.

As to the detail, the essence of the regulations before us is to introduce the new national living wage on 1 April this year, initially at a rate of £7.20 an hour for all those aged 25 and over. As has been well publicised, the objective is to reach a rate equivalent to 60% of median earnings by 2020, which is expected to be over £9 per hour. Further steps towards the 60% objective between now and 2020 will benefit from the advice of the Low Pay Commission. Its role going forward will be even more important: consulting and recommending increases to the national living wage as well as recommending national minimum wage rates for under-25s.

Of course increasing minimum wages makes possible non-compliance a more serious issue. Therefore the regulations also include measures to deal with this aspect, notably by significantly increasing the penalties, which I will come back to. We will also be launching a publicity campaign to run until 24 April to ensure that everyone, employer and employee alike, is aware of their rights and their responsibilities. We estimate that this will cost up to £4.8 million.

These changes require a certain amount of administrative tidying-up. In particular, the Government are undertaking a review to assess the case for aligning the national minimum wage cycle with that for the national living wage and with the tax year. As part of this review we are consulting key employer and worker representatives as well as working closely with the Low Pay Commission, whose good work I remember so well from my time as a private employer. For completeness I should add that a number of measures have been adopted to help employers to adapt to the changed situation, notably via cuts in national insurance contributions and in corporation tax, and by increasing small business rate relief for a further year. That is the background and the contents of the regulations in a nutshell.

I now turn to possible problems which may be of concern to the Benches opposite. Their Motion refers to the 19th report of the Secondary Legislation Scrutiny Committee. That report drew attention to risk of non-compliance to which the Government themselves had drawn attention in our impact assessment. The committee stressed that the Government should continue to acquire and publish information on non-compliance. The Government accept this principle, and the information will continue to be provided through the Low Pay Commission, which publishes a hefty report alongside its annual recommendations to government.

The wider background is that companies might react to the increase in minimum wages in a number of ways, including by a reduction in profits, by a reduction in the number of hours worked, by a restructuring of their workforce, by an increase in prices or by increasing the productivity of their workers. Of course, theoretically, non-compliance would be another response, but we are taking steps to deal with that. We calculate that by 2020, if the policies I have outlined are followed, then the number of workers on the national minimum wage and living wage will almost double from 1.5 million now to around 3 million. So of course effective enforcement is key.

Here we have done much and propose to do more. Since March 2014, both the penalty calculation and the cap have been increased. The rules on naming and shaming have been relaxed, so more employers are named publicly. We have significantly increased HMRC's enforcement budget—from £8.3 million in 2009-10 to £13.2 million this year—with commitments from the Prime Minister in September to further increases. All this has resulted in greater enforcement activity and tougher sanctions for those who break the law. Already this year, HMRC has recovered over £8 million in arrears for 46,000 workers—this compares to £3.3 million in arrears and 26,000 workers in the previous year.

Your Lordships will recall that this Government have recently increased the maximum penalty an employer can face when they break the law. We quadrupled the £5,000 cap to £20,000 in March 2014—the noble Lord, Lord Stevenson, will remember some of the discussion—and applied the cap on a per worker basis rather than per employer in May 2015. We are starting to see those larger penalties come through. In the next month, we will name a single employer who faced a penalty in excess of £500,000. Under the old regime, that penalty would have been capped at £5,000. As a result of these regulations, a penalty for any similar underpayments in the future would be greater still.

Increasing the calculation of the penalty from 100% of the arrears owed by an employer to 200%, as proposed in these regulations, will further deter employers who would otherwise be tempted to underpay their workers. We are using the power of advertising to ram this home. The Government want everyone to benefit from the economic recovery. That is why we believe that the national living wage is the appropriate step up for hard-working people right across the United Kingdom. I commend these regulations to the House.

3.15 pm

Amendment to the Motion

Moved by ***Lord Stevenson of Balmacara***

At the end insert "but that this House regrets that the draft regulations may not deliver the expected benefits to employees, in the light of the 19th Report of the Secondary Legislation Scrutiny Committee, which pointed out that the Government accept that business reactions to the resulting increased labour costs are uncertain, and in the light of the continuing need for greater information on actions being taken to reduce non-compliance with the National Minimum Wage so that Parliament can judge the success of new measures".

Lord Stevenson of Balmacara (Lab): My Lords, I thank the Minister for introducing this statutory instrument. I also congratulate her on her brilliant sense of timing. She has clearly been having acting lessons—to be able to pause so gracefully to allow those who do not want to hear her to leave is a masterpiece in timing from which we could all learn.

In its 19th report of the current Session, the Secondary Legislation Scrutiny Committee chaired by the noble Lord, Lord Trefgarne, drew these draft regulations to the special attention of the House on the grounds that they give rise to issues of public policy likely to be of interest to the House. We owe a considerable debt to this hard-working committee, which has once again done your Lordships' House a great favour in helping us hold the Government to account by drawing this SI to our attention. Therefore, the Minister should not be surprised at the Motion. She should look to the wider context within which this is placed because we are not against the principle, but we think the committee has made some important points.

Statutory instruments have a major impact on people's lives so it is right that they are given proper scrutiny in Parliament. As a responsible and loyal Opposition, we take pride in doing this and intend to continue to do so. However, as was made clear by my noble friend Lady Smith in the debate in your Lordships' House last week, it is important that the Government also act responsibly and do not abuse the trust we should place in this process by trying to slip through substantial and far-reaching changes. Just because the power exists in primary legislation is a necessary but not always sufficient reason. When she responds to this amendment, will the noble Baroness share with us whether the question of using primary legislation for this important measure was considered?

The SLSC's report says:

"It will fall to employers to meet the cost of the increases in employees' pay. BIS puts the estimated total cost of the NLW's introduction at £1,138.7 million in 2016–17".

The report goes on:

"BIS says that business reactions to increased labour costs can include reducing profits, reducing the number of hours worked, restructuring their workforce, increasing prices, increasing the productivity of their workers, or substituting younger workers aged less than 25".

As the report highlights, this response raises a number of questions about what work has been done by BIS on whether the benefits of the national living wage to low-paid workers could be offset by any or all of these business reactions. The department's response—I think this was the reason that the committee picked up this point—was that there were too many uncertainties for a reliable estimate of the cost to be given. The SLSC is surely right to highlight this as a major deficiency in a policy. When she responds, will the Minister give us a bit more detail about what modelling has been done on likely business responses?

I accept, as has the Regulatory Policy Committee, that it is difficult to monetise these options but even so it surely would not be difficult to give a broad-brush assessment of what the department thinks is likely to happen on the ground. A significant trend towards any or all of these options will materially affect the benefits anticipated and if we accept the ripple effect described in the impact assessment it will flow to some 6 million hard-working but low-paid people.

Secondly, the SLSC report points out, as the Minister said, that BIS accepts that non-compliance with the national minimum wage may increase. In the excellent impact assessment—I pay tribute to officials for the work they have done on this—the detail included spells out the measures that are going to be taken by BIS, some of which the Minister mentioned. There are what we might call carrots covering various allowances and tax reductions although it is fair to point out that these will not compensate either in total or in timing for the increased costs being transferred to millions of businesses, particularly those which are small or medium-sized. A very good example of this is the reference on page 29 of the impact assessment which says that, "Funding from the apprentice levy will be put in the hands of employers to support training. This will improve worker productivity". I invite the Minister to set out for me in writing how the additional cost of the apprenticeship levy, which is intended to be borne by larger employers, translates into a compensating financial benefit for the higher labour costs being transferred to the SME sector.

[Lord Stevenson of Balmacara]

In truth, the stick, as described by the Minister, is the proposal to double the financial penalties for companies which do not pay the new national minimum wage. BIS has confirmed that extending the coverage of the statutory wage floor and adding complexity may increase non-compliance. Will the Minister set out, in more detail than she has already, how she will comply with the SLSC's request for the Government to publish more information in future and thus satisfy the wish expressed by the committee that Parliament can properly judge the extent to which compliance with the new rate delivers the expected benefits to employees?

There is a good section in the Explanatory Memorandum on the equalities impact of the new proposals and the duties of the department in this regard. It is demonstrated within the Explanatory Memorandum that low-paid work is most prevalent in some sectors, such as retail, social care, hospitality and cleaning. It also appears to be more prevalent in part-time work, shift work, and among younger and older workers. It affects women more than men, and the largest numbers of people affected live in the north-west, the Midlands and Scotland. Clearly, if the policy works as intended, things should improve in these sectors, areas and groups. It may help to reduce the gender imbalance in pay, and we can hope that a more equal society will gradually emerge.

However, as the SLSC points out, there are real risks that non-compliance will rise and that changes in employment practice will vitiate the policy objectives. The national living wage will have national universal coverage for workers aged 25 and above, and the forthcoming publicity and other measures contained in the SI will help. Does the Minister agree that it may be necessary, and would certainly be desirable, to design additional measures to root out poor practice and illegality in the low-paying sectors listed in Table A3 of Annexe 2, the worst regions identified in Table A4 of Annexe 2 and among the groups identified in Chart A1 of Annexe 1 of the Explanatory Memorandum?

I do not want to suggest or imply that there is not a majority of responsible employers who are always going to abide by minimum wage legislation, but the figures presented in the report which accompanies the regulations are cause for concern and, as I am sure the Minister will agree, more can always be done.

Finally, I challenge the use of the term "national living wage". As I understand it, the reason for the change from the NMW to the NLW is that:

> "The Government believes that the economy needs rebalancing from a low wage, high tax, high welfare society to a higher wage, lower tax, lower welfare society".

The impact assessment goes on to say:

> "The UK can also do more to raise the wages of the low-paid compared to other countries—22% of UK workers are low-paid, compared to the OECD average of 16%".

It explains that the OECD defines low pay as less than two-thirds of median earnings, but the initial introduction of the NLW will put those who receive it at 55% of the current UK median wage. Even if the aspirations for a £9 per hour living wage are achieved by 2020, it is estimated that that will get to only 60% of the UK median wage. In other words, this is more about raising the level of the existing national minimum wage than it is about introducing a genuine living wage. According to the Living Wage Foundation, the current UK living wage is £8.25 an hour and the current London living wage is £9.40 an hour. Will the Minister explain this anomaly? In particular, will she explain why the target for 2020 is only 60% of the median wage and why the Government are not trying to reach the OECD target of 66.7%? I beg to move.

Lord Stoneham of Droxford (LD): My Lords, the Minister should not be surprised that we are having a debate of this nature. On this side, we fully understand the reasons why the noble Lord, Lord Stevenson, has moved his amendment. There is concern that the Government entered into this policy on the hoof. They did very little consultation or preparation for it. There are also signs that there were was not much cross-departmental consultation within government. The measure is designed, we think, to deflect attention from what was at that time the reduction of the tax credit policy. Like the noble Lord, Lord Stevenson, we are very concerned about the looseness of words to describe something that it is not. We have had in the housing area the concept of affordable rents, and indeed affordable housing, when they clearly are not affordable. Now we have the national minimum wage perverted into the national living wage. We welcome the increase but it is a deception to think that we will necessarily be able to reach what is a genuine living wage, as the noble Lord, Lord Stevenson, pointed out.

However, if this is the first step—and I accept that it is—to do more for low-paid employees and reduce subsidies to employers, then of course we welcome it. That initial step is acceptable, but there are a number of conditions. Clearly there was a lack of involvement of the Low Pay Commission in drawing up these original proposals. We accept what the Government have said—in future they will use the Low Pay Commission for advice on further increases, and in bringing together the national minimum wage with the so-called national living wage. But as the Secondary Legislation Scrutiny Committee pointed out, this is a big change: it involves £1.2 billion of costs in the labour market, and 6 million employees are affected. I must declare an interest here as chair of Housing & Care 21, which employs people who will be affected by these changes, although we largely pay well above the national minimum rate. The whole area of social care is particularly vulnerable. I know that the Government have made a number of initiatives on this, but obviously we will want reassurances that public sector contracts are seeking to push pay levels up, rather than contain them. Also, young people are excluded from these changes and no recognition is given to the extra costs of actually living in London. Therefore, the higher living wage should apply there.

We have a number of questions for the Government, some of which the noble Lord, Lord Stevenson, has already put. In what form will the Low Pay Commission's advice be sought when it comes ahead of the Budget next year in setting the rates for 2017? What encouragement will be given by the Government to raise productivity, particularly in low-paid sectors?

At the end of the day, if we wish to avoid inflation and unemployment, we have to raise productivity in these areas. What extra resources are going to be put into HM Revenue to deal with the extra policing of a much wider group of employees to ensure compliance? As the care cost cap implementation was delayed for five years at the start of this Government, what reassurance can the Government give that they will not delay that further, given the costs that will obviously be implied by these changes in the cost of social care? Finally, do the Government have any ambition to extend to those under 25 years of age the whole concept of the national living wage?

We cannot vote for this amendment to the Motion, because we set the direction of policy, but we do expect assurances from the Government for the ongoing investigation, particularly regarding the work of the Low Pay Commission. This measure generally supports our own policy of raising tax allowances and making sure that those at the low end of the pay market are paid a living wage.

The Earl of Listowel (CB): My Lords, I am grateful for this opportunity to debate this very important area of government policy, and I would like to ask the Minister about the impact on early years provision. As we all know, high-quality early years provision is vital to improve social mobility and to help many more families into employment. In principle, this policy should increase the pay to those working in early years settings, which are, notoriously, very poorly paid, so in principle this is very welcome. The Government have recently doubled the amount of free hours for families using childcare for two and three year-olds, so that puts a big burden on providers, and the new national living wage will exacerbate that. If the Minister could provide some reassurance about the impact of the national living wage on early years providers, I would be grateful.

3.30 pm

Baroness Neville-Rolfe: My Lords, I thank the noble Lord, Lord Stevenson, for his comments. I endorse his comments about the great work done by the Secondary Legislation Scrutiny Committee; year in, year out, it does us a great service. I thank him for his kind words about the impact assessment and I shall pass them on.

I sympathise with noble Lords opposite, who were clearly wrong-footed by the most recent Budget, especially the living wage aspect, but then disappointment is part of political life. The strength of the economy means that we can afford to take this important step towards a higher-wage, lower-tax and lower-welfare society. The measures support the Government's commitment to deliver fairness on pay for working people while being sensitive to the needs of business. By 2020, the national living wage will benefit 2.75 million low-wage workers directly, with up to 6 million in total expected to see their wages rise as a result of the ripple effects further up the distribution chain. I think that this is good news, and the House seems to recognise that.

The noble Lord, Lord Stevenson, asked whether we had considered the use of primary legislation. Of course we considered all legislative options, but the powers are available to do this through secondary legislation and it will ensure that workers get their pay rise much more quickly. That is the reason why we have adopted this approach. I also took note of some of his questions on apprenticeships. I will need to have a look at *Hansard*, and perhaps he and I can have a word at one of our many meetings on other matters.

The rationale for 60% is that the 2014 Resolution Foundation review of the national minimum wage, *More Than a Minimum*—chaired by the excellent Professor Sir George Bain, who, as some will remember, was the founding chair of the LPC—recommended a national minimum wage at 60% of median earnings as "a reasonable lodestar"—a great word. The report's expert panel also included Professor Alan Manning, Professor Paul Gregg and Professor Karen Mumford.

I accept that there was no consultation on setting the original rate at £7.20. The background work existed, and of course this was a Budget measure and its announcement was treated as such. I am afraid that that is the nature of Budget measures, but I hope that I have already given some reassurance in my opening remarks on the process in future in relation to consultation. Future national living wage rates will be recommended by the independent Low Pay Commission, which will continue to provide the invaluable advice that it has been giving for many years, firmly grounded in evidence and with public consultation. It seems right that it should have a pivotal role in this.

The noble Lord asked about the double impact of the national living wage and the apprenticeship levy. This will of course mean extra costs for some businesses, but it is right that workers are fairly rewarded for the work that they do. The economy is growing and profits and wages are rising, and we have given businesses some help, as I said in my opening remarks. The apprenticeship levy is equally necessary. It will support the development of a higher-skilled, more productive workforce, supporting greater economic growth in future and the creation of new jobs right across the UK. Employers will of course be able to get back the levy for the training that they are doing.

The noble Lord, Lord Stoneham, asked about how the LPC will seek advice when it is uprating the national minimum wage. It will continue to adopt the sort of process that we have seen operating successfully under the coalition: it will make recommendations to the Government by the end of October 2016, setting out its ideas for rates for the new national minimum wage from April 2017 and looking at indicative rates from April 2018.

Productivity growth is one of the key economic challenges for this Parliament and a route to raising living standards for everyone in the UK in a long-term, sustainable way. Our ambitious plan for this is set out in *Fixing the Foundations* and includes the introduction of the national living wage. There is a fair amount of research that shows that increasing wages to the national living wage should result in an increase in productivity in many areas, as people use labour more carefully and capital more efficiently.

As the noble Lords, Lord Stoneham and Lord Stevenson, mentioned, some parts of the economy—for example, the social care sector and retail—will be impacted more than others when the living wage is

[Baroness Neville-Rolfe]
introduced. I reassure noble Lords that this Government recognise the particular position of these sectors. In response we are, for example, giving local authorities access to up to £3.5 billion in new support for social care by 2019-20. Equally important will be enforcement in these sectors. I have already outlined some of the changes that we are making, such as the extra funding and work on bringing the new rights to the attention of workers, and HMRC is taking action against those employers who break the law and underpay their staff. It currently has 155 investigations open with social care employers. These include acting on complaints and extensive targeted enforcement. I know from having worked in business that HMRC is also very keen to make sure that the national minimum wage—and in future the national living wage—is paid in low-paid service sectors.

The noble Lord, Lord Stoneham, and the noble Earl, Lord Listowel, asked about early years provision and employing under-25s. It is for the Low Pay Commission to use its consultations and expert judgment to advise on appropriate rates for under 25 year-olds and those aged 25 and over. As with all of its recommendations, should it recommend a change to the differential in the national minimum wage or living wage rates, the Government will want to understand why it thought this was appropriate to ensure that the minimum rates of pay continue to support low-paid working people as well as the economy. The substitution effect will depend on future LPC recommendations. Of course, the underlying reason for the difference between the national living wage and that for under 25 year-olds is that we are extremely keen to ensure that early years provision is employed provision—we really want to make sure that we do not hit employers and that we encourage people to give jobs to the youngsters.

I hope that the comments I made in my introduction and the points that I have been able to make in summing up will go some way to reassuring noble Lords who have put down this regret Motion both in respect of our plans and in respect of stronger enforcement. In the light of that, I recommend these regulations to the House.

Lord Stevenson of Balmacara: My Lords, I am very grateful to the noble Lord, Lord Stoneham, and the noble Earl, Lord Listowel, for contributing to this debate. They raised additional questions that were helpful and useful. I hope that further information will be forthcoming from the department into some of the details the Minister was not able to get to in her response.

The Minister ended by saying that she hoped that noble Lords—there is only one—who put down this regret Motion could see their way to providing some measure of agreement that this regulation is a good thing. Of course, we cannot be against additional pay for the lowest paid and we support the Minister on that. However, I sense a slight poverty of ambition behind the regulations and that is why I wanted to put forward a regret Motion for those of us who feel that this is a step in the right direction but only a very small step. It would have been good if we could have got from the Government more of a sense of an understanding of the need for pay to go up, for sticky areas in the economy to be addressed very vigorously and for the regulations to deal with those who wish to severely underpay—I think that some do go down that route—as well as, to pick up a point that the Minister made in her opening and closing remarks, an understanding that this is not just a right/left issue.

Many commentators—of which the Resolution Foundation, a non-partisan group, is a very good example—absolutely believe that the basis on which we will see recovery in this country is a real commitment to a proper high-wage and well-rewarded economy, in which people are paid for the work they do in growing the economy and making exports and everything else return to a level that we have seen in the past. I do not think that the regulations, as described, get us all the way there. They are a step in the right direction, but I think that this is something that we may wish to return to.

The reason for putting down the amendment—although not the timing, which was in the hands of the Government and not in our hands—was to get these debates up and running, and we have achieved that. With that, I beg leave to withdraw the amendment.

Amendment to the Motion withdrawn.

Motion agreed.

Immigration Bill

Committee (1st Day)

3.40 pm

Relevant documents: 7th Report from the Constitution Committee, 17th and 18th Reports from the Delegated Powers Committee

Clause 1: Director of Labour Market Enforcement

Amendment 1

Moved by ***Baroness Hamwee***

1: Clause 1, page 1, line 5, after "State" insert "for the Home Department"

Baroness Hamwee (LD): My Lords, I also have Amendments 2, 3, 6 and 13 in this group. My noble friend Lord Greaves commented the other day that it has become something of a custom—not as much as a convention—for the early speeches on amendments in Committee to turn into something like Second Reading speeches. I do not intend to make a Second Reading speech, and the comments with which I shall preface my remarks on Amendment 1 could not have been made at Second Reading.

I do not suppose that having to deal with 112 amendments at such a late stage was easy for the Minister or for officials. Indeed, I suspect that the officials who have had to deal in very short order with what is in effect a new Bill as regards the provisions for labour market enforcement have had a particularly difficult time, so I am sympathetic to all of them. However, others of us who have been involved in the Bill have not found it easy and, in particular, those outside this House who are involved in the

sector and whose comments are always so valuable to us have had a really hard time. Frankly, this is no way to legislate.

A member of the Public Bill Committee in the Commons commented on how good the process had been, although he did say, "Pity about the content of the Bill". The Minister has also commented on the evidence sessions in the Commons, saying that more detailed scrutiny was undertaken than is often the case. However, these new clauses dealing with the role and remit of the GLA affect the structural arrangements and the relationships of actors in the sector. They also introduce new measures and more, and I cannot see that anyone could describe this as best practice.

I apologise to the Committee for the late tabling of amendments to the government amendments—I tabled a number on Friday—but I wanted to look at them, with my own responses to them, at this stage rather than repeat the process on Report, as might have happened had I left it until then. As I said, how can the NGOs and others respond, presented with amendments in effect less than a week ago? It is not just their problem; it is ours as well, because we cannot do our job well if we are in a vacuum. I am sure the Minister will say that the consultation on the labour market sector, which closed in December, trailed the proposals, but it did not; not in the way in which we now see them. We are making law and therefore we have got to make it right, not just have a general narrative discourse on the arrangements.

3.45 pm

Part 1 of the Bill, on the labour market, has no place in immigration legislation. The issues do not apply universally to immigrants and, conversely, are very relevant to many people who are not immigrants. Even without the new version, as I will call it, the Bill would be difficult enough. The Constitution Committee of your Lordships' House has commented scathingly that immigration law stands out as a particularly byzantine field, saying that the Bill's complexity is exacerbated by much of it amending existing, already highly complex pieces of immigration legislation which are subject to frequent changes. It comes in the wake—although the wake has not subsided, of course, but we will come to that later—of the 2014 Bill, which itself is substantial and complicated. The Constitution Committee expresses its,

"real concern from a rule of law perspective",

describing immigration law as inaccessible and not fit for purpose—whinge over.

Amendments 1 and 2 seek an understanding of how the new regime will sit within government. I appreciate that it is quite usual to refer to a Secretary of State without designating a department, for obvious reasons. However, this situation is unusual, which is why I have referred to the Secretary of State "for the Home Department". That is the sponsoring department for the Gangmasters Licensing Authority, but the consultation to which I have referred was a joint consultation involving the Home Office, which focuses on protection and enforcement, and BIS, which focuses, among other things, on deregulation. Of course, the Treasury is also involved, and the debate in the Commons suggested that the director will report to the Home Office.

I had better pre-empt any teasing about my criticising joined-up government. I am not doing so. I have argued often enough for that myself, so I do not want to complain about cross-departmental working. However, if the powers are to be exercised jointly, it is important to have an on-the-record explanation of how that is going to operate.

Amendments 3, 6 and 13 would put the involvement of the devolved Administrations on the face of the Bill. I had a look back at the Modern Slavery Bill, which seems to deal with this issue in the way that I have dealt with it in these amendments. I have picked up that progress has been made on this, and I hope it has. It hit my consciousness only last week during a visit to the Scottish Parliament. Although the Governments continue, the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly will go into purdah in about nine weeks' time because of their elections. This adds another dimension to our consideration of the Bill, because clearly these things need to be sorted out quickly, and not just in respect of this clause. I beg to move.

Lord Alton of Liverpool (CB): My Lords, I support the amendments that the noble Baroness, Lady Hamwee, has laid before the Committee of your Lordships' House this afternoon. In particular, I support her remarks about Scotland and the need for proper and adequate consultation. She is right to say all those things.

The noble Baroness referred to the Gangmasters Licensing Authority, an issue to which we will return in the later group of amendments dealing with government amendment 39 and those connected to it. However, it is linked in some ways with these amendments. I will not pre-empt remarks on the amendment by addressing it in detail, other than to note that, as the noble Baroness said, 112 government amendments have been tabled. There has been no pre-scrutiny of this legislation by both Houses, and these amendments have been introduced for the first time here in Committee, which is asking an awful lot in terms of producing good quality legislation. I know that this is not the Minister's fault, but I raised that issue with him in the excellent meeting that he organised for all Peers. To make legislation on the hoof is always a mistake.

I am not alone in thinking that. The Immigration Law Practitioners' Association has written to us to say:

"The volume of these amendments, the late stage of their introduction and the time available means that both ourselves and the House will be limited in our ability to provide the scrutiny that this detailed legislation requires".

That was a point made by the noble Baroness, Lady Hamwee, a few moments ago. We simply cannot do our job properly when we are stampeded into having to make decisions on major questions of this kind with so many amendments being placed before us at once. The ILPA also says:

"We note that new clauses introduced by the Government contain a range of new delegated legislation which will not have

[LORD ALTON OF LIVERPOOL]
been subject to scrutiny by the Delegated Powers and Regulatory Reform Committee which reported earlier on the Immigration Bill".

That issue will surface again when we come to the question of the Gangmasters Licensing Authority.

I do not want to be churlish, either, because the legislation that we considered last year—also introduced by the noble Lord, Lord Bates—was classic and admirable of its kind, and benefited from having been scrutinised by both Houses. It was showpiece, showcase legislation and the Government should be justifiably proud of having introduced it—as should Parliament for having enacted it. The danger in some of these amendments, and we will come to this in due course, is that they may undermine some of the excellent legislation that we enacted last year. I hope that when the Minister replies, he will therefore address the concerns raised by the noble Baroness and the Immigration Law Practitioners' Association. The noble Baroness did not describe this as hybridity, but effectively inserting an entirely new Bill inside an existing Bill at this late stage in parliamentary proceedings amounts to that. I hope her amendment will be taken in the spirit in which it has been offered, and that the Minister will address all those points.

Lord Ramsbotham (CB): My Lords, I endorse what the noble Lord, Lord Alton, has just said. This is not the first time during the passage of this Bill that a vast number of government amendments have been inserted. The same thing happened in the other place immediately before Report, and the same complaints were made that none of the amendments had been scrutinised properly. Indeed, there was no time to do so before the other place had to vote on amendments in Committee that they had not had time to scrutinise. Remembering my own time in the Ministry of Defence, if I were faced as a civil servant with such a huge and complex piece of legislation, with additional complexities, I would have complained to the Secretary of State and to the Permanent Under-Secretary that legislation was being made so complex that it was simply undeliverable.

We have to realise that the immigration system in this country is currently under stress. There are said to be some 600,000 unrecorded migrants in the country now and we will face not just a flood of people coming here from the Middle East but an additional flood of people from places such as Africa thanks to climate change. Therefore, we should be simplifying our legislation so that it can cope with pressure rather than complicating it in this way.

Baroness Afshar (CB): My Lords, I speak in support of the views expressed. If eminent Members of the House who are familiar with these matters are finding this legislation difficult, what can immigrants do with it? They are not British and many of them are possibly already here. These changing laws will be whirling around their heads just as they arrive. It makes it impossible for them to abide by the law when even this House cannot understand what the law is. Is it not possible to have something simple and clear that immigrants can abide by?

Lord Kennedy of Southwark (Lab): My Lords, I shall start my remarks by associating myself with the introductory remarks of the noble Baroness, Lady Hamwee, who talked about the unsatisfactory way the Government have handled the Bill so far. I also agree that the first part of the Bill, which concerns the Director of Labour Market Enforcement, has no place in this legislation and is a separate matter. The lack of pre-legislative scrutiny was referred to by the noble Lord, Lord Alton—whose remarks, again, I very much agreed with. This is no way to legislate. It reflects poorly on the process and risks undermining other legislation such as the Modern Slavery Act 2015.

When the noble Lord, Lord Bates, responds to the debate, I think that he owes it to the Committee to give a proper explanation of why we are in this situation. Let us be clear. The Government are in charge of the Bill and of the timetable, and their legislation should be dealt with much better than this. As I say, I hope that he will give a full explanation to the Committee when he responds.

This first group of amendments seeks in the main to improve what is presented here by putting into the Bill clarifications and duties to consult. The noble Lord, Lord Bates, may be suggesting something similar shortly, but that has not necessarily been implied. I am generally supportive of what is being proposed in the amendments tabled by the noble Baroness, Lady Hamwee, and the noble Lord, Lord Paddick, while Amendment 11 has been proposed by myself and my noble friend Lord Rosser. I will deal with Amendment 11 first. We are seeking to put a clear duty on the Director of Labour Market Enforcement to consult with civil society and voluntary organisations in the preparation of the annual report that he will have a duty to present to the Secretary of State each year. If a proper report is to be prepared for the Secretary of State, information will need to be gathered and assessed, and it is often voluntary organisations and civil society that will acquire the information that will be vital to the production of a report of substance to ensure that the duties of the director remain relevant and can identify the modifications which are necessary to achieve that.

As has been said, the amendments in the names of the noble Baroness, Lady Hamwee, and the noble Lord, Lord Paddick, clarify that it must be the Home Secretary who appoints the Director of Labour Market Enforcement, and that the Business Secretary and relevant Scottish and other departmental Ministers must also be consulted. They also place a duty on the Director of Labour Market Enforcement to consult with Ministers in the devolved institutions and various officials exercising powers under labour market legislation on the preparation of a labour market enforcement strategy that will be submitted to the Home Secretary. Again, if in his response the noble Lord, Lord Bates, is going to suggest that this is not necessary, can he please tell the Committee how the Secretary of State will ensure that the report they receive is both timely and relevant to the matters in hand, and give us some direction as to how they should be consulted?

The Earl of Sandwich (CB): My Lords, I was waiting for the noble Lord to mention his Amendment 11 before saying that I am delighted to see it here.

The Government will recognise the role in the Modern Slavery Act of the coalition of NGOs which really helped to put the Bill together. It should be emphasised that we want to see the same thing again with the director in this case. I hope that that will borne in mind throughout the consideration of these amendments.

Lord Harries of Pentregarth (CB): I also rise very briefly to support Amendment 11 in the names of the noble Lords, Lord Rosser and Lord Kennedy of Southwark, for the simple and obvious reason that voluntary organisations are the key players in this. They are the eyes and ears of what is going on, and if they are not consulted, the Government are simply not going to be in a position to understand the realities of the situation.

4 pm

The Minister of State, Home Office (Lord Bates) (Con): I begin, as I have been invited to, by apologising to the Committee for the late tabling of these amendments, but let me try to explain that a little further. We were faced with a particular challenge. Noble Lords will recall that we had the Second Reading on 22 December, and one issue raised at that point was that the scheduled date for the first day in Committee was 13 January. In the light of the likely publication of our response to the consultation, we agreed to see whether the start date could be put back—which it was until today, 18 January.

We were then faced with a challenge regarding the publication of the report, referred to by the noble Baroness, Lady Hamwee, in response to the consultation document on tackling exploitation in the labour market. We said that we would have a period of consultation, which ran from September through to December, and that we would legislate on the back of that consultation, which seems to me to be general good practice. The question was then: at what stage should the amendments be introduced? There was a little debate—I am looking at the Box, but it is probably best that I do not—as to whether they should be introduced on Report, or in Committee. My noble friends Lord Ashton, Lord Keen and I took the view that if they were introduced for the Committee stage, at least they could receive a thorough airing, which could be reflected on before Report.

There is a large number of amendments. We had a meeting with all interested Peers and again, we tried to listen carefully to the points that were being raised. One was that because the amendments were tabled, it was not easy for an opposition spokesman or any Member of the House, let alone the Minister responding, immediately to correlate the amendment to the specific recommendation. A suggestion was made that we should produce a schedule, which was done within 24 hours of that meeting. That then went out to noble Lords who had attended the meeting, through the usual channels to the official party groupings and to Cross-Benchers, of course.

I am trying to explain some of the thought process. It was not intended to be discourteous to your Lordships' House but sought to be helpful. The other point is on the nature of these amendments. I think that 59 relate to the consultation document. There is also a vast swathe—I did not manage to calculate the number—linked to the licensing of private hire taxi companies. We shall be coming to that issue in later groups. I did not realise that it seems as if every locality in the entire country has its own regulation for private hire taxi companies, so one amendment cannot apply across the entire country but needs to amend legislation pertaining to a particular area. That deals with the large tranche of the amendments.

I add to the previous debate on the minimum wage regulations my appreciation and that of the whole House to the Delegated Powers and Regulatory Reform Committee for its incredibly speedy work, even if it did introduce a bit of a riposte by stating that,

"the Government tabled a substantial number of amendments—54 pages' worth!".

I think that is the first time I have seen an exclamation mark in one of its reports. The point was made eloquently by symbol on the committee's feelings on that. I offer my apologies, and hope that this is by some way of explanation. I also express our appreciation to the Select Committee on the Constitution for its very helpful report, which I know we will be coming to in later stages.

With that attempt at setting out the position, which I know is not ideal, I now turn to the amendments before us. The noble Baroness has rightly noted that the Director of Labour Market Enforcement's remit covers the work of enforcement bodies that sit under two departments: the Gangmasters Licensing Authority reports to the Home Secretary while the Secretary of State for Business, Innovation and Skills is responsible for the work of the Employment Agency Standards Inspectorate and the HMRC's national minimum wage team.

The Government have been clear in the consultation that we published and our response to it, as well as in assurances made by my right honourable friend James Brokenshire in Committee in another place, that the director will be a joint appointment by the Home Secretary and the Secretary of State for Business, Innovation and Skills. They will jointly appoint the director and receive the strategy. The noble Baroness may have concerns about how the two Secretaries of State will reach agreement, but I reassure her that preventing abuse of labour market laws is a priority for both departments. Subject to parliamentary approval of the role, they will both be looking to appoint a director with the necessary skills and experience to make a difference.

The requirement to consult Scottish and Northern Irish Ministers in Amendment 3 brings me to the territorial extent of this role. Employment law is broadly reserved as the UK operating as a single labour market brings great benefits to workers and employers. Therefore, the director's remit will be UK-wide. However, there are parts of the remit where the policy is not reserved. To deal with this, we are legislating to ensure that the director can set the strategy to enforce labour market legislation only to the extent that it already applies and is reserved. That is: the whole of the UK in respect of the national minimum wage; Great Britain for the Employment Agencies Act 1973 and the Gangmasters

[LORD BATES]
(Licensing) Act 2004; and England and Wales in respect of the Modern Slavery Act 2015. Therefore, there will be no need for Ministers formally to consult Scottish Ministers or the Department of Justice in Northern Ireland.

However, to allow the strategy to be successful, the legislation requires it to be evidence-based and include the director's assessment of the scale and nature of non-compliance in the labour market. To do this, the director will draw on the widest possible range of sources. This will include the intelligence hub provided for in Clause 6, but will inevitably include engaging non-governmental organisations, as the noble Lord, Lord Kennedy, requested, bodies representing employers, bodies representing workers and other organisations to develop the fullest possible picture. These will include charities, the enforcement bodies themselves, and other organisations such as the police.

Amendments 6 and 13 would require the Director of Labour Market Enforcement to engage certain people in the development of the labour market enforcement strategy, while Amendment 11 would require the Director of Labour Market Enforcement to engage with civil society and voluntary organisations in the development of the labour market enforcement strategy. It is not yet clear how the director would be able to discharge the legal requirement to,

"engage with civil society and voluntary organisations",

which is not defined. I fear that putting this duty on the director would be unhelpful as it does not specify the full range of organisations that the Government expect would need to be consulted as part of that provision. These include non-governmental organisations, bodies representing employers, bodies representing workers and other organisations not specified in the amendment. Therefore, my opposition to it rests on it being unnecessary, while risking unhelpfully to narrow the director's focus.

Amendments 12 and 14 appear to limit the director's proposed role by not permitting his strategy to alter the strategies set out by any of the other enforcement bodies, or binding the enforcement bodies to delivering the director's strategy. The director's strategy is not intended to undermine the strategies of the enforcement bodies, or to take precedence. Rather, we expect those strategies to be informed by the director's strategy as they deliver their contribution to tackling labour market exploitation.

On the GLA, the GLA board will continue to be responsible for the delivery of the GLA's functions. What will change is that the delivery of those functions will sit within a wider vision of tackling labour market exploitation. While I will address this in due course, the Government's amendments will add the functions of the GLA board to the list of labour market enforcement functions as specified. Furthermore, the GLA board will have a duty to exercise its functions in accordance with the director's strategy. We believe that this will ensure that the enforcement bodies and the director work together more effectively.

The final amendment in this group, Amendment 38, brings me to the intelligence hub. Clause 6 as drafted gives the new director the duty to lead an intelligence hub that forms a coherent view of the nature and extent of exploitation and non-compliance in the labour market.

Baroness Hamwee: I think the Minister may have turned over two pages and gone on to the next group.

Lord Bates: Well, I have to say in that respect, I have not turned over two pages, but I may well be on to the next group. If so, and with that helpful prompt from the ever-helpful Baroness, I give way.

Lord Kennedy of Southwark: I thank the Minister for his helpful explanations of his remarks. Will he confirm that, because of the situation we find ourselves in with these amendments coming at such a late stage—civil society will want to look at them again—there will be plenty of time outside the Chamber for noble Lords and campaigners to meet the Minister to discuss these things in more detail?

Lord Bates: I can certainly say that. That is a very helpful intervention on a number of levels. I know that officials found our meetings last week and before Christmas very helpful. I think that that will continue to strengthen the work of the Committee. With that, I will pause my remarks and hope that the noble Baroness will feel able to withdraw her amendment at this stage.

Baroness Hamwee: My Lords, I certainly will. It would not be profitable to continue the discussion now about the tabling of these quite considerable changes. I. too, am grateful to the officials who have been very helpful in the most difficult circumstances.

It is extraordinary to me how many people outside this House read the report of our proceedings in very considerable detail, particularly those who have an interest in the subject matter. For them, I will say that I checked with the Public Bill Office this morning and it was confirmed to me that, provided we do not divide but merely agree the government amendments, there are no bars to our tabling amendments to what will then be part of the Bill on Report. I apologise to the Minister and officials if that prompts a flood of further amendments—but so be it.

My only other point, with regard to the Minister's remarks on taxis, is to offer him a piece of advice. He should never tell a taxi driver that he is a Minister in the Government—or indeed a Member of this House—because he will not get out of the taxi without a most difficult conversation.

On Amendment 11, I understand the technical points that the Minister makes, but the third sector is hugely important. As has been said, it is the linchpin of the way in which our immigration service—if that is the right word—deals with asylum seekers and some other immigrants. It is absolutely central. It should not need saying that there will be the contact with the voluntary sector and other organisations that has been spelled out. I think that it says a lot that it was felt necessary to put that down.

With regard to my amendments and which departments do what and how they work together, we are told that the legislation is a priority for both departments, but I

would say that each department has its own distinctive and different priorities. That is where I see problems, perhaps, coming. I beg leave to withdraw Amendment 1.

Amendment 1 withdrawn.

Amendments 2 and 3 not moved.

Amendment 4

Moved by ***Lord Rosser***

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

"( ) The primary purpose of the Director is to secure the enforcement of labour market legislation, as defined in section 3(3) of this Act."

Lord Rosser (Lab): Before I start, may I say that I certainly do not wish to comment adversely if the Minister got a little confused as to where he was in his notes, if only because I am pretty confident that that is going to happen to me on probably more than one occasion through the passage of the Bill. It is nice to know that I am already in good company.

As we pointed out at Second Reading, the Explanatory Notes to the Bill say:

"The purpose of the Bill is to tackle illegal immigration by making it harder to live and work illegally in the UK … The intention behind the Bill is that without access to work, illegal migrants will depart voluntarily, but where they do not, the Bill contains other measures to support enforced removals".

Those two sentences are not tucked away at the back of the Explanatory Notes, almost as an afterthought, but are in the second of two short paragraphs at the very beginning of the Notes that constitute the first section, "Overview of the Bill".

4.15 pm

Since the clauses dealing with the new post of Director of Labour Market Enforcement, which we are discussing, are the first seven clauses of the Bill, it is not unreasonable to ask the Government what the role of the Director of Labour Market Enforcement will be in delivering the purpose of the Bill in making it harder to live and work illegally in the UK, in increasing the number of migrants who will depart voluntarily and, if they do not, in supporting enforced removals.

In his welcome and helpful letter of 8 January 2016, responding to points raised at Second Reading, the Minister said, on behalf of the Government, that the new director's role did not cover immigration control, that nowhere in the Bill was he or she given the purpose or power to do that, and that, if they did, they would be acting outside their statutory powers. That clarifies the issue in relation to immigration control, although it begs the question of what activities or roles the Government do or do not regard as being covered by the words "immigration control" and therefore outside the statutory powers of the Director of Labour Market Enforcement.

I appreciate that the Director of Labour Market Enforcement will not have staff at points of entry to the UK making decisions on who can and cannot be allowed to enter, and will not determine asylum claims or applications for extended leave. But that does not mean that the director and his organisation can play no part in what many might regard as part of the immigration control process. As has already been said, the new post is, after all, being introduced in an Immigration Bill and a Home Office Bill. The director must surely have some part to play in the immigration enforcement system because, if he or she does not, how will they contribute to the declared purpose of the Bill as set out in the Explanatory Notes, to which I have already referred?

The purpose of our Amendment 4 is to seek to ensure that the functions of the Director of Labour Market Enforcement are exercised primarily for the purpose of protecting those vulnerable to labour market exploitation, and to make that clear on the face of the Bill. The Government's argument against doing this appears to be that Clause 3 defines the director's role by reference to the legislation and enforcement functions that will be within the remit of the post, including the three enforcement bodies for which the director will set the strategy: namely, the Employment Agency Standards Inspectorate, HMRC's national minimum wage team and the Gangmasters Licensing Authority.

That, of course, is correct but it is also a problem since the Bill, in particular Clause 3, sets out a range of functions but does not set out what the primary function should be, which, for a Director of Labour Market Enforcement, one would have thought would be the protection of those vulnerable to labour market exploitation through the enforcement of labour market legislation, with the primary role of this post being a protective one.

In the other place, the Minister said that the purpose of the Director of Labour Market Enforcement was to tackle labour market exploitation across the field. But he was not prepared, for reasons that are not clear, to say that that was the primary purpose of the director, and to put that in the Bill, in line with our amendment. The need to make it clear in the Bill that the primary purpose of the director is to secure the enforcement of labour market legislation and tackle labour market exploitation was further highlighted by the observation of the Minister in the other place that while the role of the new director,

"was not intended to stray into the separate issues of immigration enforcement",

if he or she came across people who were here illegally,

"the director would be duty-bound to report that and to pass on intelligence".—[*Official Report*, Commons, Immigration Bill Committee, 27/10/15; col. 166.]

It is quite likely, one would have thought, that the director could on this basis prove to be a not insignificant player in finding people who are here illegally. It is precisely because of this, and the fact that the post is being established on a statutory footing in an Immigration Bill whose declared purpose is to tackle illegal immigration by making it harder to live and work illegally in the UK, that it is so necessary to spell out in the Bill what the primary role of the director is if we are to avoid any misunderstandings or wrong assumptions from those who might come into contact with the director's organisation that the post is also about immigration checks rather than just about labour market enforcement.

There is clear evidence from the Netherlands and the USA of the dangers if there is any confusion over,

[Lord Rosser]
or merging of, the roles of labour inspection and immigration enforcement. Research in the Netherlands shows that dual labour inspection priorities to identify undocumented workers on the one hand and victims of trafficking on the other have negative impacts on the uncovering of trafficking cases, since victims of trafficking are too scared to come forward and the labour inspectors also fail to identify them.

The Anti-Slavery Commissioner has also made the point that many people have fled from countries where confidence in the rule of law and the authorities is low. If they come here and are exploited, they are going to be fearful of going to the authorities because of previous experience. If we are not careful, this could be an unintended consequence of the Bill as it stands, in relation to the Director of Labour Market Enforcement.

Three other amendments in this group relate to the strategy that the Director of Labour Market Enforcement will set out. Amendment 7 would ensure that the labour market enforcement strategy would include an assessment of the threats and obstacles to effective labour market enforcement and the remedies secured by victims of labour rights infringements and labour market offences. The Bill requires the director to make an assessment of non-compliance in the labour market, but there is no requirement to assess the threats or obstacles to effective enforcement which could, of course, include powers and resources, human and financial, which would impact on non-compliance, or a requirement to examine remedies secured by victims of non-compliance in the labour market which, likewise, could also impact on levels of non-compliance. A strategy is not just about making an assessment of non-compliance and its extent. It is also about looking at how enforcement could be done better and at what actions need to be taken, or changes made, to achieve that objective. The Minister will, no doubt, also wish to say something, either now or in a later group of amendments if he finds that more appropriate, about the resources that will be made available to the new director.

The Modern Slavery Act is victim-focused and victims of labour exploitation ought to be a key focus of this Bill. This is why the amendment provides for the enforcement strategy to cover the issue of remedies. Information on compensation for infringement of labour market standards is currently limited. For example, HMRC does not keep data in a format that provides statistics on the amount of arrears paid—or not paid—to working people. Data on civil claims and damages awarded are, likewise, not available. During the financial years 2010-11 to 2012-13, there were no prosecutions by the Gangmasters Licensing Authority resulting in compensation orders for victims of human trafficking, and data on compensation secured through the criminal injuries compensation scheme for such victims are not recorded. With the present dearth of information, how can anyone know whether progress is being made on meeting the needs of victims of exploitation in the labour market if data on remedies are not being collected, as would be required in future under the terms of Amendment 7?

Amendment 35 seeks to ensure that labour market offences committed against all workers are included within the scope of the enforcement work of the Director of Labour Market Enforcement, irrespective of immigration status. That should include all those who may be in the labour market, including undocumented victims of trafficking—hence the wording of the amendment. Finally, Amendment 36 refers to the annual report from the Director of Labour Market Enforcement and is intended to ensure that it links with his or her assessment about non-compliance in the labour market, the remedies secured by victims and the threats and obstacles to effective enforcement. This is not provided for in the Bill, as drafted, and nor is linking the director's strategy with his or her assessment of non-compliance in the labour market. The amendment aims to ensure that the strategy covers everything that it should and that the annual report is tied into the same process.

These amendments were also considered in Committee in the other place. The Minister maintained that Amendment 7 was unnecessary because the Government expected that the director would feed information of the kind called for in the amendment into the planning and reporting cycle, and that this would be covered by the director's labour market enforcement strategy. He then went to say that the director's strategy,

"is about setting out information and issues concerning the work of different bodies and agencies, including some themes of non-compliance".—[*Official Report*, Commons, Immigration Bill Committee, 27/10/15; col. 180.]

That seemed a rather less specific commitment that the director would be assessing the threats and obstacles to effective labour market enforcement, including powers and resources. Why not put this clearly in the Bill?

There is an issue with resources, particularly since the Government intend that while the relevant Secretaries of State will take the new director's proposals on resources into account, the Government will set the overall level of resources devoted to labour market enforcement, and that the director should then recommend how resources should be allocated within the total envelope of funding available to the three enforcement bodies coming under the director, namely the Gangmasters Licensing Authority, the employment standards inspectorate and HMRC's national minimum wage enforcement teams. A number of independent bodies, including the Migration Advisory Committee, have expressed concern that the resources at the moment for the existing agencies are such that the likelihood of any inspection or action being taken is very low and that, as a result, there is not much of a deterrent to most of those who may be involved in abuse in the labour market. One example is that Gangmasters Licensing Authority investigations dropped from 134 in 2011 to 68 in 2014.

Despite a recent increase in the funding for HMRC to enforce the national minimum wage, it still does not match the scale of the task. For example, the TUC estimates that at least 250,000 workers have been underpaid the national minimum wage. The number of front-line enforcement staff at the Gangmasters Licensing Authority has been cut by 25% since 2010-11 and the Employment Agency Standards Inspectorate now has nine inspectors, compared to 20 at its peak.

Millions more workers will come within the remit of the HMRC team when the national living wage is introduced.

The Government are also proposing to create a new authority out of the GLA, which will be responsible for prosecuting a new offence of aggravated labour law breach across the whole economy. The Government will need to commit to increasing significantly the funding available for enforcement work if it is to be effective and act as a deterrent. Without providing the necessary resources, any strategy from the new Director of Labour Market Enforcement will not achieve the objectives set out in the Bill. Accordingly, the issue of any threats or obstacles to effective labour market enforcement is one which the director should be required to address in his labour market enforcement strategy.

On Amendment 35, the Minister in the Commons was less than clear in Committee. He said that the labour enforcement agencies would tackle non-compliance by employment agencies, businesses and gangmasters regardless of whether the affected workers had the right to be or to work in the United Kingdom, and that the Government were committed to tackling serious crimes against individuals whatever their status. However, the Minister then said that the amendment was not attractive because it,

"appears to take us in a direction that would apply new rights to those who are here illegally, whereas there are other mechanisms through the linkages, through the rights that the Gangmasters Licensing Authority will have, and through the consultation. It is about the extension of those aspects through other means".

The Minister in the other place also said:

"The director's role that we have proposed supports our wider strategy on modern slavery, enhancing the response to labour exploitation".—[*Official Report*, Commons, Immigration Bill Committee, 27/10/15; col. 184.]

It would be helpful if the Minister, the noble Lord, Lord Bates, could interpret the seemingly contradictory and complex comments by the Minister in the other place by spelling out what protections, if any, are provided under the Bill to workers irrespective of immigration status, and what role the Director of Labour Market Enforcement will play in respect of labour exploitation and abuse in the workplace of those who do not have the required immigration status to be in this country. I beg to move Amendment 4.

Baroness Hamwee: My Lords, my noble friend Lord Paddick and I have Amendments 5, 8, 10, 25, 28, 32 to 34 and 37 in this group. Our names are also put to Amendments 7 and 36, tabled by the noble Lord, Lord Rosser, like whom I think it is important that the legislation is clear as to the director's purpose. In other words, what is the point of the director? The director's strategy is, in my eyes, a mechanism for implementing his purpose, and unless we spell out the purpose in a succinct fashion then we go straight to the strategy and that does not seem to be logical.

4.30 pm

My Amendment 5 would go further than Amendment 4 by saying that,

"The primary function of the Director shall be the protection of workers from exploitation".

It would not tie their status down to or specify other legislation. I appreciate of course that the director is not going to be able to act unless he is formally able to do so by reference to other legislation, but he should be in a position to see what is going on right across the labour market, so that he can advise on a cross-governmental basis and monitor access to remedies across the labour market. If this approach is attractive it would need other amendments, but at this stage I would simply say that although a single regime is welcome, if the objective is protection from exploitation, the legislation should say so.

I would also ask whether there is a place for a relationship with the Health and Safety Executive and with local authorities, which have duties in enforcing health and safety legislation and the rights of children at work. We also want to make clear, as has been said, that although this is in an Immigration Bill, it is not about immigration enforcement. Employers have duties towards the whole of the workforce, whoever they are, and although immigrants—including legal immigrants who do not understand their rights—may be particularly exploitable, what we must not do, as the noble Lord said, is deter immigrants from seeking help to escape abuse. The Minister in the Commons did agree to continue to reflect on this, and we now have the government extension of functions in the new schedule, but I think, if anything, that might add to the risk of deterrence that the noble Lord and I are concerned about, by associating inspection and immigration.

Our Amendments 25 and 28 would insert a reference to the "protection of workers" in the provisions which allow the Secretary of State to prescribe additional labour market enforcement functions and offences. This is asking for an assurance from the Minister, which I am sure he will find it easy to give, that the provisions are not primarily aimed at immigration enforcement. The question is what enactments or offences are in the Government's contemplation.

Amendments 33 and 34 are also about which workers are protected. Again, time was spent on this in the Commons, but it is obvious from the briefings that I and, I am sure, other noble Lords have received that there is still some confusion. This is not only about cases where there is no right to be in the UK. Under the Employment Rights Act, whose definition is imported here, a worker is defined as someone who has entered a "contract of employment" or another contract, which I assume means a contract for services where someone is self-employed. One question is whether, in a situation of exploitation, there is always a contract, but particularly important is that Amendment 33 replicates the definition of a worker in Section 26 of the Gangmasters (Licensing) Act, which includes the fact that a right to be in the UK is irrelevant. Switching from a definition which the GLA has been accustomed to work with raises issues in itself.

As for Amendment 37, Clause 5 says the Secretary of State can remove material from the director's strategies and reports, on the basis set out, for example if it would,

"be against the interests of national security … jeopardise … safety … or … prejudice the investigation or prosecution of an offence".

[Baroness Hamwee]

That is fair enough. I have seen that elsewhere in legislation. However, Clause 5(2) says that the Secretary of State must not then put that material back when he lays the report before Parliament. I am puzzled as to why that is necessary. If the Secretary of State has taken it out, is he likely to put it back before laying the report before Parliament? Is this because the Home Office fears a future Secretary of State might lose the plot, or is it to protect against a change of Government or what? I was curious.

Amendments 8 and 10 are on resources, and again I was confused as to where to deal with this. However, the means as well as the ends need to be willed; fine words about objectives are not enough. This has been such an issue throughout discussions not just on the Bill but on the remit of the Gangmasters Licensing Authority. Quite rightly in previous debates, the point has been made that it would be very good to extend the remit, but we must make sure that they have the money to do so; otherwise, we risk damaging the good work currently done. It is essential that the director takes resources into account. Otherwise, what is said is effectively meaningless.

Lord Alton of Liverpool: My Lords, these amendments, which I support, raise both the role and resources available, as the noble Baroness, Lady Hamwee and the noble Lord, Lord Rosser, described, to the Director of Labour Market Enforcement. Reading though the exchanges in another place, it is clear that the Government were uneasy at Report stage about the lack of clarity in the Bill. Otherwise, why would the Minister, Mr James Brokenshire, have given an assurance to the House of Commons that they would go away and reflect on the matter? Therefore, it would be interesting to hear today the outcome of those reflections.

Certainly, looking at what was said in another place, there are some contradictions obvious to anyone who reads those exchanges. The Minister said, for instance, in Committee:

"We intend the director's remit to cover labour market breaches, not immigration offences".—[*Official Report*, Commons, Immigration Bill Committee, 27/10/15; col. 163.]

That is very straightforward. However, at a later stage, he said:

"The provision is not intended to stray into the separate issues of immigration enforcement, but if cases of people who are here illegally are highlighted, the director would be duty-bound to report that and to pass on intelligence through the hub that is being created".—[*Official Report*, Commons, Immigration Bill Committee, 27/10/15; col. 166.]

I would therefore like to know what happens when there is a contradiction between those two roles. Where there is a protective role and an enforcement role, what would be the director's expected priority in those circumstances? We said throughout the proceedings on the modern day slavery and human trafficking legislation that it should always be victim focused. Is this a derogation from that, or are we simply being consistent with what we did before? The House needs to know before we give this the green light.

I was surprised when the Minister in another place, in refuting the arguments that have been put forward again in your Lordships' House today, said,

"I simply do not think it is necessary".—[*Official Report*, Commons, Immigration Bill Committee, 27/10/15; col. 166.]

I wonder why he came to that conclusion, because clarity in legislation is always highly desirable. Otherwise, why would he have wanted to go away and reflect; why would these amendments have been moved in another place; and why would they be here again today? Clearly, something is necessary. Will the Minister, if he cannot put it right today, be agreeable to doing so on Report?

Baroness Ludford (LD): My Lords, I share colleagues' concerns about the lack of clarity of the remit and purpose of the Director of Labour Market Enforcement and the indications of a lack of resources for the organisation so far. The Migration Advisory Committee has already been cited, but it is worth mentioning the remarks of Sir David Metcalfe in evidence to the Committee in the other place. He said that funding remains an issue, particularly for the Gangmasters Licensing Authority, and that:

"In the low-skilled report, we calculated that you would get an inspection from HMRC once every 250 years and you would get a prosecution once in a million years".—[*Official Report*, Commons, Immigration Bill Committee, 20/10/15; col. 20.]

The odds of bad employers being caught, let alone prosecuted, seem slim. It comes to something when the US State Department is moved to mention the lack of resources. In its *Trafficking in Persons Report 2015* it mentioned concern that there needs to be an increase in funds for the Gangmasters Licensing Authority. It is a little galling to have to be told by another Government that there are not enough resources, but we could take that to heart. That report also stated that government funding for specialised services for victims of trafficking remains limited. We are judged to be falling down on resources.

I, too, was confused by the exchanges in committee in the other place about the director's focus outside workers who are here legally. The suggestion seems to be that a labour market offence can be committed only against persons legally in the country, which suggests that others are going to be dealt with through an immigration lens. I add my voice to those who have asked for clarity about whether the director will be focused on employers who most exploit workers, including those without leave to be in this country and to work. Without that wider remit outside legal workers, the director cannot be effective against the worst employers.

I am confused by the number of definitions of worker. We can add to them the definition under EU free movement law, but perhaps that would unnecessarily complicate the matter in hand. However, there seem to be at least three definitions of worker, and it might be sensible to have one.

Lord Horam (Con): I understand the questions raised by noble Lords and the dangers of a lack of clarity in this area, but we may be making a bit of a meal of this issue. In the House of Commons, James Brokenshire made the situation fairly plain. Referring to the comment quoted by the noble Lord, Lord Alton, clearly, offences are matters not for the Director of Labour Market Enforcement but for immigration officers. Equally, the director may well want to look at intelligence arising from offences relating to immigration in the context of the strategy he is trying to devise to

avoid labour market exploitation. There seems to be a difference between people on the ground who are trying to deal with immigration offences day to day, and the director, who is trying to enact a supervisory role on a rather larger scale.

If I am right about that—I may be wrong, and I fully agree that the situation is confusing and difficult and should be simpler—the amendments put down by the noble Lord, Lord Rosser, are mistaken because they tie the director down too much. In practice, we may want the director's remit to go rather wider and to take into account what he may learn as a consequence of the information he acquires from immigration officers operating on the ground. That is a sensible way to proceed administratively. I may be wrong, and I will listen to what the Minister says, but it seems to me that the situation is rather clearer than we seem to be suggesting.

4.45 pm

The Earl of Sandwich: My Lords, we may be in danger of making a meal of this group of amendments. I quite understand that the noble Lord, Lord Horam, has pointed out a connection between the two, but it is a very serious issue to describe the difference between them. I go back to the Modern Slavery Act, which was an excellent example of pioneering government and listening Ministers. A welcome number of government amendments on both that and this Bill shows that the law is constantly in need of review. As many NGOs are actively demonstrating, there is much more to be done on illegal working, as we work through this Bill and beyond. Part 1 does not adequately reflect human rights concerns. The noble Lord, Lord Rosser, pointed out the big confusion here that comes up under several amendments between labour regulation and immigration law enforcement, and the improper use—or potentially improper use—of employers and landlords as immigration officers, making migrant workers especially vulnerable. Some with more legal training than me are concerned about the likelihood that this encroachment is inconsistent with the ILO Convention No. 81, the Labour inspection convention of 1947. I hope someone will confirm that that is a difficulty. Do the Government agree that to ensure protection these two areas must be kept separate?

Lord Hodgson of Astley Abbotts (Con): I have to say that I have some sympathy with my noble friend Lord Horam about the importance of not narrowing the gateway too much in terms of the work of the Director of Labour Market Enforcement. The wording in Clause 2(2)(a)(i) allows for a very wide remit: it seems to me to be important to preserve this. It is very easy of course to see this only through the prism of the victims—and indeed there are terrible victims who need protection—but the director should surely be able to identify practices, behaviours and trends not only relating to the protection of workers.

I am a keen supporter of employee share ownership. Every year the Employee Ownership Association has a dinner in your Lordships' House, which I am proud to sponsor. Last year I was sitting next to one of the biggest companies in the field of imports, which brings a lot of stuff across the Channel in containers. He said to me, "Do you know that up to about a year ago, once a year a container would have people inside it; two or three times a week now, you open the container in Cowley and six or seven people jump out and disappear into the dark. They have a baseball bat and you can't stop them—and talking to my colleagues in other firms this is an increasingly prevalent practice".

It seems to me that this is the sort of issue that ought to be publicised and the director ought to be able to raise. It is not about protection of workers, though that is a very important part of his job. It is about what is happening in the labour market generally. It would be a grave mistake if we allowed ourselves not to think about these activities as well, and make sure that the director could comment on them and make suggestions for improvement. It is in the interests of everybody, but particularly those who are victimised, that this should be publicised—and the other side of the coin should be publicised as well. I hope that my noble friend will bear that in mind when he comes to consider his reply to this set of amendments.

Lord Bates: I first thank the noble Lord, Lord Rosser for moving this amendment. I am glad we are on the same page in terms of tracking the amendments. As I do that, let me remove another lever-arch file, with a message from the Box, which I thought was a very timely one: if noble Lords would kindly tell us when they plan to degroup an amendment, then we will try to do better at telling people when we intend to lay an amendment. But I suppose it is the first day in Committee and we are all finding our way through that postbag.

This has been a useful exchange. Under this particular group, as I see it, the Committee is seeking to understand better the nature of the role of the new Director of Labour Market Enforcement and to flesh it out, to understand something more of the resources and to understand where the immigration enforcement boundary and the role of standards in the labour market actually connect. While I appreciate the desire to include upfront a strong statement of the remit of the Director of Labour Market Enforcement, a role that has been welcomed on all sides of the House and in the other place, I believe that amendments on the subject are unnecessary. The role and remit of the director are clearly set out already in Clauses 1 to 7. We want the director to bring co-ordination across the whole spectrum of breaches in employment law, from employers who do not know the rules right through to the organised criminal exploitation of workers.

I should say here—this is relevant to the contributions from a number of noble Lords, particularly the noble Lord, Lord Alton, and the noble Earl, Lord Sandwich—that we often find that the rogue employers, underpaying employees with regard to the national minimum wage, and the unscrupulous employment agencies that deduct far more than they should from employees' salaries are often the same people, who will be guilty of abuse across a whole range of different headings. That is the essential value that the information gives us, and the essential value of the overall role.

I will send around to noble Lords a very useful schematic. I know that schematics are not favoured by your Lordships' House because of the difficulties that

[LORD BATES]
they convey to the *Official Report* in communicating them, but this one is a good way of illustrating that at the moment a number of disparate functions are prosecuted in different silos. We are seeking to be much more effective by bringing those silos together, not just in terms of their strategy but by placing the Director of Labour Market Enforcement above them to ensure that scarce resources are allocated most efficiently, and that we learn the maximum that we are able to about exploitation.

Where we set the director's primary purpose in legislation as enforcement, as the noble Lord, Lord Rosser, seeks in Amendment 4, we are prejudging the best way to secure compliance. The noble Baroness, Lady Hamwee, seeks in Amendment 5 to give the director the purpose of protecting workers from exploitation. Exploitation is not universally defined and means different things to different people. Concerns have been expressed that the director will get involved in enforcing our immigration laws. I reassure noble Lords that that is not part of the role of the Director of Labour Market Enforcement. I know that there was some discussion about the exchanges in Committee in another place on this, but I am happy to place on record again my remarks in my letter of 8 January:

"I want to reassure colleagues",

following Second Reading, that immigration control,

"is not part of the role of the Director of Labour Enforcement. Nowhere in this Bill is the Director given the power or purpose to do that … they would be acting outside of their statutory powers".

It is useful to get that very clear statement on the record in Committee. Concerns have been expressed that the director will get involved in enforcing our immigration laws, and I want to ensure that that is not the case.

I turn to the annual labour market enforcement strategy. The Government's position is that it will be successful only if it includes an assessment of threats and obstacles by "turning over stones", telling Ministers where the gaps are and making proposals for how they can be addressed. Similarly, a successful strategy will be based on the evidence of what enforcement has happened in previous years, including what remedies were secured for victims. These are both already covered by the Bill so Amendment 7, in our opinion, is unnecessary.

Amendments 8 and 10 cover the director's role in the funding arrangements for the enforcement bodies. It is the Government's intention that Ministers in the Home Office and the Department for Business, Innovation and Skills should continue to set the overall envelope of spending available for labour market enforcement and should recommend how best to allocate this between the three bodies and the different activities they undertake, based on their assessment of the likely nature of non-compliance in the following year. I cannot support these amendments. While the Government intend that the relevant Secretaries of State will take the director's proposals on resources into account in their discussions with the Treasury about funding, it is right that the Government set the overall level of resources devoted to labour market enforcement in the context of the totality of pressures on public spending.

Amendments 18, 25, 28 and 32 relate to the power to change the scope of the labour market enforcement strategy by regulations. While at present we believe that the director's remit is sensibly defined, it may make sense in the future to extend this if it becomes clear that the risk of abuse and exploitation is changing. It is appropriate for such extension to be made by secondary legislation to ensure flexibility and to enable us to act quickly, subject of course to the appropriate degree of parliamentary oversight.

Amendments 33 to 35 relate to the director's strategy-making role in respect of offences committed against workers under the Modern Slavery Act 2015. The clause or the proposed amendments would not redefine "worker"—as mentioned by the noble Baroness, Lady Ludford—for the purposes of the Employment Agencies Act 1973, the National Minimum Wage Act 1998 or the Gangmasters (Licensing) Act 2004. The existing coverage of the respective Acts continues to apply. This means that the Employment Agency Standards Inspectorate and the GLA will still tackle non-compliance by employment agencies, businesses and gangmasters regardless of whether the affected workers have the right to be—or work—in the UK. We see the director's focus as improving the way we enforce labour market and employment law rules—making sure workers who are properly here are protected better. However, we are committed to tackling serious crimes committed against individuals, whatever their status, as the noble Baroness will know from the work she and others did on the Modern Slavery Act last year—a landmark piece of legislation.

I turn to the contents of the director's annual report. The Bill already requires the annual report to include an assessment of the extent to which the strategy had an effect on non-compliance in the labour market. There is no need to specify the other details. If the strategy identifies threats and obstacles to effective enforcement and makes proposals to address them, the effectiveness of these throughout the year must be covered in the annual report. Similarly, as the strategy will set out how the enforcement bodies are to exercise their functions, including seeking remedies for victims, the success of this must be covered by the annual report. Therefore, I believe the majority of Amendment 36 is unnecessary.

The point was made that we need to focus our attention on victims. Victims have been protected, for example, by the recovery of unpaid earnings, by making sure that employment agents who persistently abuse contracts or unfairly treat their employees are no longer allowed to register as agents, and by the Gangmasters Licensing Authority not renewing certain licences.

The final amendment in this group concerns the publication of the annual strategy and annual report. The legislation as drafted states that any strategy or annual or other report prepared by the director and laid before Parliament must not contain material that has been removed for very specific reasons. These reasons are where the publication of such material,

"would be against the interests of national security, … might jeopardise the safety of any person in the United Kingdom, or …

might prejudice the investigation or prosecution of an offence under the law of England and Wales, Scotland or Northern Ireland".

These are pretty standard exclusions that we have come across in previous legislation. The Bill as drafted requires the Secretary of State to remove information from a publication if he or she considers it to fall into those categories. The Government believe that this is essential and strikes the right balance between transparency and safety. Indeed, it replicates provisions in Section 42 of the Modern Slavery Act regarding the strategic plan and annual report prepared by the Independent Anti-slavery Commissioner. I hope that my answer will reassure noble Lords on that point.

Finally, we have put on the face of the Bill, in Clause 1(4):

"The Secretary of State must provide the Director with such staff, goods, services, accommodation and other resources as the Secretary of State considers the Director needs for the exercise of his or her functions".

That is a statutory statement. My noble friend Lady Neville-Rolfe announced in the previous debate that the amount of money that has gone into national minimum wage enforcement has increased by £4 million. While it is right to press us to spell out in more detail exactly what is intended for the role, I think that there is a logic there, which my noble friends Lord Horam and Lord Hodgson have reinforced. I hope that, with that reassurance, the noble Lord will feel able to withdraw the amendment.

5 pm

Baroness Hamwee: My Lords, before the noble Lord responds, perhaps I may take some of those comments but in something of a reverse order. On the question of resources, the Minister referred to Clause 1(4), but that relates to provision for the director. Of course, we are concerned not just about the director but about the organisations—if that is the right term for the various entities—which will be implementing the strategy. Whoever's strategy it turns out to be is the subject of another debate. So, although I accept the point that the Minister has made, I do not think that it goes all the way, as some of us were seeking.

Lord Bates: If it would be helpful to noble Lords, I should be happy to set this out in writing. However, I can tell them that the 2015-16 budget for the Employment Agency Standards Inspectorate is £0.5 million and it has 8.6 full-time-equivalent staff. For the same period, the Gangmasters Licensing Authority has funding of £4.268 million, including £100,000 for Northern Ireland enforcement, and it has 66 full-time-equivalent staff. The budget for the national minimum wage enforcement team was increased by £4 million to the current figure of £13.2 million, and it has 230 full-time-equivalent staff. We are saying that the helpful part of the role of the Director of Labour Market Enforcement will be to look at those three groups and the current basket of resource, which has been increased substantially over the past year, and to see how it can be most effectively deployed to tackle the types of wrongs that we are seeing.

Baroness Hamwee: My Lords, the figures are interesting. Nobody is ever content and no one will say, "That's enough", but my impression—I say this as somebody who hears those figures, although they do not really mean anything to me; I am not an expert in any of those fields—is that there are organisations struggling to do the job that they have and which in some cases they do absolutely extraordinarily. Just hearing figures expressed in millions does not advance the argument in the way that I know the noble Lord and I are concerned with.

Lord Alton of Liverpool: Before the noble Baroness leaves the point about resources, she may recall that during the proceedings on the modern slavery and human trafficking legislation we were told that between 2011 and 2014 the Gangmasters Licensing Authority saw a reduction of 17% in its budget—a figure that I think we can all comprehend very easily. I wonder—this is directed at the Minister partly through the noble Baroness—whether the figures that he has just given represent a real increase on those reductions and whether we are seeing a reinstatement of the moneys that were cut.

Baroness Hamwee: My Lords, I am looking to the Minister, but he has not received inspiration on that yet.

Lord Bates: I have not received inspiration, but I do not doubt for one minute what the noble Lord rightly observes. He refers to a time when we were having to tackle some pretty sizable problems in the public finances, and that continues to be a pressure. That is one reason why, I think, we are bringing these resources together. It would be helpful—and I will certainly undertake to do this—to set out in one letter to Members of the Committee in your Lordships' House the situation on resources, perhaps in a way that is easier to assess. However, the point is that when you have different pots in different areas with different groups of people, it makes it all the more important that they are joined up, that there is co-ordination and that we get the maximum effect for every taxpayer pound that is spent. That is, of course, what the remit of the Director of Labour Market Enforcement is envisaged to be.

Baroness Hamwee: But within the budgets set by the two departments, as we have just heard. I do not think that anyone is arguing against efficiency, but those budgets are being spent, I assume, to their maximum now. So it is a discussion that will go on.

With regard to the point about the regulations and the possibility of extending the scope of the director's work, the Minister mentioned parliamentary oversight. Of course, that is a very current issue, because oversight only goes so far. Indeed, one might say that it is "sight" but not "change", because we cannot do anything about secondary legislation.

I want to comment on the points that have been made about trends and the work, other than that to which the noble Lord and I have pointed, on the protection of workers. I realise that the way in which I have worded my amendment was perhaps not the most felicitous. I did in my speech mention things such as monitoring and trends, and I meant that in a very wide sense. I understand, for instance, that the GLA—this is a very important part of its work—has been extremely successful in its relationship with employers and runs

[Baroness Hamwee]
a liaison group with employers and agents in the sectors in which it currently works. One might take any survey with a pinch of salt, but a 93% approval rating—I think I have got that right—from employers in their view of their own regulator strikes me as being pretty high, and I for one certainly do not dismiss the points that have been made by the two noble Lords on the other side.

Lord Rosser: My Lords, I will be brief in responding, with just one or two points to make. I have listened carefully to what the Minister has said in response but, frankly, I think that we are making a meal out of not being willing, as far as the Government are concerned, to put the primary purpose of the Director of Labour Market Enforcement in the Bill. I certainly do not accept any argument that it would somehow restrict the functions of that particular post.

I appreciate what the Minister has had to say about his willingness to send a letter relating to resources, and I am sure that that will be extremely helpful. It is certainly my intention to come back to the issue of resources in a later group of amendments.

On the issue of the involvement or otherwise of the Director of Labour Market Enforcement in the immigration system, the Minister repeated the part of his letter that I also referred to: that the new director's role did not cover immigration control and that nowhere in this Bill is the director given the purpose or power to do that, and if he or she did they would be acting outside their statutory powers. This is a genuine question and not a challenge, but if the Minister is going to send a letter on resources, will he consider adding to it an indication of which clauses of the Bill would preclude the director from being involved in any aspect of immigration enforcement and control? I ask that partly in the context of Clause 2, which states that

"A labour market enforcement strategy … is a document which … deals with such other matters as the Director considers appropriate".

What happens if the director considers that a strategy relating in part to some involvement in the immigration process is appropriate? Is he entitled under that particular subsection to get so involved? It would be extremely helpful if in his letter the Minister would address that point. With those comments, I beg leave to withdraw the amendment.

Amendment 4 withdrawn.

Amendment 5 not moved.

Clause 1 agreed.

House resumed. Committee to begin again not before 5.45 pm.

Steel Sector
Statement

5.10 pm

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe) (Con): My Lords, with the leave of the House I shall now repeat a Statement made in the other place by my right honourable friend the Minister of State for Small Business, Industry and Enterprise. The Statement is as follows.

"It is with regret that I find myself having to update the House on further job losses in the steel sector. This morning, Tata Steel announced plans to make over 1,000 redundancies across its UK strip business as part of its continuing restructuring plans. The proposals involve 750 job losses at Port Talbot and Llanwern. There will be 200 redundancies in support functions, and Tata has also announced 100 redundancies at steel mills in Trostre, Corby and Hartlepool. This will be a difficult time for all workers and their families. Our immediate focus will be on helping any workers who lose their jobs back into employment as quickly as possible. We will also continue to support the steel industry.

Given the UK's devolution settlement, much of the support that can be offered both to workers and to Tata in south Wales will come from the Welsh Government. But the UK Government want to ensure that Port Talbot has a commercial and sustainable future, and it is encouraging that the Welsh Government are to launch a task force this week to support those affected by today's announcement.

I have previously offered our support to the task force chair, Edwina Hart, and will continue to work with the Welsh Government going forward. I therefore welcome the commitment that the First Minister made today to working closely with the UK Government. I can also assure Members that I am working closely with the Secretary of State for Wales, who I know has been in the area today and hence is not here in the House.

It is important to remember that the fundamental problem facing our steel industry is the fall in world prices, caused by the overproduction and underconsumption of steel. No Government can change the price of steel. But we can and are achieving a level playing field for British producers. I can inform the House that the Government have been working closely with Tata to do all we can to ensure a sustainable future for Tata Steel in the UK, both at Port Talbot and Scunthorpe. The Government have offered their assistance to Tata as it seeks to find a buyer for its long products division. It is encouraging that Tata has announced Greybull Capital as its preferred bidder and we remain in close contact with Tata as its commercial negotiations continue. The Government stand ready to play our part to help secure Scunthorpe's long-term future.

Returning to today's announcement, the same offer is there for Port Talbot. Tata is currently working with consultants to develop a plan to address the near-term competitiveness of its business at Port Talbot. We and the Welsh Government are in regular dialogue with Tata. This dialogue includes my right honourable friend the Secretary of State for BIS, as well as my officials and me. While the future of Port Talbot must be commercially led, we will help where we can within the parameters of state aid rules.

Last October, the Government held a steel summit at which the UK steel sector set out its five asks of Government. I can report that we have made quick and substantial progress against these asks to ensure a

level playing field for our steel industry. The industry asked for lower energy costs. In December, we secured state aid approval to pay further compensation to energy-intensive industries, including steel, to include renewable policy costs. We have already paid nearly £60 million to the steel industry to help mitigate the costs of its existing renewable policies. The latest state aid approval will now enable us to extend the scope of compensation, saving steel makers hundreds of millions of pounds. But we will go even further and exempt energy-intensive industries from most of these costs.

The sector asked for flexibility over EU emissions regulations, and that is exactly what we have secured. Derogations for Port Talbot have already been agreed by Natural Resources Wales. The Environment Agency has accepted Tata Steel's proposals for derogations for improving emissions from Scunthorpe, subject to a current public consultation. Once approved, this will give Tata a further six years to improve emissions levels from the coke ovens, and both Tata Steel's major power plants have been included in the UK transitional national plan which the UK has submitted to the European Union. This gives the company until June 2020, a further four years, to meet emissions requirements. These actions will save the industry millions of pounds.

We have also published and further updated procurement guidance for government departments to allow aspects such as social impacts, job impacts and staff safety to be taken into account when procuring steel for major projects. We are the first country in the EU to take advantage of and implement these new flexibilities. In short, there is no excuse not to and every reason to buy British steel.

I have heard it said that the Government have blocked the reform of trade defence investigations; we have not. I can assure you that the Government have been acting decisively to safeguard the UK's steel interests in Europe. In July and again in November last year we voted in favour of anti-dumping measures on certain steel imports. It was the UK that lobbied successfully in support of industry calls for an investigation into imports of reinforcing steel bar. The European Commission has taken this forward swiftly, including an extraordinary meeting of the EU's Competitiveness Council, and has agreed faster action. I will be returning to a follow-up stakeholder conference next month where I will push for further progress. The review on business rates in England will conclude this year. Of course, the Welsh Government have responsibility for business rates in Wales and therefore in Port Talbot.

UK steel has today added to its original five asks with two further requests concerning China securing market economy status and funding assistance for environmental improvements, research and development. We will explore both of these with the sector while continuing to drive forward the original five.

As we have seen today, the steel industry remains subject to unprecedented global pressures. While the immediate causes of these are beyond the Government's control, I can assure the House that we continue to do all we can to help the industry and will stand by all those workers who face redundancy in south Wales and other parts of the United Kingdom".

My Lords, that concludes the Statement.

5.19 pm

Lord Stevenson of Balmacara (Lab): My Lords, the devastating impact of job losses in the country as a result of Tata's announcement of more than 1,000 job losses across Wales, Corby and Hartlepool is devastating news for all of the workers, their families and the close-knit communities surrounding the plants. The impact is a double whammy for Wales because steel is an industry which has contributed significantly to the added value of the economy there, adding several percentage points to GVA figures. Of course, this latest news comes on top of job losses at Tata's Newport plant last year, along with job losses across the UK announced by a number of operators in September 2015, and the complete closure of the Redcar plant.

Steel is the foundation of many of the UK's most important manufacturing sectors, including aerospace, defence, automotive and construction. However, the industry suffers from a perfect storm. Countries such as China are engaging in ruthlessly uncompetitive practices which are destroying the steel industry, energy prices are too high and emissions regulations are too restrictive. The Government centrally, although they are doing some work on this, still, perversely, do not require their own contractors to buy steel from the UK. The Minister, in repeating the Statement in this House, for which we are grateful to her, mentioned that there is some progress on these matters, but the general view around the country is that although progress is being made, it has sadly been too little and it has certainly come too late.

Central to ensuring that our steel industry survives and thrives is the urgent need for an industrial strategy. The Chancellor declared recently that Britain would be carried aloft by the march of its makers. But manufacturing exports have slumped and manufacturing output is still below its level of seven years ago, before the crash. There is a lot more still to be done.

I have some questions for the Minister. When did she or her colleagues raise the issue of the dumping of steel directly with the Chinese? Can she give us chapter and verse on that? Can she spell out the support from the UK Government that will be made available directly to the families and communities affected by the latest round of cuts? She said that the Government would help where they can, subject to state-aid rules—but there is a humanitarian crisis on our doorsteps and we really need to see action. What work is being done by the department on the supply chain that supports these companies affected by job losses and, presumably, reductions in activity? Many of these are small and medium-sized companies that help to keep the British steel industry going. What work will be done to support the UK buyers of output from these plants who may well now have to seek alternative supplies on the market?

The steel industry is of vital strategic importance to this country and the Government need to safeguard its future. We are very conscious that there are issues in the market of price and overcapacity, but these have been there for a long time, and we have been raising concerns about the structure of the UK steel industry for most of the previous Government and certainly during this one. Where is the action?

[Lord Stevenson of Balmacara]

We are keen that the Government support key strategic industries in this country and make sure that highly skilled jobs are not lost. I hope that these sad events will trigger a reconsideration of the Government's hostility to an industrial policy and strategy. We hope that they will get to grips with this crisis. It would be a tragedy for the steel industry if they did not, not only for those who have lost their livelihoods but for those of us who wish to make the case for modern economic progress.

Baroness Burt of Solihull (LD): My Lords, I am sure that I represent everyone in the House when I say that our thoughts today are with the steelworkers and their families.

A major cause of this, it would seem, has been the dumping of Chinese steel. We are part of the largest trading bloc in the world, and this has been going on for a very long time. What are the Government doing to defend our interests and to fight for British steel in the EU? The noble Baroness said that some things are being done but I think that everyone would agree that we need to do more to mitigate some of the worst problems that we are going through at the moment.

The British Government need to do more, but so do the Welsh Government. My Liberal Democrat colleagues in Wales have called for scrapping business rates on planting in the Welsh steel industry. The Labour Party has criticised the Government in England but seems to have done nothing where it is in charge in Wales.

Finally, one-third of the production in Port Talbot is for the car industry—a highly successful industry. The Minister says that there is no excuse not to buy, and every reason to buy, British steel. So why does she think, given all that she said, it is not being bought?

Baroness Neville-Rolfe: I start by agreeing with how devastating today's news is, and I agree with the statement made by the First Minister in Wales, Carwyn Jones. Our first thoughts today are with the families, communities and supply chain businesses that are dependent on steel production in Port Talbot, Llanwern and Trostre. This is a severe blow to the community and to steel production in the UK. Indeed, I welcome the task force that has been set up in Wales today, which will meet this week. That follows the model of task forces set up in other areas, such as Redcar. They have done very good work and are particularly good at focusing locally, not only on issues affecting steelworkers but on businesses in the supply chain, which are obviously vital to future jobs.

It is right to say that we have made a lot of progress since we last discussed this in the autumn. Noble Lords will remember that there were five asks from industry, trade unions and others. There are two more today. We have made substantial progress on four of those five asks, as I pointed out in my Statement. We have not made progress on rates because they are the subject of a current review by the Government. In Wales action on rates is, rightly, for the devolved Administration, as has already been said.

I was asked when the Prime Minister first raised steel in China. I know that he certainly raised the issue of steel when President Xi visited us in October. In Brussels, which I was asked about, we have of course changed our approach on steel. In the relevant committees in July and in November, for the first time we pressed for action and voted against rebar. Individual cases of Chinese and other dumping have been pursued and accelerated. There was a summit of the EU Competitiveness Council, a special meeting that took place entirely because of a request by the Secretary of State to Brussels. I think noble Lords will agree that looking at these things together in Brussels is necessary, and that the action on energy costs and industrial emissions directives has come about directly as a result of that work. These things are difficult, but we have been determined to do a lot and we have been acting in Brussels constructively.

5.26 pm

Lord Crickhowell (Con): My Lords, from these Benches I first express my sympathy for the workforce, whose jobs are being lost. Bearing in mind what has rightly been said about the importance of Port Talbot for our highly successful motor and white goods industries, I am pleased to hear of the determination of the Government, working with the Welsh Government, to see that Port Talbot has a sustainable and commercial future. I also welcome the specific measures that my noble friend has drawn attention to. However, on the question of rates, although it is true that there is a long-term review in England and that rates are the responsibility of the Welsh Government, surely there is a need for early and specific action in the steel industry on the rates question. Will my noble friend assure me that we will not necessarily have to wait to the end of the year for the completion of the long-term review of rates?

Baroness Neville-Rolfe: I hear what my noble friend says and completely agree that rates is a vital area. We have three ministerial working groups, set up in October. They are very aware of the importance of rates. My noble friend Lord O'Neill is leading the work stream on productivity and competitiveness. I will ensure that I pass on the comments made on rates.

Lord Brookman (Lab): My Lords, I wanted to hear what the Minister had to say because I was general secretary of one of the unions involved in the steel industry. As the Minister said, it is devastating news, but it is not unusual news for the steel industry. I am reminded of something I said a few weeks or months ago, about when there were 270,000 employees in one company in the steel industry in the United Kingdom, called the British Steel Corporation. Now we are where we are. The figures are abysmal and most worrying. I worried even further when someone said to me, "Keith"—that is my first name—"You must remember that we live in a post-industrial society". If we are heading down that track—we are rapidly going down that track as far as the steel industry is concerned—frankly, what the Minister and the Government are saying is not good enough.

I am concerned that I do not hear too much from the Minister about what the trade unions are actually saying at the moment. Are they accepting the closures? Are they accepting the fact that there will be fewer than 30,000 people in total manufacturing steel in the

United Kingdom? Are they not that concerned—the Minister made the point that she was—that the imports from China and elsewhere are causing havoc in this country? I do not think the news from the Government is good enough, and I hope we get some more positive action from them.

Baroness Neville-Rolfe: My Lords, I would like to pay tribute to the unions in these very serious steel difficulties. They really have been amazing and shown that they can be extremely constructive. They therefore have been working in the task forces with Tata and other steel producers to try to minimise the problems and difficulties of the steel industry.

It has unfortunately been a long tale of decline, with job numbers halving between 1998 and 2010 and a reduction of around one-third in production in that area. There has been an improvement up to 2014, with numbers up from 33,000 to 35,000, but, of course, we now have the latest set of difficulties.

All sides need to come together. Obviously, we need to pursue the problems in Brussels. We have colleagues in other member states who also have steel industries that are suffering from the effect of China. We have to engage on the China side. In the various working groups, we have to look ahead because steel is an important industrial sector. One of the things we have been looking at, for example, is how the improved procurement rules that we helped to negotiate in Brussels can be used to help British steel go into major projects such as HS2.

Lord Wigley (PC): My Lords, is the Minister aware of the article in today's *Western Mail* by the eminent economist Gerry Holtham and Adam Price? They see the possibility of being able to create a joint public and private sector venture between the Government of Wales and Tata, and because of the high quality and specialist steels that are being made in Shotton, Trostre, Llanwern and Port Talbot, this could be a flyer.

In the past, such investment by government has been allowed in Italy and Germany within European rules. Will the Minister and the Government take this forward in conjunction with the Welsh Government to see if this is a positive way out of our difficulty?

Baroness Neville-Rolfe: I have not seen the article, but it sounds extremely interesting. I think we have made it clear that we are very keen to work with the Welsh Government on sensible options. We have already shown our readiness to get proposals through and ensure that the state aid rules are not a bar to that.

Lord Morris of Aberavon (Lab): My Lords, this is a very sad day for Port Talbot. When I first became its MP, 16,000 workers went through its gates every day. There has been huge investment in the harbour, which I had the privilege of opening, and continuous casting. While I welcome the state aid approach of compensation for about 30% of electricity bills, could not the long-standing grievance of an unlevel playing field have been dealt with some years ago?

I also welcome the new guidance on procuring steel for major contracts, but is this another example of trying to bolt the stable door much too late? In short, could not the long-standing problems of the steel industry that we have been talking and reading about have been anticipated many years ago?

Baroness Neville-Rolfe: This has indeed been a very long-standing issue. As far as I am concerned, I am always "glass half full" and I think we have to look forward to action that we can take together in the EU. We have to look forward to the work that has been suggested by the industrial strategy groups that have been set up on steel, and to the work that the Welsh Government, supported by our Government, can do in Port Talbot in particular.

Lord Thomas of Gresford (LD): My Lords, I come from an area which has suffered steel losses in the past. The Brymbo steelworks near Wrexham were closed. I think the noble Lord, Lord Evans, had something to do with that. Shotton had the greatest number of redundancies in Europe at that time. It required a huge effort to replace those industries in order to give jobs to the people who had been displaced.

Will the United Kingdom Government promise to fund to the utmost extent the needs of the people of Port Talbot and surrounding areas—the 10,000 jobs that depend on the steelworks, as well as those of the people who actually work there—to make sure that that part of Wales remains viable and economically successful?

Baroness Neville-Rolfe: The work we are going to do with the Welsh Government, who lead on these issues for Port Talbot, is incredibly important. In other areas, task forces have come together from all stakeholders and have spent the available money really well, which obviously has to include looking after the people who are made redundant.

Lord Hain (Lab): My Lords, will the Minister accept the deep frustration that many of us feel—in my case, as a former MP for Neath—who have had close associations with the steel industry and with the Port Talbot plant in particular? We gave warnings many years ago about sky-high energy costs, about Chinese dumping of steel more recently, and about the failure of this Government and their immediate predecessor to tackle the deficit through investment in growth rather than austerity. As a result, there has not been sufficient demand in terms of Government and private capital investment these last six years for British steel, including from Port Talbot. To that extent, the Government are responsible for the catastrophic impact on the local communities of Neath and Port Talbot in particular.

Baroness Neville-Rolfe: My Lords, I do not think I can accept that, although I know all that the noble Lord did when he was Secretary of State for Wales. There actually was a decline in the steel industry for many years. We have helped to get viable steel operations on their feet. We are dealing sensitively and carefully with the current issues that have arisen partly because of global changes. Consumption of steel, as the House will know, has declined radically and at the same time China has been increasing its production hugely. This causes a unique storm and we are trying to find a way

[Baroness Neville-Rolfe]
forward in these very difficult circumstances. I think that the Secretary of State and the steel Minister, Anna Soubry, are doing an excellent job in very difficult circumstances.

Lord Howarth of Newport (Lab): My Lords, I appreciate the Minister's recognition that the news we have heard today is grievous for the communities of south and south-east Wales, including Newport, where I was the Member of Parliament. The steelworks at Llanwern are located in my former constituency of Newport East.

Will the Minister be more specific about the measures that she indicated in highly general terms that the Government intend to take to stand by those who have been made redundant? I also echo what my noble and learned friend Lord Morris and my noble friend Lord Hain have said. Surely, the measures to support the steel industry that the Government have taken in recent months, welcome though they are, should have been taken much earlier so that they could have averted the disasters that we now face rather than taking steps simply to palliate them. Will the Minister also say what intention the Government have to act strategically to help the economies of south Wales and south-east Wales to diversify? What will she do to support retraining of those who have lost their jobs in the steel industry and what will she do to support investment to enable new industries and new businesses to grow in the regions affected?

Baroness Neville-Rolfe: My Lords, there was, of course, a new Government after the election and I have tried to explain what this new Government have been doing in this area. It is important to have a growing economy; that creates jobs in other areas. The noble Lord is right to point to other opportunities. On other occasions we debate the digital single market and all the service industry that has grown so strongly in the UK. That has to be part of the solution to the problems in communities such as those in south Wales that have been so severely affected today and for which we are all so sorry. The task forces that we have set up elsewhere, and that the Welsh Government are setting up for Port Talbot, can, in my experience, make a huge difference.

Baroness Morgan of Ely (Lab): My Lords, first, I refute the suggestion that the Welsh Government have done very little to help the steel situation in Wales. They have worked very closely with the steel unions and Tata Steel to try to prevent this happening but the writing was on the wall a long time ago. There has been a steel summit and I am very happy to hear that a task force has been set up. While the biggest blow in terms of job losses announced today will be felt at the huge plant at Port Talbot, which is an absolute tragedy for that community, particularly for the workers and their families, we must not forget the impact on plants such as Trostre in Llanelli, which also have a very proud and long tradition of steel making. Will the Minister explain why we should be subject to the whims of the Chinese, who are dumping steel in the UK at below market cost? She talked about a level playing field; it simply does not exist. However, at the same time, we are bending over backwards to give the Chinese massive, costly subsidies for their nuclear ambitions in the UK, which will tie the UK into long-term high energy prices and kill off any hopes of a manufacturing revival in this country in the future.

Baroness Neville-Rolfe: I very much agree with what the noble Baroness said about Trostre. Indeed, Llanwern, Corby and Hartlepool have also been affected today, so it is not just Port Talbot. Our hearts go out to them. We have taken action on Chinese imports. As I said, we voted last July in favour of anti-dumping measures for Chinese imports of steel wire. Again, in November, we voted for anti-dumping measures. We have changed the paradigm and we have raised the issue with Premier Xi. In ongoing discussions on the special status of market economy status, we have made it clear that while we would like to see China get market economy status in due course, it has to abide by the rules and that, if we give it market economy status—which is for the Commission to decide—duties can also be imposed.

Lord Anderson of Swansea (Lab): My Lords, it is clear that China is massively dumping and the measures which have been taken so far have manifestly proved insufficient. Those Chinese dumping activities—their industry is largely state owned—impact the whole of the European Union. What further is the European Union proposing to do? What timetable is proposed to stem this manifest dumping by China?

Baroness Neville-Rolfe: I think I have covered the ground well but there is due to be another summit in February for the EU to look at these issues.

Lord Stoddart of Swindon (Ind Lab): My Lords, the noble Lord, Lord Stevenson, mentioned delays in the Government taking action. Of course, one reason for the delay is the European situation in relation to trade assistance. Can I have an assurance from the Minister that other countries in the EU are taking the same notice of EC rules as is this country? Secondly, in relation to energy costs, why are the Government—as has already been noted—paying the Chinese and the French huge sums of money to build nuclear power stations which will take at least 10 to 15 years to build and, at the same time, are closing down coal-fired power stations, which provide the cheapest form of energy?

Baroness Neville-Rolfe: My Lords, the EU rules on state aid apply to everybody. Where member states do not apply them, they get taken to the European Court of Justice and there are quite significant penalties and financial implications. That is why steel industries across the EU have found it difficult. These state aid rules can be beneficial in other areas. On nuclear power, we are, of course, looking for investment in this vital industry. It is one of the areas in which the Chinese have indicated that they may invest. I see that as different and separate from steel. If there are problems with steel, we should take action in the steel area.

Lord McFall of Alcluith (Lab): My Lords, the noble Baroness says that we need investment in nuclear. We actually need investment in steel as well. The Government

are guaranteeing £92.50 for every unit of electricity produced at Hinkley Point for the next 35 years. The subsidy will come to £20 billion and the plant will cost customers some £4.5 billion. If we have these gigantic figures for the nuclear industry, what is missing for the steel industry? Is it just a lack of resolve on the Government's part?

Baroness Neville-Rolfe: Of course, we need investment in steel in parallel with nuclear. We should look at how Tata has come in and invested in steel in the UK. There is bad news today but Tata has worked well with us in these very difficult circumstances to try to do the right thing and to really improve our offer for steel that can be used in the UK in our car industry—and overseas—HS2 and in all the other very important uses for steel, because I believe that what we need is a market for our goods. That is what the steel industry needs.

Immigration Bill

Committee (1st Day) (Continued)

5.46 pm

Clause 2: Labour market enforcement strategy

Amendments 6 to 8 not moved.

Amendment 9

Moved by ***Lord Ashton of Hyde***

9: Clause 2, page 2, line 17, leave out "whose officers" and insert "whom, or by whose officers,"

Lord Ashton of Hyde (Con): My Lords, before I turn to the amendments before us, it may be helpful to explain what the changes the Government are proposing will do to the Bill print. We have brought forward a number of amendments to Part 1. To avoid this becoming unwieldy, on reprint this will be split into two chapters. Chapter 1 will be entitled "Labour Market Enforcement" and will cover that topic, meaning what is currently Clauses 1 to 7 and the material in government amendments numbered between 9 and 77. Chapter 2 will start at what is now Clause 8 and will cover illegal working.

I have taken on board and listened to what was said in Committee on the Director of Labour Market Enforcement, and his role and resources, and the general points that have been made about these government amendments. In the light of what has been said, it now falls to me, in bringing these amendments forward, to explain the nature of the amendments which bring into being some of the issues we have talked about.

I will begin with those amendments that collectively better define the "labour market enforcement functions", "non-compliance in the labour market", and "labour market offence" that are within the scope of the labour market enforcement strategy that the director is required to create every year. Some of these are substantive, others are technical in nature, but they all go to the core of the purpose of the Director of Labour Market Enforcement and what should be covered by the annual labour market enforcement strategy.

Amendments 9 and 19 to 23 ensure that all the enforcement bodies' functions contained in the Employment Agencies Act 1973, the National Minimum Wage Act 1998 and the Gangmasters (Licensing) Act 2004 are brought within the oversight of the director. Amendment 23 has two key purposes. First, it adds new functions of the Gangmasters and Labour Abuse Authority under Part 2 of the Modern Slavery Act 2015 to the list. As I hope noble Lords will know from our response to the consultation on *Tackling Exploitation in the Labour Market*, published on 12 January, and as we will cover when we reach later amendments, the Government wish the Gangmasters Licensing Authority to evolve into an authority that is able to tackle serious labour market exploitation across the economy. As part of this, we intend that the Gangmasters and Labour Abuse Authority will be able to enforce certain parts of the Modern Slavery Act 2015.

Secondly, Amendment 23 includes the investigation of breaches of the new labour market enforcement orders. As I hope noble Lords will be aware, we are bringing forward amendments to enable a new regime of labour market enforcement undertakings and orders. These will be used to tackle the most unscrupulous employers. I look forward to dealing with this in detail later today but, if it is the will of this House that these undertakings and orders should be added to the Bill, the Government want this regime to be firmly in the scope of the labour market enforcement strategy.

I turn to the abuses in the labour market that we want the director to help us tackle. It is the Government's intention that the labour market enforcement strategy covers all types of non-compliance by business with the Employment Agencies Act 1973, the National Minimum Wage Act 1998 and the Gangmasters (Licensing) Act 2004, whether they are criminal offences or not. Amendments 16, 17 and 24 seek to better define in legislation the non-compliance that is not an offence but should be included. This is: non-payment of the national minimum wage where it does not meet the wilful criminal intention; failure to pay a notice of underpayment of national minimum wage; and breaching a Gangmasters and Labour Abuse Authority licence condition that results in withdrawal of a licence rather than a criminal prosecution.

The next set of amendments deals with the offences that will be included in the labour market enforcement strategy. The Bill already includes offences under the Employment Agencies Act 1973, the National Minimum Wage Act 1998 and the Gangmasters (Licensing) Act 2004—the three core pieces of legislation enforced by the three enforcement bodies—and offences in Part 1 of the Modern Slavery Act 2015. Amendment 26 excludes an offence from this core legislation that applies to enforcement officers rather than employers—the offence of improper disclosure of information collected by the enforcer. We think this is not best dealt with through the Director of Labour Market Enforcement but is covered by other mechanisms. Amendments 27 and 30 add to the scope of the labour market enforcement strategy the offence of breaching a slavery and trafficking prevention order where the action against the perpetrator was taken by the Gangmasters and Labour Abuse Authority. Amendment 27 also adds to the scope

[Lord Ashton of Hyde]
breaches of the new LME orders that the Government are proposing to create. Amendment 29 adds related offences, such as aiding and abetting, to the list.

The Government believe that this is a sensible remit for the Director of Labour Market Enforcement at this time. However, I draw noble Lords' attention to the powers currently in the Bill which provide that the Government can add further labour market enforcement functions and labour market offences to the scope of the labour market enforcement strategy. Amendment 17 includes the ability for the Secretary of State to also add further non-compliance in the labour market by regulations. The Government believe it is appropriate for such extensions to be made by secondary legislation to enable us to act quickly if it becomes apparent that changes are required urgently. We believe that making these regulations subject to the negative procedure is the appropriate degree of parliamentary oversight. The power would allow the Government only to add labour market enforcement functions, non-compliance or offences already set out in legislation to the scope of the labour market enforcement strategy, not to create new categories of non-compliance or offences.

I turn to the more technical amendments. Amendment 15 removes the definition of "financial year" from Clause 2, which is now contained, along with other relevant definitions, in a new clause proposed in Amendment 62. Amendments 31, 61, 243 and 244 deal with the regulation-making powers under this Part. As I have said, we want the Secretary of State to have the ability to widen the remit of the Director of Labour Market Enforcement's annual labour market enforcement strategy, should the nature of exploitation change in the future. This will make sure that the role stays relevant to prevent abuses in the labour market. Secondly, we want the Secretary of State to have the ability to confer extra functions on the Gangmasters and Labour Abuse Authority by regulations for the same reason: if there are new abuses in the labour market that we need the authority to be able to crack down on. The Government believe that the appropriate level of parliamentary scrutiny for these regulations is the negative procedure. This is because Parliament has approved the regimes and the Government are keeping them up to date. However, were any primary legislation to be amended as a consequence, we believe it is appropriate for the affirmative procedure to apply, as that merits a higher level of parliamentary scrutiny. Thirdly, the ability to add to the list of trigger offences would enable enforcement bodies to request an LME undertaking. Again, this will mean that our labour market enforcement can be flexible to changing non-compliance and criminality in the labour market. Lastly, the list of measures that can be included in an LME undertaking and an LME order are added to.

For these three regulation-making powers, we are proposing that the affirmative procedure should apply. This is because a breach of an LME order is a criminal offence, and we want that to be subject to appropriate scrutiny here and in the other place. In relation to the territorial extent of the regulations, Amendment 61 makes clear that the regulation-making powers can contain only devolved matters with the consent of the Ministers in the relevant devolved Administrations. Finally, Amendment 246 changes the Long Title of the Bill to better reflect the functions which have been added since introduction. I beg to move.

Baroness Hamwee (LD): My Lords, my noble friend and I have one amendment in this group. It is an amendment to the Government's Amendment 17, which allows other requirements to be added to the list of roles already set out, and other enactments to be added. The noble Lord said that this does not mean the creation of new offences: I accept and understand that. He also said that it will extend to "non-compliance in the labour market". That is exactly what I am seeking—

Lord Ashton of Hyde: I am sorry to interrupt. Could the noble Baroness tell me which amendment she is speaking to?

Baroness Hamwee: It is Amendment 18, which is an amendment to government Amendment 17. From the way in which the Minister introduced Amendment 17, I think that he was anticipating Amendment 18. He seemed to glance in my direction at the time as well.

The Minister said that the fourth paragraph of Amendment 17, regarding,

"failure to comply with any other requirement imposed by or under any enactment and which is prescribed by regulations",

was to deal with other enactments which related to non-compliance in the labour market. My amendment seeks an assurance to exactly that effect: that the Secretary of State could not roam far and wide over the statute book by adding whatever enactment took his or her fancy under that paragraph. I realise, looking at Amendment 18 now, that my drafting is not completely correct—in other words, it is wrong. I have taken out too many words, but I am sure that the Minister and his officials will have understood what I was driving at.

6 pm

Lord Kennedy of Southwark (Lab): My Lords, the noble Lord, Lord Ashton of Hyde, explained that he was hoping to make things a bit easier for noble Lords with the reprinting. I welcome that and wish him well with it.

The amendments in this group are all government amendments, with the exception of Amendment 18, in the names of the noble Baroness, Lady Hamwee, and the noble Lord, Lord Paddick, which seeks to amend a government amendment. I am grateful to the noble Lord, Lord Ashton of Hyde, for explaining these amendments. One of the amendments refers to functions that were considered for inclusion. Can he help the Committee by saying what functions were considered and then not included? I would be interested to know that in relation to Amendments 16, 17 and 24.

I can see the value of being able to add further non-compliance matters by regulation. However, this should be by the affirmative and not the negative procedure, as proposed here. Such matters often benefit from a short debate in the Moses Room when additions are proposed. I think that many in the Committee would agree that this legislation is not to the same standard or quality as we saw with the Modern Slavery

Bill, for example. For that reason, if for no other, we should have the affirmative rather than the negative procedure.

It could be suggested that Amendments 19, 20, 21, 22 and 23 better define the labour market functions within the scope of the labour market enforcement strategy, by reference to specific legislation; I can see that point.

Government Amendments 243 and 244 both require the use of the affirmative procedures. That is welcome, but it contradicts the earlier decision to use the negative procedure, which I have referred to on this group. The last amendment, Amendment 246, would take out a reference to the Director of Labour Market Enforcement. Yes, that is fine, but I wonder whether the Government should perhaps have taken the whole thing out of the Bill and brought a separate Bill back.

Baroness Butler-Sloss (CB): My Lords, I welcome the greater powers for the Gangmasters Licensing Authority, both in this group of amendments and in a later group. The authority has done extremely good work ever since its inception in legislation and I am delighted that there will in due course be powers for its officers to take steps under PACE. I appreciate that that provision is not in the present group, but I want to say that in case I am not here when that point comes up.

I want to put two points to the Minister. First, how far afield is he expecting the Gangmasters Licensing Authority to roam? In particular, does he have in mind either the hospitality or the construction industry, each of which should at some stage be under the control of that authority, or possibly this new director, in a way which is not covered at present? Secondly, if in fact the Gangmasters Licensing Authority is to have further powers, as it will, it is crucial that it has greater resources. That matter should be absolutely upfront because if its officers are allowed to become prevention officers—to be able to arrest and to do much more than they can at the moment—it really does not have sufficient resources to carry that out, let alone anything further that needs to be done.

Lord Ashton of Hyde: My Lords, several noble Lords said right at the beginning of our debate that these government amendments came fairly late, but noble Lords on the opposition Benches are not the only ones to suffer from that. I will therefore have to ask the noble Baroness, Lady Hamwee, for her indulgence because I am afraid that her Amendment 18 was not contained within my speaking notes for this group. It is an amendment to our Amendment 17, but I do not have the details of how I should refute it with the power that I normally would. As my noble friend Lord Bates said right at the beginning, and as I think the noble Baroness mentioned, some of these issues may be revisited at times on Report—but I accept that that is not a very compelling argument tonight.

The noble Lord, Lord Kennedy, talked about negative and affirmative procedures. I have never known him to agree that we should have a negative procedure when we could have the affirmative. I do not want to repeat the reasons that I gave, but we have made a distinction between regulations that create new offences or affect primary legislation and those which merely deal with existing offences, where we still maintain that the negative procedure is correct.

The noble and learned Baroness, Lady Butler-Sloss, asked how far the remit of the Gangmasters Licensing Authority will roam in future. I cannot tell her that today, but I absolutely take on board her point. As I said in my opening remarks, we intend that the authority should evolve. That is the whole point of our changing the Gangmasters Licensing Authority to the new arrangements, and putting it under the remit of the Director of Labour Market Enforcement. The only thing we are likely to be concerned about—we have made this point before—is that it will be for labour market enforcement issues and not for other things. However, I take on board the noble and learned Baroness's point on where it might evolve.

Of course, the Director of Labour Market Enforcement is required to outline a strategy. That is one of the things that we would expect him to do, having used the intelligence hub to work out where the efforts of his three enforcement agencies should best be employed. I also take on board that if we are expanding their role, there will be resource implications. My noble friend Lord Bates has already committed to write to noble Lords about the resource issue, so I would like to leave it there and ask that the amendments be accepted.

Lord Kennedy of Southwark: I assure the noble Lord that I would be very happy to agree to a negative procedure. I have nothing against that at all, but my concern here is that we have not had the greatest time today, with amendments arriving late. It is about my lack of confidence and the fear that we may be sitting back here in some weeks' or months' time with problems, only for us to say, "I told you so".

Lord Ashton of Hyde: I hear what the noble Lord says.

Amendment 9 agreed.

Amendments 10 and 11 not moved.

Amendment 12

Moved by ***Baroness Hamwee***

12: Clause 2, page 2, line 26, at end insert—

"( ) Nothing in this section shall permit the alteration of a strategy of a person entitled to prepare a strategy under any labour market legislation (as defined in section 3)."

Baroness Hamwee: My Lords, Amendment 12, together with Amendments 14 and 38, is in my name and that of my noble friend Lord Paddick. The first of these amendments again goes to the relationship between the new director and the other bodies which the Bill concerns, in particular the Gangmasters Licensing Authority. The Bill provides for a strategy to be prepared by the director. Amendment 12 is probing in the sense that I am not sure whether the language is quite right, but the point is clear enough. It would provide that anyone else who is entitled to prepare a labour market legislation strategy under that legislation gets to keep it, so that their strategy cannot just be altered by some diktat from the director. Of course, in real life, one hopes there would be consultation and discussion.

[Baroness Hamwee]

As we have heard from several noble Lords this afternoon, most recently the noble and learned Baroness, Lady Butler-Sloss, the GLA is a successful body. It has a board and it publishes a strategy. Which strategy takes precedence? In particular, what is the function of the GLA board under the new regime if a strategy is to be handed down by the director? It is important to know how the Government envisage that this will work. We start at the top of the tree with two Secretaries of State, who will have to sort out what was described earlier as "an envelope". Then there is some sort of trickle-down arrangement. The Government must have thought about how the relative powers and the working arrangements would operate. It is not going to be that easy.

My other amendments are rather to the same point. Amendment 14 is about whether or not the other bodies should be bound by what the director provides. These amendments came before the Government's mega-tranche of amendments last week. Again, I want to probe the relationship between the various strategies and whether Clause 2(6) affects the GLA board. It refers to:

"Any person by whom labour market enforcement functions are exercisable".

Is the GLA a "person" for this purpose? Clause 2(6) refers to Labour market enforcement functions being carried out by enforcement officers, not by the employing authority

The last amendment in the group, Amendment 38, is on Clause 6, which provides that the director must set up what is referred to as an "information hub". The GLA has an information hub. Is that to be superseded? Again, it raises the question of resources. Something like a hub does not just come naturally by shoving some pieces of paper into a file. One thing that will have to be addressed is the funding of the IT infrastructure. Who is to manage the hub? As I said, the Government's new proposals were published after these amendments were tabled, so they have been rather overtaken—or possibly had their significance magnified—by the new proposals.

This morning on the "Today" programme, the Prime Minister talked, I think in the context of the police, about a country whose Government rely on independent institutions. He said something like, "Independent institutions should be able to exercise independent judgments". That rather neatly encapsulates the quandary that I find myself in when trying to understand who will be able to be independent within this new regime. I beg to move.

Baroness Butler-Sloss: My Lords, I share the concerns of the noble Baroness, Lady Hamwee, in relation to Amendment 12. As I said on the earlier amendments, and as agreed by everyone in the House, the Gangmasters Licensing Authority has gained a great deal of expertise and is working extremely efficiently. The concern that I share and would like to ask the Minister about is whether the director is going to give the Gangmasters Licensing Authority a free rein to continue the good work it is doing. Is there not a danger it may be controlled by strategies set out by someone who does not have the same expertise as Paul Broadbent and his team? I would be very worried about putting the director over the Gangmasters Licensing Authority without clear instructions that his strategy must be very broad and that he should let the authority get on with the work it has done so well. It would not do it so well if it was confined by any sort of strategy that posed unnecessary restrictions on the work of Paul Broadbent and his team.

6.15 pm

Lord Kennedy of Southwark: My Lords, Amendment 12, moved by the noble Baroness, Lady Hamwee, puts in the Bill a new clause that puts beyond doubt that this part of the Bill cannot be used to permit the alteration of a strategy of a person entitled to prepare a labour market enforcement strategy paper. This is a sensible addition to the Bill and one that I hope the Minister—whether it is the noble Lord, Lord Bates, or the noble Lord, Lord Ashton, who responds—will be able to support, or at least agree to look at carefully and perhaps bring something back on Report.

I am not sure that Amendment 14, also proposed by the noble Baroness, Lady Hamwee, would bring much to the clause, although I am not against it in principle. Amendment 38 makes it optional for the Director of Labour Market Enforcement to,

"gather, store, process, analyse and disseminate information".

I have given thought to the amendment and listened to the reasoning behind it. In fact, it may be quite useful to have this information, but the noble Baroness made some excellent points about resources and the useful work already done by the Gangmasters Licensing Authority.

The Minister of State, Home Office (Lord Bates) (Con): My Lords, I thank the noble Baroness, Lady Hamwee, for giving us the opportunity to discuss this important area further and to look at the production of an evidence-based, annual labour market enforcement strategy as a key part of the role of the Director of Labour Market Enforcement. By following a single, overarching strategy with a shared view of risk, enforcement will be better co-ordinated and more effective.

A real concern was expressed during the consultation exercise on labour market enforcement, which has been referred to. The Government have of course responded to that, giving rise to the amendments referred to earlier. In many ways, this touches on the point raised by the noble and learned Baroness, Lady Butler-Sloss. In terms of responsibility for strategy, the Gangmasters Licensing Authority currently reports up to the Home Secretary. Initially, it was I think part of Defra, but it was moved across to the Home Office because we felt that that was a more logical place for it to sit, particularly in the light of the introduction of the Modern Slavery Act. So the authority refers up to the Home Secretary, while the HMRC national minimum wage team feeds up its strategy to the Secretary of State for Business, Innovation and Skills, as does the Employment Agency's standards inspectorate. So at the moment there are two different reporting lines. The proposal is that, rather than effectively having two separate reporting structures, there is an initial feed-in

to the Director of Labour Market Enforcement, who then reports to the joint Secretaries of State. That may in fact result in fewer problems.

Amendments 12 and 14 appear to limit the director's proposed role by not permitting his strategy to alter the strategies set out by any of the other enforcement bodies or by not binding the enforcement bodies to delivering the director's strategy. The director's strategy is not intended to undermine or take precedence over the enforcement bodies' strategies; rather, we expect those strategies to be informed by the director's strategy as they contribute to tackling labour market exploitation.

The GLA board will continue to be responsible for delivery of the GLA's functions. What will change is that the delivery of those functions will sit within a wider vision of tackling labour market exploitation, an issue I will address in due course. The Government's amendments will add the functions of the GLA board to the list of labour market enforcement functions. Furthermore, the GLA board will have a duty to exercise its functions in accordance with the director's strategy. We believe that this will ensure that the enforcement bodies and the director can work together more effectively.

Amendment 38 brings me to the intelligence hub. Clause 6 as drafted gives the new director the duty to lead an intelligence hub that forms a coherent view of the nature and extent of exploitation and non-compliance in the labour market—something that the consultation and the Committee have accepted as being absolutely necessary. The director will use the information gathered to formulate the annual strategy for labour market enforcement. It is essential that the director have the power to gather information from those involved in labour market enforcement to enable them to set the annual strategy. Without this, the strategy will not be evidence-based and will therefore be unable to improve the effectiveness and co-ordination of enforcement, which is our objective. If the duty on the director to gather information was removed from Clause 6, that would lead to a different role than the Government have committed to creating.

To enable the intelligence hub to work, we intend to create a statutory framework to enable information and intelligence to be shared appropriately, with the necessary safeguards. We will bring forward amendments at Report to achieve this. I reassure noble Lords that the new intelligence hub will not replace existing information-gathering arrangements in the individual enforcement bodies, which I know was a point of concern. They will continue to gather and analyse their own data in order to plan their own operational activity. This will then be fed into the new intelligence hub and the director's strategic plan, providing an up-to-date picture of areas where workers are at risk of abuse. However, the director's intelligence hub will be wider. It is important that the director have the power to exchange data and intelligence with other enforcement bodies whose legislation is often breached by the same rogue businesses.

I also reassure noble Lords that we are in the process of identifying what resources, including IT infrastructure, will be required to enable the new information hub to be effective, and that the Government recognise this is just as important as creating the statutory framework. I hope my explanation will be helpful to the noble Baroness and that she may therefore feel able to withdraw her amendment.

Baroness Butler-Sloss: I wonder if I could just come back. I am not so concerned with Amendment 12. I am much more concerned with what lies behind it. My particular concern is that a new director who organises strategy should not be organising a strategy of the Gangmasters Licensing Authority, which knows much more about it than he does. Therefore, this new director of strategy needs to have a light touch when he deals with an established organisation that has been doing very good work with a lot of successful prosecutions. I have not had that assurance from the Minister.

Lord Bates: I will try to be a bit more helpful if I can. I totally share the view of the noble and learned Baroness that the Gangmasters Licensing Authority is doing an outstanding job in its present field. That is one reason why we are increasing its powers. It is a recognition that it is an effective organisation and we want to make it even more effective. It is unthinkable that someone could come into this role—co-ordinating and sharpening the overall strategy of labour enforcement—who would not embrace the strategy already in place of such an effective organisation as the Gangmasters Licensing Authority.

Clause 7 prevents the director exercising functions or making recommendations in relation to individual cases. Decisions about sanctions to be taken against businesses are a matter for the enforcement bodies, which will remain operationally independent. However, the director may consider individual cases when examining the general issue during the exercise of his or her functions. I know that that relates to a previous comment, not to the comment just made. None the less, I hope that those additional reassurances—that the labour market enforcement director is building on strategies, ensuring that they are coherent and joined-up, and in doing so is absorbing best practice from a wider range of organisations involved in enforcement—will be welcomed. If so, the noble Baroness might feel these amendments are not necessary at this stage.

Baroness Hamwee: The noble and learned Baroness expresses my view precisely. I am not particularly concerned with the specific amendments; they were probing amendments. I might enlist her help in drafting something for the next stage. I am not sure—I may have missed it, in which case apologies—whether my question about whether the GLA board was a person for the purposes of Clause 2(6) was addressed, but perhaps that can come later. The board will exercise functions—essentially functions to the director's priorities. In other words, the GLA board's role is going to be changed. That is a serious issue for the individuals who will have taken one set of skills to the board and will not be expecting to get involved in something which is essentially more operational.

We are all struggling a bit to articulate the arrangements that we are concerned about and what we think should be in place. That is perhaps because it is quite easy to

[Baroness Hamwee]
draw some sort of diagram—an organigram—on a page showing the relationships, but that is not necessarily what real life is like. I am afraid that the intelligence hub does not reassure me at all, because it sounds like two lots of overlapping expenditure, if not complete duplication. That may be something that I return to. The nub of all this is the relationship. I hope that I can find a more felicitous way of addressing this at the next stage, but it has to remain on the agenda. For now I beg leave to withdraw the amendment.

Amendment 12 withdrawn.

Amendments 13 and 14 not moved.

Amendment 15

Moved by ***Lord Bates***

15: Clause 2, page 2, line 35, leave out subsection (7)

Amendment 15 agreed.

Clause 2, as amended, agreed.

Clause 3: Non-compliance in the labour market etc: interpretation

Amendment 16

Moved by ***Lord Bates***

16: Clause 3, page 2, line 40, leave out paragraph (a)

Amendment 16 agreed.

Amendment 17

Moved by ***Lord Bates***

17: Clause 3, page 2, line 41, at end insert—

"( ) failure to comply with the requirement under section 1 of the National Minimum Wage Act 1998 (workers to be paid at least national minimum wage);

( ) failure to pay any financial penalty required to be paid by a notice of underpayment served under section 19 of that Act (see section 19A of that Act);

( ) breach of a condition of a licence granted under section 7 of the Gangmasters (Licensing) Act 2004;

( ) failure to comply with any other requirement imposed by or under any enactment and which is prescribed by regulations made by the Secretary of State."

Amendment 18 (to Amendment 17) not moved.

Amendment 17 agreed.

Amendments 19 to 24

Moved by ***Lord Bates***

19: Clause 3, page 2, line 45, leave out from "officer" to end of line 46 and insert "acting for the purposes of that Act (see section 8A of that Act),"

20: Clause 3, page 3, line 2, leave out from "1998 (" to second "of" in line 3 and insert "see section 13"

21: Clause 3, page 3, line 3, at end insert—

"( ) any function of the Gangmasters and Labour Abuse Authority conferred by section 1(2)(a) to (c) of the Gangmasters (Licensing) Act 2004,"

22: Clause 3, page 3, line 4, leave out from "officer" to "of" in line 6 and insert "or a compliance officer acting for the purposes of that Act (see section 15"

23: Clause 3, page 3, line 6, after "Act)," insert—

"( ) any function of the Gangmasters and Labour Abuse Authority under Part 2 of the Modern Slavery Act 2015 (slavery and trafficking prevention orders etc),

( ) any function of an officer of that Authority acting for the purposes of Part 1 or 2 of that Act (see sections 11A and 30A of that Act),

( ) any function an officer has by virtue of section (Investigative functions),"

24: Clause 3, page 3, line 9, leave out subsection (3)

Amendments 19 to 24 agreed.

Amendment 25 not moved.

Amendments 26 and 27

Moved by ***Lord Bates***

26: Clause 3, page 3, line 16, at end insert "other than one under section 9(4)(b) of that Act"

27: Clause 3, page 3, line 24, at end insert—

"( ) an offence under section 30(1) or (2) of that Act which is committed in relation to—

(i) an order which was made on the application of the Gangmasters and Labour Abuse Authority, or

(ii) an order which was made under section 14 of that Act and which falls within subsection (4A) below;

( ) an offence under section (Offence);"

Amendments 26 and 27 agreed.

6.30 pm

Amendment 28 not moved.

Amendments 29 to 31

Moved by ***Lord Bates***

29: Clause 3, page 3, line 26, at end insert—

"( ) an offence of attempting or conspiring to commit an offence mentioned in paragraphs (a) to (f);

( ) an offence under Part 2 of the Serious Crime Act 2007 in relation to an offence so mentioned;

( ) an offence of inciting a person to commit an offence so mentioned;

( ) an offence of aiding, abetting, counselling or procuring the commission of an offence so mentioned."

30: Clause 3, page 3, line 26, at end insert—

"(4A) An order made under section 14 of the Modern Slavery Act 2015 falls within this subsection if—

(a) the order was made following the conviction of the defendant of an offence mentioned in subsection (4)(d) or (e), and

(b) the prosecution resulted from an investigation conducted by a labour abuse prevention officer (within the meaning of section 114B of the Police and Criminal Evidence Act 1984)."

31: Clause 3, page 3, line 27, leave out subsection (5)

Amendments 29 to 31 agreed.

Amendments 32 to 35 not moved.

Clause 3, as amended, agreed.

Clause 4: Annual and other reports

Amendment 36 not moved.

Clause 4 agreed.

Clause 5: Publication of strategy and reports

Amendment 37 not moved.

Clause 5 agreed.

Clause 6: Information hub

Amendment 38 not moved.

Clause 6 agreed.

Clause 7 agreed.

Amendment 39

Moved by ***Lord Bates***

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

"Gangmasters and Labour Abuse Authority

Renaming of Gangmasters Licensing Authority

(1) The Gangmasters Licensing Authority is renamed the Gangmasters and Labour Abuse Authority.

(2) In any enactment passed before the day on which this section comes into force, and in any instrument or other document made before that day, references to the Gangmasters Licensing Authority are to be read, in relation to any time on or after that day, as references to the Gangmasters and Labour Abuse Authority."

Lord Bates: My Lords, I shall speak also to Amendments 40 to 42, 60, 73, 77 and 214. I will allow the sponsors of Amendments 71 and 245 to speak to them.

Government Amendment 39 will rename the GLA the Gangmasters and Labour Abuse Authority, reflecting the transformation of its role. Amendment 40 relates to a new schedule, inserted by Amendment 73, enabling the GLAA to investigate labour market exploitation through investigative powers for our proposed new offence and the labour market offences contained in Clause 3. Government Amendment 41 enables GLAA officers to exercise police-style powers when investigating labour market offences, ensuring prompt action to tackle criminal behaviour. Officers will undergo necessary training, meeting College of Policing standards, to exercise these powers.

Other noble Lords will speak to Amendments 41A to 41D. Government Amendment 42 introduces a power for the GLAA to request assistance from the National Crime Agency, the police and immigration enforcement, who will have a similar right to ask the GLAA for assistance. Other bodies can be added by order.

Government Amendments 60 and 77 make consequential amendments reflecting the GLA's change of name, adding the director to certain legislation, such as the Freedom of Information Act, introducing IPCC oversight for the exercise of PACE powers and retaining the current GLA regime in Northern Ireland.

I will deal with the other amendments in this group when they have been spoken to by other noble Lords. I beg to move.

Lord Alton of Liverpool (CB): My Lords, earlier today a number of noble Lords referred to their misgivings about the changes being made to the Gangmasters Licensing Authority. During the passage of the modern-day slavery and human trafficking legislation, I moved amendments on the GLA and queried its ability to meet its obligations because of the resources made available to it—a point referred to earlier by my noble and learned friend and by other Members of your Lordships' House during our earlier debates. During the passage of that legislation, I moved amendments to enable the GLA to utilise assets from the proceeds of the crimes that it had investigated. In doing so, I reminded the House of the events which led to the genesis of the GLA, notably the 23 Chinese men and women who drowned in Morecambe bay after their Liverpool gangmasters took them to undertake cockle picking. At the time, a local fisherman, Harold Benson, described the tragedy as not only awful beyond words but absolutely avoidable.

In December 2014, during the passage of the legislation on modern-day slavery, I told the House that the lessons of Morecambe bay had not been fully learned. I described a similar incident in the Ribble estuary in which 17 cockle pickers of eastern European origin had been snatched to safety. In those debates, I cited the small number of personnel employed by the GLA, the cut, which I referred to earlier, of around 17% in the GLA's budget between 2011 and 2014, the small number of convictions—just seven—and the research by the University of Durham calling for the mandate of the GLA to be extended. Instead of seeing an expansion of the GLA's remit in order to prevent labour exploitation, there are genuine fears that the Government's amendments that we are considering represent a severe threat to the GLA, with changes to its role, remit and name resulting in a greatly weakened licensing labour inspection regime. If this comes to pass, it would inevitably allow new labour abuses, such as those I have just described, to abound.

The main issue revolves around the creation of what has been described as flexible licensing standards without a requirement for affirmative procedures. Government Amendment 77 to omit the requirement for the GLA to make rules by statutory instrument in effect means that the GLA has power to amend licensing standards and must—this is changed from "may" in the original GLA Act—seek approval of the Secretary of State, but not Parliament. The Secretary of State still retains the power she always has had under Section 6(2) of the Gangmasters (Licensing) Act to remove by negative procedure certain circumstances in which labour providers do not require a licence.

In summary, these amendments, taken with existing powers, mean that the Secretary of State could greatly reduce by negative procedure the number of labour providers licensed in a GLA sector, as suggested by the recent consultation response, and could greatly reduce the licence standards to be applied to those who are licensed with no requirement for any statutory instrument. This appears to be what the Government mean when they talk about flexible licensing, which was put forward in the consultation and supported by just 19%—less than one in five—of the respondents.

[Lord Alton of Liverpool]

The Delegated Powers and Regulatory Reform Committee published a report on the new government amendments only last Friday and found that these new powers to change rules without parliamentary approval are inappropriate and therefore should be removed from the Bill. Focus on Labour Exploitation states that,

"the GLA is a first line of defence against the labour abuses that develop into severe exploitation and modern slavery. We are extremely concerned that a new 'flexible' licensing regime as proposed in these amendments will leave the GLA powerless to prevent widespread abuses and therefore exploitation and instead caught up in police style investigations that absorb a huge amount of time and resources".

In our debate on the Modern Slavery Act, the noble Baroness, Lady Garden of Frognal, answering for the Government said:

"We need to consider this carefully and ensure that in seeking to broaden the GLA's remit, we do not undermine the good work that is being done already".—[*Official Report*, 10/12/14; col. 1879.]

I entirely concur with that sentiment. We must be very careful indeed not to do precisely that.

The noble Baroness also said:

"The GLA is working with the University of Derby to devise training and to develop an anti-slavery training academy for use by supply chain businesses. This will build on the GLA's excellent existing collaboration with business in its regulated sectors. The GLA is well placed to tackle the serious worker exploitation that lies between the more technical compliance offences that fall to be investigated by HMRC and the serious and organised crimes that are addressed by the National Crime Agency".—[*Official Report*, 10/12/14; cols. 1880-81.]

Presuming that this is the aim of today's amendments, what are the resource implications? This point was made earlier by my noble and learned friend and other Members of your Lordships' House. Without the necessary resources, how on earth will this agency be able to do these things? Clearly the Government envisage an expanded role. This will include police-style investigations and powers for offences across the labour market. Alongside this is the proposal to have a more flexible approach to licensing.

The Minister needs to be clear about whether the aim of the amendments published on the very day that the consultation concluded—which hardly demonstrates that there was a long period of reflection—is to remove strict compliance obligations from those businesses which have been compliant hitherto or whether it is to give the GLA more teeth. I wonder what the Minister makes of the minimal support which the flexibility proposal received from the respondents—just 19% out of a total of, I think, 93 respondents to the consultation, who came from academia, charities, trades unions and industry.

Existing GLA licence standards are crafted to give strong protection against exploitation. That includes issues such as working hours, pay, accommodation and safe transport. Clearly, flexible licensing should not mean a reduction in licensing. This must not become a sort of trade-off between licensing as a means of raising labour standards and preventing exploitation and a more flexible approach that could divert time and resources to tackling extreme cases instead. That in turn would create a climate in which rogue gangmasters could flourish and undermine the excellent intentions of the legislation we passed on human trafficking and exploitation of people as modern-day slaves.

Furthermore, the amendment removes a requirement for the GLA to make rules by negative procedure—a point made by the noble Lord, Lord Kennedy, when we were dealing with the earlier amendments. In effect this will mean that the GLA would have the power to amend licensing standards and must seek the approval only of the Secretary of State and not of this House or the other place. The Secretary of State still retains, and always has had, the power to remove certain categories of labour providers requiring a licence by negative procedure. These amendments mean that the licence standards to be applied to labour providers in a given sector could be significantly reduced or expanded without parliamentary scrutiny. Unless Parliament is engaged in the shaping of licence standards, changes could be made without a clear evidential basis and without proper and full consultation with all stakeholders with expertise in labour sector licensing requirements. GLA licensing rules should not be changed without detailed impact assessments, including worker consultation, which might assure Parliament that any changes would not negatively impact upon the vulnerable workers whom they are designed to protect.

In conclusion, when the modern-day anti-slavery legislation was enacted, it had the benefit of pre-legislative scrutiny and of the forensic examination by both Houses. That is not the case with what is before us today. We would be wrong to treat this avalanche of amendments lightly or to be pushed pell-mell into approving them in haste.

Lord Lea of Crondall (Lab): I, too, want more clarity on the same issue that we have been discussing for the past half hour or so. I refer to the new Schedule, on page 32 of the Marshalled List. Why is some of this necessary? At the bottom of that page, the proposed new subsection states:

"The body known as the Gangmasters Licensing Authority is to continue to exist"—

that is very nice—

"and is to be known as the Gangmasters and Labour Abuse Authority".

Given that the word "Licensing" is disappearing, does that arise in respect of the present functions of the Gangmasters Licensing Authority simply because those are being subsumed in the wider exercise that is mentioned at the bottom of the page, where it says,

"the Authority and its officers must carry out those functions in accordance with the strategy",

which is the wider strategy? The more I think about it, the more I cannot quite believe that this will do anything other than restrict some of the present functions of the Gangmasters Licensing Authority. Therefore, at the foot of page 32 instead of just saying "continue to exist", which, as I say, is very nice—a pat on the head, so jolly good—why could we not say "and its functions continue to exist"? Could the Minister clarify why that is not the case?

6.45 pm

Lord Rosser (Lab): I thank the Minister for introducing the government amendments in this group, which set out the Government's proposals for the new Gangmasters

and Labour Abuse Authority. We also have an amendment in this group calling for the Secretary of State to undertake a review of the existing, highly successful and effective Gangmasters Licensing Authority, with a view to extending its remit to enforce labour standards and protection wherever it is believed abuse and exploitation of workers may be taking place.

The Delegated Powers and Regulatory Reform Committee, as the Minister has said, has already expressed its views, through the use of an exclamation mark, on the number of last-minute amendments the Government have submitted. In its speedily produced report on those amendments—for which we are, I am sure, all very grateful—the committee made a number of recommendations relating to the latest tranche of government amendments. It would be helpful if the Minister could say whether the Government intend to adopt those latest recommendations and will therefore be bringing forward appropriate amendments as necessary. It would be very helpful to know what the Government's position is on that point.

The Gangmasters Licensing Authority, as has already been said, was set up in the aftermath of the Morecambe Bay tragedy in 2004, when 23 Chinese cockle pickers drowned while working there. In the past two years, the GLA has prevented the exploitation of over 5,000 workers. The question that has to be asked, in the light of the changes proposed by the Government and the setting up of a new Gangmasters and Labour Abuse Authority, is whether these changes will address the problem of labour exploitation and abuse across the board, or will the effect be to extend across a broader front a watered-down and less effective version of the current Gangmasters Licensing Authority? If that is the case, this would do little to help eradicate labour exploitation or abuse or, equally significantly, do little to encourage those being abused to come forward.

According to the Association of Labour Providers, which conducts a survey of Gangmasters Licensing Authority licence holders once every two years, this year—as I think the noble Baroness, Lady Hamwee, said earlier—93% of licence holders said they were in favour of licensing, 73% perceived the Gangmasters Licensing Authority to be doing a good job and 67% deemed the Gangmasters Licensing Authority to have contributed to a significantly or slightly improved level-playing field. The point about regulation and achieving a level playing field is important because, as the chairman of the Migration Advisory Committee told the Public Bill Committee in the Commons,

"It takes away the cowboys … and the people who do the undercutting".—[*Official Report*, Commons, Immigration Bill Committee, 20/10/15; col. 20.]

The proposed new or revamped authority, the Gangmasters and Labour Abuse Authority, will have the power to enforce the National Minimum Wage Act 1998, the Employment Agencies Act 1973 and relevant parts of the Modern Slavery Act of last year across the entire labour market. It will also engage in criminal investigation and enforcement. The setting up of the Gangmasters and Labour Abuse Authority, as the changed name suggests, will also lead to a move towards what the Government are describing as,

"a more flexible approach to licensing".

Before putting forward their proposals on the proposed Gangmasters and Labour Abuse Authority, the Government conducted a consultation on tackling exploitation in the labour market. In the part of the questionnaire on licensing, the Government asked respondents to say whether they agreed that the Government,

"should introduce a more flexible approach to licensing, based on a risk assessment, judged on a sector by sector basis and agreed by Ministers and Parliament".

Since, as the noble Lord, Lord Alton, has already pointed out, almost twice as many respondents answered no to that question as answered yes, it looks, frankly, as though the Government had already made up their minds on the issue of flexible licensing before the consultation started. Otherwise, what was the point of the consultation when almost twice as many respondents answered no to that particular question?

Unscrupulous gangmasters can of course also be flexible and simply move to a sector where the proposed flexibility of the licensing arrangements may enable them to carry on their exploitation and abuse in the labour market. What firm assurances can the Government give that this would not happen under a "flexible approach" to licensing? Can the Minister give an assurance that flexible licensing does not mean a reduction in licensing? I suspect that he cannot give such an assurance. If it means a reduction, that could threaten efforts in the Modern Slavery Act to protect vulnerable workers from exploitation and to reduce cases of modern slavery. Will the Minister also confirm that there will be no shift away from licensing towards voluntary schemes? Witnesses before the Bill Committee in the Commons were clear that the enforcement of labour standards across the board is the only way to level the playing field.

The issue raised most frequently by respondents to the consultation related to resources, and comments have already been made on this issue. Having sufficient resources attached to ensure that the new authority had the ability to match its mission was a recurring theme, and overall respondents were clear that any reforms would need to be sufficiently resourced and enforced. No doubt this clear response was in part conditioned by the fact that labour inspection authorities have seen steep declines in their budgets over the past five years, including a cut of more than 20% to the Gangmasters Licensing Authority. Not only will the GLA, in its changed role, see its remit extended to the whole labour market but it will receive new criminal powers of investigation and enforcement that could require significant resources which, if not provided, could then distract from core licensing and monitoring functions.

However, although this was the most frequently raised issue in the consultation, the Government failed to address it in any meaningful way in their response. Instead, there is a suggestion that the Director of Labour Market Enforcement will help to pool resources between labour inspection authorities. Given the existing budgets on which they operate, though, such pooling could not ensure that the proposed increase in workload was adequately funded. I ask the Minister to tell us, either now or well before Report, in the letter that he earlier undertook to send on resources, what the Government's estimate is of the resources that will be

[LORD ROSSER]
needed by the new bodies that they are creating under the Bill, including, importantly, the new Gangmasters and Labour Abuse Authority, to undertake the role and remit that they are being given in future under the terms of the Bill—a role and remit that, in many cases, are extended over those that currently apply. Presumably, the Government do not set up new statutory bodies or organisations with defined roles and powers without having a view on the resources that will be needed to enable the remit to be carried out, and the powers given to be effectively applied and enforced.

We have also expressed concerns, in the discussions on previous amendments, about the relationship between labour standards enforcement authorities and the immigration authorities. There is a reference in one of the Government's new clauses to the new Gangmasters and Labour Abuse Authority having a working relationship with immigration officials and,

"any other person prescribed or of a prescribed description",

over requests for assistance. Since there is evidence that, the greater the overlap between labour inspection and immigration control, the less likely victims of exploitation are to come forward for identification, could the Minister spell out in some detail what the parameters will be of the working relationship, set out in the Bill, with immigration officials and others undefined, to which I have referred?

The Bill's provisions also bind officers from, now, the Gangmasters Licensing Authority and, in future, the Gangmasters and Labour Abuse Authority to the provisions of the Director of Labour Market Enforcement's strategy. The noble and learned Baroness, Lady Butler-Sloss, has already expressed her reservations about that. Why do the Government believe—I ask this despite the previous explanation that the Minister gave—that this is necessary, as opposed to requiring the GLA, and, in future, the GLAA, to have regard to the director's strategy? What difficulty do the Government see arising if the primary functions and overall strategy of the GLA and GLAA are set by their own board after having regard to the director's strategy? What is it that the Director of Labour Market Enforcement could conceivably require the GLA to do that that body might not want to do, and thus appear to justify the Government's proposal that it will be bound by the provisions of the Director of Labour Market Enforcement's strategy? I hope that the Minister will respond in some detail on that point.

I hope that I am not abusing my ability to speak on this group, but I also invite the Minister to respond, under this group or in the letter that he earlier undertook to send, to a question that I asked in an earlier group about the protections given under the Bill to workers irrespective of immigration status, and what role the Director of Labour Market Enforcement and the agencies that he or she will oversee, including the new GLAA, will play in addressing labour exploitation and abuse in the workplaces of those who do not have the required immigration status to be in this country.

As always, I will listen with interest to the response of the Minister, who I hope will be able to reply, either now or prior to Report, to the points made in response to the Government's proposals, including the latest batch of amendments following their consultation on labour market exploitation.

Baroness Donaghy (Lab): My Lords, as the Minister will know, I am a refugee from the employment relations world and the language of immigration is not familiar to me. I know that the Minister himself has a lot of personal experience of employment relations so I hope he will understand that, in supporting my noble friend's amendment, I have real concerns about why these issues have come up under an Immigration Bill at all. Obviously, I must not be self-indulgent and make a Second Reading speech at this stage, but I echo what has been said that, if this is associated with immigration matters then reporting by vulnerable workers will be even less likely, and that is a matter of some concern.

My other concern is that vulnerable workers can also be British-born. We have heard a lot about how some adults with special needs have been housed in tin shacks and exploited horribly. When I produced a report for the previous Labour Government on construction fatalities, I identified that there were also vulnerable groups of workers who were British-born: the very young, who would not necessarily challenge the authority of their employer, and—how shall I put it?—the quite mature, who were perhaps reaching the end of their working life in construction and thought that they knew rather more about it than they actually did, or perhaps were not familiar with a piece of machinery. So I would regret it if this were seen entirely as an issue of immigrant and migrant labour. Because of where it has appeared in the legislation, there is a danger that that could happen.

I take some comfort from the fact that the consultation exercise was shared between the Home Office and BIS. I look for an assurance from the Minister that BIS will have a very full role to play so that the employment relations aspect of all this—the labour market issues as I know them—rather than immigration issues, will be fully taken into consideration.

7pm

Perhaps I may underline that, when I looked at this issue, I recommended that the Gangmasters Licensing Authority should cover construction. That was seven years ago, so things have changed without all the changes the Government are recommending. In a way, I am rather glad that the powers are being extended, but it is a question of being careful what you wish for. I have a real worry that this tidy little hierarchy, which looks as if it is going to be based in the Home Office, is going to be a dissipated power and there are going to be a lot of misunderstandings about the role of the new authority.

In the year that I studied for the report, there was a lot of discussion because about 12 migrant workers had been killed in the construction industry. Some would say they were the most vulnerable because they were used to tolerating lower standards of health and safety or they were exploited or there was a language barrier that prevented effective communication. I have to say there was no real data to show this. Equally, I saw that many migrants were skilled and experienced and worked in regular groups. They were attracted to

the industry, which liked their work ethic, and they were paid the agreed industry rates. Some questioned the competence of migrant skilled workers and said their qualifications were not comparable, but there was no evidence to prove that.

I agree with what my noble friend Lord Rosser has said. Can the Minister assure us that the real labour relations issues will not be neglected here and that the good work of the Gangmasters Licensing Authority will not be dissipated in any way? We should remember that this is not just an immigration issue; it concerns vulnerable workers of all kinds.

Baroness Hamwee: My Lords, the very fact that the noble Baroness raises this issue coming—and I do not say this at all disparagingly—rather fresher to this Bill than some of us underlines the need to get the answers to questions raised around the Committee on to the record and in such as a place as they can easily be found. It should not just be in a letter in the Library but in the Bill. That becomes all the more obvious. I am glad that the noble Baroness reinforced that. Other references have been made to the report of the Delegated Powers and Regulatory Reform Committee and to flexible licensing, so I will not take the time of the Committee now.

I have a number of amendments in this group. This may be the point at which I emulate the Government Front Bench as I am in danger of losing my place—I hope they will forgive me if I do. My Amendment 40A refers to the importance of resources by providing that the new functions conferred by regulation on the GLAA should be ones for which resources have been made available.

My amendments to Amendment 41 raise some similar points which I will refer to later, so I will deal with them in a rather more general fashion. The first is a probing amendment. Amendment 41 proposes new Section 114B for the Police and Criminal Evidence Act and says that,

"regulations may apply provisions of this Act with any modifications".

Does that refer to modifications that are necessary simply in order to tweak references to legislation; for instance, so that the legislation being modified applies quite clearly directly or is it something wider? As it is written at the moment I fear it might be wider, which is why I have raised the issue.

I also suggest that regulations should,

"provide for labour abuse prevention officers to undertake specified training and achieve specified qualifications".

The noble and learned Baroness referred earlier to the extension of PACE powers. One should not extend those significant powers to people who do not know how to use them. Training is needed and possibly qualifications for them to be able to use those powers. I picked that up at a number of points. I also suggest with my amendments that a statutory instrument amending or repealing a provision of the Act is significant.

In new Section 22A of the Gangmasters (Licensing) Act 2004, to which the noble Lord, Lord Rosser, referred, a relevant person for the purposes of requests for assistance going either way includes immigration officers. That again conflates immigration control and labour market regulation. I am aware that the GLA has experienced some frustrations when it might undertake what you might call hot pursuit when it has discovered a likely offence but does not have the power to deal with it. I have heard Paul Broadbent say that it is very frustrating when you have to wait for the police to arrive to deal with something and you cannot stop evidence being removed. I am not sure whether I am making that point at quite the right point in the Bill but I think it comes generally within this area.

My next group of amendments deals very much with training, qualifications and resources again so I will not repeat the arguments, but I think it was again the noble Lord, Lord Rosser, who referred to the relationship between the strategies. Under Amendment 77 the GLAA will have to carry out functions "in accordance with" the labour market enforcement strategy. Everybody else involved is left with the lighter obligation of having regard to it, so why the difference? That is my Amendment 77A.

Amendments 77B and 77C are about the relationship with the Secretary of State and the Secretary of State's powers. At the moment, to take one instance, the GLA sets fees after consultation with the Secretary of State. What will the position be in the future? My Amendment 72 would enable the GLA to require information from supply chain. It would give it powers relating to an organisation that takes supplies of goods and services. That seems to have been a lacuna that could do with filling or closing. I am not sure what one does with a lacuna, but it is rather a different amendment from the others we have been debating. Again, it is something we could very usefully address during the course of this Bill.

Viscount Hailsham (Con): My Lords, I apologise for making what I suspect will be regarded as a somewhat pedantic point but I should like to raise some specific questions about Amendment 41. At this point, I am referring to the amendments to the PACE powers.

First, as regards new subsection (1), I notice that the power is permissive and not mandatory. Perhaps the Minister would be so good as to explain why it is not a mandatory power but only a permissive one. Secondly and related to that, I am sure that your Lordships would like to know whether it is the Government's intention to exercise this power. If so, when and to what extent?

My next point is also brief. In new subsection (7)(b) I find that the regulations may apply to "particular purposes". I think that your Lordships will be reassured to know that this power is not going to be imposed with regard to particular investigations; rather, that it is more general in character.

My last point relates to new subsection (1)(8), which concerns a very wide power. It is contemplated giving the Secretary of State a power to amend substantive legislation. I have personally always been very cautious about using statutory instruments for such a purpose. Incidentally, I am very glad to see that the affirmative procedure is being used here for that very purpose, but, as I say, I am very cautious about using statutory instruments in this way. I suspect that the Committee would like to know the extent to which the Government are minded to use this power and, if so, for what purpose and when.

Lord Bates: My Lords, I am very grateful to noble Lords for speaking to their amendments in this group. I shall try to address as many of the points raised as I can at this stage, but I may have to write to noble Lords on some of the more specific ones.

I want to make one general point, which more or less relates to the points made by the noble Baroness, Lady Donaghy, and the noble Lord, Lord Lea. Essentially they are asking what has changed here. The Government are effectively putting themselves in a strategic position to take much tougher action against all forms of labour market abuse. In general terms, although the TUC had some reservations about the detail, which I am sure we will come to, in a broader sense it welcomed the fact that the Government were taking this matter very seriously, wanting to join up different agencies which are all doing a very good job, to give them a stronger strategic position and, of course, more powers. Those powers would include the ability for rogue employers to be jailed. These are serious powers and I will come back to the comments of my noble friend Lord Hailsham on their use, because that is a very important point for us to consider.

It should be remembered that we are extending the base of the resources. In some of the amendments we have covered the additional resources that will be available to the agencies—for example, the Organised Immigration Crime Task Force and the National Crime Agency, which we dealt with in the Serious Crime Act, and there is also immigration enforcement. Organised crime syndicates are massively exploiting this area. Information will be shared and we will be receiving information from different areas. That is part of a big approach that we are taking to nail some of the abuse that has been going on for far too long.

7.15 pm

When it comes to resources—a key point referred to by the noble Lord, Lord Alton—again, it is right that we get down into the detail. I was making a rough note of some figures I had quoted earlier, which I shall have to check. Effectively we are bringing together three agencies and putting in a new Director of Labour Market Enforcement. The Bill sets out that there will be funding to enable the director to do his or her job. Therefore, let us say that that is an additional element of funding. Beneath that, we have the Gangmasters Licensing Authority, whose budget is about £2.48 million, the Employment Agency Standards Inspectorate, whose budget is about half a million pounds—a relatively small sum—and the national minimum wage enforcement function. The latter has by far the greatest number of staff and by far the greatest budget, standing at £9 million last year. Therefore, the total across those three groups for last year was £12 million.

In his Autumn Statement, the Chancellor announced that a further £4 million would be going to the minimum wage task force, and the regulations, which were prayed against just before we started this Committee stage, provide for additional fines to be levied on employers. The task force's budget was increased from £9 million to £13.2 million. Therefore, over the past year the overall pot for labour market enforcement has increased from £12 million to £16 million—a 25% increase, which is quite substantial—and there are additional powers. I am not saying that a headline figure of that nature is going to answer everybody's questions but it underscores that we are genuinely putting resources and legislative power behind the efforts to tackle labour market abuse.

I turn to some of the points that were raised. The noble Lord, Lord Rosser, asked about the relationship between the Gangmasters and Labour Abuse Authority and immigration enforcement. It is entirely possible that the GLAA will become aware of a situation involving gangmasters that also involves illegal working and the employment of illegal workers. In such circumstances, it is vital that a defined partnership exists to enable the exchange of information while ensuring that roles remain distinct. This already happens and we are taking the opportunity to formulate how that relationship works. This is part of what I referred to earlier. Often—we are told by the prosecuting authorities—when someone is guilty of an offence in one area, they are an offender in multiple areas.

I was asked about GLA prosecutions, and this relates to the points raised by the noble Lord, Lord Alton. Over time, the GLA has undertaken a number of more complex investigations that focus more effectively on serious and organised crime. This reflects a targeted and risk-based enforcement approach by the GLA. This year alone, the GLA has undertaken 92 such investigations—already more than the 72 undertaken in 2014 and the highest level since 2011. Again, I am not trying to escape from the resources point; I am trying to say that the GLA, which we all defer to in admiration, is doing more work more effectively, and we expect it to undertake more investigations.

The noble Lord, Lord Rosser, also asked why the GLAA has to carry out its functions in accordance with the strategy rather than having to have regard to the strategy, as other enforcement bodies do. The GLAA board remains responsible for the delivery of the GLAA functions but it now sits within the wider strategic approach of tackling labour exploitation. Enforcement bodies will be responsible for delivering aspects of the strategy but the legislative difference will be driven by their different legal identities. In practice, the same expectation will apply to all three enforcement bodies—that is, they will now follow the director's strategy.

On the strategy of the Gangmasters and Labour Abuse Authority and the point that the noble Baroness, Lady Donaghy, was making, it is important to remember that such abuse can be investigated across any sector, so it is not restricted to the traditional areas in which the Gangmasters Licensing Authority operated. It can look at labour abuse wherever it is found, including in construction. Again, I would have thought that that would be broadly welcomed.

Lord Rosser: Is it the Government's position that the resources currently available to the existing authorities will be sufficient to cover the apparently extended role and remit under this Bill of the Director of Labour Market Enforcement and the GLAA, which, as the Minister has said, will now exercise its function across a much wider front? Do the Government think that the kind of sums the Minister says are being spent at

the moment will be sufficient to cover what appears to be a considerably enhanced role for this authority in future?

Lord Bates: As I said, they are 25% higher than this time last year in terms of overall labour market enforcement. Are we saying that that is sufficient? No, because what we are focusing on is the strategy. A very important role of the Director of Labour Market Enforcement will be to advise the Home Secretary and the Secretary of State for Business, Innovation and Skills on what resources are necessary to tackle labour market abuse and exploitation. That is what we are doing, but once we have an overall strategy that says where the focus should be, we would be confident in identifying where the gaps are. We would have more confidence in claims made for increases in resources at that point than perhaps might have existed when we were looking at them in isolation. Again, I would have thought that that would be welcomed.

The noble Lord, Lord Rosser, rightly asked if we would look at the recommendations made by the Delegated Powers and Regulatory Reform Committee. Of course we will. We take all the committees of this House extremely seriously. I would say in our defence—as has been used in defence against us—that the report is dated last Friday, 15 January, and it is now Monday.

Lord Rosser: I hope the noble Lord will accept that it is dated Friday of last week because the Government were so late in producing their significant tranche of amendments.

Lord Bates: Touché. I get that point. The point I am trying to make is a very serious one: that the Government will of course listen to and pay very careful regard to the recommendations of a committee of your Lordships' House. I will have more to say on that by the time we get to the relevant section on Report.

Will our reforms make it easier for rogue gangmasters to operate without fear of detection? Absolutely not. Our reforms will ensure that the GLAA has tough new enforcement powers to tackle criminals in any labour sector, not just those that are licensed. Importantly, the number of licences granted for 2014-15 was 82, with 27 refusals and 23 revocations, out of a total of 954 licences in existence. That shows that it is something more than a box-ticking exercise: that genuine work is being done by the GLA in assessing the quality of those licences, and we want that to continue.

I have touched on reviews—perhaps not to the entire satisfaction of the noble Lord, Lord Alton—but I will come back to that issue and set out the position in a letter. The licensing rules contain detailed provisions on a variety of matters, such as what information should be provided by a licence holder to a worker before they start—for example, shellfish-gathering rules on tide, accommodation, record keeping and sector-specific provisions. This follows a model set out in Section 7 of the Private Security Industry Act 2001 which allows the Security Industry Authority to set its licensing criteria by publishing a document without any parliamentary procedure but with the approval of the Secretary of State.

I come to the point made on PACE powers—that there is no mention of the new labour market enforcement order offence in the proposed new Section 114B of PACE. Amendment 55, which introduces the new clause "Investigative functions", provides that the enforcing authorities can use the investigative powers they already have for the relevant trigger offence to be investigated in any breaches in LME orders. This means that where the GLAA has PACE powers for the trigger offence, it can use those powers to investigate a breach. I am immediately conscious, as I read that out, that that does not answer the particular point. Staff designated to exercise police-style powers will be subject to the relevant PACE codes and to Independent Police Complaints Commission supervision. As I say, I am conscious that that does not answer the specific question my noble friend asked, and I will undertake to write to him and to other noble Lords whom I have not had the opportunity to respond to in the time available. I hope, with those reassurances, that noble Lords and Baronesses will feel able to withdraw their amendment.

Baroness Hamwee: One of the amendments to which I spoke, which was quite unrelated to any others, addressed the supply chain point for the GLAA. I wonder whether the Minister has an answer to that. If not, could that not get lost in the rather more philosophical issues we have been debating?

Lord Bates: It is one that we listed in the supply chain regulations which recently came before your Lordships' House. A number of undertakings were given at that time to examine options for a central database and how that will be done. It should also be said that there was general agreement that we had set the threshold for the reporting of those standards at the lower end of the expected threshold, so that more companies would have to comply. That has a concomitant effect upon the size of the database which would need to be maintained in order to carry those statements of transparency in supply chains by the companies affected. I am very happy to undertake to update noble Lords on progress with that in the course of my responses.

Lord Elton (Con): Before my noble friend sits down I plead the excuse of being the Minister who moved the original PACE and took it through this House. I have a sort of avuncular interest, particularly in codes of conduct. I would be most grateful if he copied me in to the correspondence about the bearing of PACE codes of conduct on these new people operating under the Bill.

Lord Bates: I would be delighted to ensure that the noble Lord, as a distinguished former Home Office Minister, is so copied in.

Amendment 39 agreed.

Amendment 40

Moved by ***Lord Bates***

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

"Functions in relation to labour market

(1) Schedule (Functions in relation to labour market) (functions in relation to labour market) has effect.

(2) The Secretary of State may by regulations confer other functions on the Gangmasters and Labour Abuse Authority or its officers."

Amendment 40A (to Amendment 40) not moved.

Amendment 40 agreed.

Amendment 41

Moved by ***Lord Bates***

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

"PACE powers in England and Wales for labour abuse prevention officers

(1) After section 114A of the Police and Criminal Evidence Act 1984 insert—

"114B Application of Act to labour abuse prevention officers

(1) The Secretary of State may by regulations apply any provision of this Act which relates to investigations of offences conducted by police officers to investigations of labour market offences conducted by labour abuse prevention officers.

(2) The regulations may apply provisions of this Act with any modifications specified in the regulations.

(3) In this section "labour abuse prevention officer" means an officer of the Gangmasters and Labour Abuse Authority who—

(a) falls within subsection (4), and

(b) is authorised (whether generally or specifically) by the Secretary of State for the purposes of this section.

(4) An officer of the Gangmasters and Labour Abuse Authority falls within this subsection if he or she is—

(a) acting for the purposes of the Employment Agencies Act 1973 (see section 8A of that Act),

(b) acting for the purposes of the National Minimum Wage Act 1998 (see section 13 of that Act),

(c) acting for the purposes of the Gangmasters (Licensing) Act 2004 as an enforcement officer within the meaning of section 15 of that Act,

(d) acting for the purposes of Part 1 or 2 of the Modern Slavery Act 2015 (see sections 11A and 30A of that Act), or

(e) acting for any other purpose prescribed in regulations made by the Secretary of State.

(5) The investigations for the purposes of which provisions of this Act may be applied by regulations under this section include investigations of offences committed, or suspected of having been committed, before the coming into force of the regulations or of this section.

(6) Regulations under this section are to be made by statutory instrument.

(7) Regulations under this section may make—

(a) different provision for different purposes;

(b) provision which applies generally or for particular purposes;

(c) incidental, supplementary, consequential, transitional or transitory provision or savings.

(8) Regulations under subsection (4)(e) may, in particular, make such provision amending, repealing or revoking any enactment as the Secretary of State considers appropriate in consequence of any provision made by the regulations.

(9) A statutory instrument containing regulations under this section which amend or repeal any provision of an Act of Parliament may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(10) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

(11) In this section—

"enactment" includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;

"labour market offence" has the meaning given in section 3 of the Immigration Act 2016."

(2) In section 18 of the Gangmasters (Licensing) Act 2004 (obstruction of officers), in subsection (1)(a), after "this Act" insert "or functions conferred by virtue of section 114B of the Police and Criminal Evidence Act 84 (application of that Act to Authority officers)"."

Amendments 41A to 41D (to Amendment 41) not moved.

Amendment 41 agreed.

Amendment 42

Moved by ***Lord Bates***

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

"Relationship with other agencies: requests for assistance

(1) The Gangmasters (Licensing) Act 2004 is amended as follows.

(2) Before section 23 (but after the italic heading before it) insert—

"22A Relationship with other agencies: requests for assistance

(1) The Authority may request any relevant person to provide assistance to the Authority or any of its officers.

(2) The Authority may make a request under subsection (1) only if it considers that the assistance would facilitate the exercise of any function by the Authority or any of its officers.

(3) Any relevant person may request the Authority to provide assistance to the relevant person.

(4) A relevant person may make a request under subsection (3) only if the person considers that the assistance would facilitate the exercise by the person of any function.

(5) A request under this section must—

(a) set out what assistance is being requested, and

(b) explain how the assistance would facilitate the exercise of the function.

(6) A person who receives a request under this section must respond to it in writing within a reasonable period.

(7) Each of the following is a "relevant person"—

(a) a chief officer of police for a police area in England and Wales;

(b) the National Crime Agency;

(c) a National Crime Agency officer;

(d) a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971;

(e) any other person prescribed or of a prescribed description.

(8) Before making regulations under this section the Secretary of State must obtain the consent of—

(a) the Scottish Ministers, if the regulations prescribe a person who exercises, or a description of persons who exercise, any function in a case where provision conferring the function would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament;

(b) the Welsh Ministers, if the regulations prescribe a person who exercises, or a description of persons who exercise, any function in a case where provision conferring the function would be within the legislative competence of the National Assembly for Wales if contained in an Act of that Assembly;

(c) the consent of the Office of the First Minister and deputy First Minister, if the regulations prescribe a person who exercises, or a description of persons who exercise, any function in a case where provision conferring the function would be within the legislative competence of the Northern Ireland Assembly if contained in an Act of that Assembly made without the consent of the Secretary of State."

(3) In section 25 (regulations, rules and orders), in subsection (5)—

(a) omit the "or" at the end of paragraph (a);

(b) at the end insert ", or

(c) section 22A(8)(e) (regulations adding to the definition of "relevant persons")."""

Amendment 42 agreed.

House resumed. Committee to begin again not before 8.30 pm.

HIV and AIDS

Question for Short Debate

7.30 pm

Asked by ***Baroness Barker***

To ask Her Majesty's Government what assessment they have made of the report of the All-Party Parliamentary Group on HIV and AIDS *Access Denied*.

Baroness Barker (LD): My Lords, I thank noble Lords who are about to participate in this debate for their patience. Normally when one does that, it relates to a matter of minutes, but in this case noble Lords have had to wait seven weeks. We were originally due to discuss this matter at the beginning of December, but we were bumped—I believe that is the term—because of events in Syria. I will return to that at the end of my speech because there is an interesting point to be made.

However, there is an upside. It means that we waited over the Christmas and new year Recess and one of the more enjoyable things about new year is to open newspapers and discover what has been released under the 30-year rule. This year, it was fascinating to read about everything that the noble Lord, Lord Fowler, did 30 years ago when as Health Minister he had to walk in and explain to Mrs Thatcher why we should spend money to deal with this controversial disease that affected people whom we did not particularly like and so forth. Some of us have long suspected that he was something of a hero in the way that he persuaded one of the most formidable right-wing politicians in the world to do the right thing for public health. I want to look at this report today in that spirit.

The report was compiled by members of the All-Party Parliamentary Group on HIV and AIDS—some of us went to India and others went to South Africa—to look at this key question of access to HIV medicines. It is fair to say that there has been a tremendous success story in the world of HIV in the past 10 years or so. Because of international agreements by Governments and the pooling of resources, we have managed to curtail the impact of this deadly disease in an amazing way. In 2015, we reached a milestone of 15 million people on treatment compared with fewer than 1 million 10 years ago. It is estimated that nearly 16 million people are now accessing anti-retroviral treatments. HIV-related deaths have fallen to 1.2 million in 2014 from 3.2 million in 2005. Modelling—we have to model these things—suggests that nearly 74 million people have avoided acquiring HIV and 36 million HIV deaths were avoided between 1990 and 2013. That is an amazing global public health success. But across the globe, 60% of new infections are among young women, and HIV remains the leading killer of women of reproductive age. Noble Lords will appreciate that the report covers a number of large and in some cases very technical issues, and I will have to skate through just a few of them and hope that other noble Lords in the debate will follow me in.

The aim of the sustainable development goal is to end AIDS as a public health threat by 2030. To do that—to bend the curve of this epidemic—the bulk of progress has to take place over the next five years. If we do not manage to prevent young people, particularly women and girls across the developing world, from contracting the virus, infection rates will get ahead of us. The question for us, as a country that has led the international success to date, is: how will we manage to do that in times of austerity?

I want to highlight some of the things we need to do that emerge from this report. First, we must ensure continued access to affordable treatments. The success that has come about in the past 10 years has partly been due to the work of the Global Fund, but it is also because generic drugs are now widely available across the developing world. As noble Lords will know, the development of new drugs is a very risky business. That is why in highly developed countries it is a long and expensive process, although one of the most interesting things that came out of our evidence sessions is that there is no real relationship between the cost that drug companies attach to new drugs and the cost of producing them. They simply make a market decision about how much money they can make from new products.

However, those generic suppliers have managed to do wonderful things. They have managed to get the cost of the drugs to maintain a person in India for a year down from something like $2,000 per annum to $100 per annum. Those drug manufacturers told us that is now impossible to get those costs down even further. Some parts of the pharmaceutical world need more help. There is no great market for paediatric pharmaceuticals. Therefore, drug companies cannot put any more money into getting the costs of those drugs down. They look to Governments and international players for help in finding ways to make sure that they can keep the supply of those drugs coming.

The second thing is to focus on R&D. This Government have a proud record of making contributions to international research and development. Indeed, in the past few months there has been an announcement from George Osborne that there would be funding via the Ross fund for research into new diseases. It is not clear whether that funding will be in addition to existing HIV funding. Will the Minister commit to making a statement about the transparency of the different parts of funding that DfID and the Government are involved in? This is not a time to start robbing Peter to pay Paul. We have to be absolutely clear about the totals of funding and the projected outcomes.

[Baroness Barker]

The third thing that I want to focus on is the replenishment of the Global Fund. As a partnership between Governments, the voluntary sector and the private sector, the Global Fund has done truly remarkable work. One reason why it is so effective is that it focuses much of its work on women and girls. We know that the Government a few years ago led the way internationally by making a commitment of almost £1 billion into the Global Fund. The Global Fund replenishment is due shortly. Will the Government continue to give an international lead to funding that replenishment? It is so important and the most effective way in which to tackle this problem. We need to keep the pressure on other developed countries to continue with their funding and not to let it be dissipated.

I have a final question for the Minister. Middle-income countries have been de-prioritised in terms of UK Government direct aid. We understand the reasons for that. When we were researching the report in India, we heard lots of arguments about how India is now a successful economy that no longer needs to receive UK aid. But as noble Lords are aware, the poorest people on earth live in middle-income countries and the people most marginalised in those societies and most at risk fear greatly that their needs will be missed. I wonder whether the Minister will commit her Government to work with other international donors and funders to find new mechanisms to support those middle-income countries, as they transition away from direct aid from larger countries such as ourselves to a new order in which their own health systems and political systems are better equipped to deal with this ongoing issue. Finally, will the Minister explain to noble Lords where HIV will sit in the DfID strategy from 2016? It seems that it is being folded into a much broader remit on sexual and reproductive health, and there is some considerable concern out there that it is being deprioritised.

If we do not continue to fund public health initiatives such as this one around the world, desperate people will become the migrants that Europe has to help. Please can we maintain what to date has been a very successful track record and not be pushed away from that by the politics of the moment?

7.40 pm

Lord Fowler (Con): My Lords, I congratulate the noble Baroness, Lady Barker, on her speech and on the work that she is doing in this area. I thank her for her remarks and I agree with all the points that she made. Perhaps I may also pay tribute to the chairman of the all-party group at the time, Pamela Nash, who is much missed in Parliament. Many important points are contained in the report on the availability of drugs, on generics and the rest, but the first part sets out the barriers to treatment.

I want to concentrate on one of those, the third barrier which is noted: the ways that key populations are left behind. Those key populations are injecting drug users, men who have sex with men, sex workers and transgender people. The one feature that unites these different groups is that they all suffer discrimination, prejudice, criminalisation and violence, and they are often given little or no political priority. This goes to the heart of the debate, because it all too often defines a position where access to medicine is denied. We are not talking only about developing countries in sub-Saharan Africa. When we talk about injecting drug users, we are quite often talking about countries like Russia, for example.

Globally, and particularly in the developing world, an even more formidable barrier is the discrimination against gay people, which takes its clearest form in the criminalisation of homosexuality. Many countries around the world still have laws, regulations or policies which present obstacles to HIV treatment—more than half the countries of the world, according to UNAIDS—and many of them are, of course, in the Commonwealth. The effect of criminalisation on access to medicine is clear enough. It acts as the strongest possible barrier for the people penalised in this way to come forward, and even more, it acts as a disincentive to prevention.

In their defence some officials around the world, particularly in Africa and India, say that the law is not strictly enforced in some countries, but that does not remotely settle the issue for it ignores the fact that the law also sets standards. That is why we have race relations legislation, for example. The standards in this case, however, are much worse. If the law says that certain acts are criminal, it provides an excuse for people generally to discriminate. It gives the green light to persecution. "The law is on our side", they say. It encourages whole communities to ostracise gay people and for young men to be forced out of family homes, which happens all too often.

Perhaps I should say in passing, in response to something the noble Baroness said at the beginning of her speech, that I was half amused and half irritated to see in the official papers which were recently released that the internal advice from a civil servant at No. 10 to Margaret Thatcher on the AIDS threat was—I shall précis it—"Leave it to Fowler, Prime Minister. You would do better choosing a children's cause". I doubt very much whether that distaste for sexual disease has altogether disappeared in this country.

I want to make one last point. Apart from Governments, the obvious people who should be leading in the effort to fight the kind of discrimination that we face are the churches, and it is sad to note that there is precious little sign of that around the world. Uganda is not the only African country where the church is in fact on the side of repression rather than fighting it. Leaving equal marriage to one side, which we have debated in this House several times, not only would it be refreshing but immensely valuable if the Anglican church could back much more explicitly the right of gay people not to suffer from the injustice and discrimination that at present they do. There are some issues we can debate, but surely not the infringement of the human rights of any individual.

A wind of change in attitude is sweeping through many parts of the world, so surely the aim must be to encourage that wind of change to blow through Africa as well, and at the same time to blow down some of the barriers to treatment that are set out in this valuable report.

7.46 pm

Lord Cashman (Lab): My Lords, before I thank the noble Baroness, Lady Barker, and the all-party parliamentary group under the chairmanship of Pamela Nash, I want to make a personal statement of thanks to the noble Lord, Lord Fowler. As a gay man growing up in the 1980s, I think many people on other continents and some in this country thought that we were a group of people who were expendable, but because of the noble Lord's courage, leadership and determination, we were not seen to be so in this country. There are generations of gay men, lesbians and men who have sex with men, not only here but elsewhere, who owe the noble Lord a deep debt of gratitude, and I am privileged to echo something which, if they had the opportunity to do so, they would say.

I thank the noble Baroness, Lady Barker, for securing this important debate and for her speech, and I will try not to repeat some of the things she has said, but sadly for noble Lords I will repeat much of what the noble Lord, Lord Fowler, has said. Unbeknown to me as I sat down and wrote my speech earlier today, the themes are the same: human rights and civil liberties are at the very core of what we do.

Perhaps I may say, as I have on numerous occasions since I joined your Lordships' House just over a year ago, that given my experience working with NGOs and UNAIDS and my time as a member of the Committee on Development of the European Parliament, I remain deeply concerned about the Government's decision to direct ODA away from countries which they define as "middle income" countries. In so doing, and by insisting that the Global Fund should also control and curtail its work in middle-income countries, decades of work and investment in those countries are undermined. Once again, that places marginalised communities and vulnerable key populations, along with women and children, at risk. If we are seriously to make AIDS and HIV history, we will not do so by scaling back our work and our commitments, especially when using such questionable factors as GNI to define general income levels, as referred to by the noble Baroness, Lady Barker. South Africa, a country I know only too well, along with India, are two countries where our approach is unhelpful, to say the least.

Outlined in the excellent material supplied by the House of Lords Library, I note—and, sadly, must confirm that I am deeply alarmed and worried about—the criminalisation of homosexuality in parts of Africa, the Caribbean, the Pacific and Asia, as the noble Lord, Lord Fowler, referred to. These attacks are on fundamental human rights, which in turn affects access to treatment, increases the transmission of the HIV virus, and piles on greater harm with stigma and discrimination, and that it is often done in the name of religious belief is even worse. Those people of all people, preaching tolerance and understanding, should extend it and not control it or rein it in. However, in this regard I welcome the announcement of the most reverend Primate the Archbishop of Canterbury—Justin Welby—who said that he hoped the Anglican community could lead the argument for decriminalisation of homosexuality worldwide. That is not a direct quote. However, I am deeply concerned at the sanctions against the United States Episcopal Church for its open and liberal attitude to homosexuality and its acceptance of same-sex marriage.

My concerns are also, as I said, for other vulnerable groups—men who have sex with men, trans women and trans men, sex workers, women and young children. Access to healthcare, access to medicines and early testing are absolutely necessary if we are to continue the battle against HIV/AIDS, ignorance and stigma. Every year I take the trouble to have myself tested for HIV, and it is incredibly shameful that so many men and women still fail to do so.

We need to create a global research and development fund, as the noble Baroness, Lady Barker, referred to, and transparency, as she said, is key. Where is the funding coming from? Are we robbing HIV/AIDS Peter to pay Paul? We need to invest our way out of this crisis and prepare for the challenges of the future. We need to give access to first-line antiretrovirals and second and third-line treatments. If we ask people to test for HIV, we must assure them that they will receive treatment throughout their lives.

We have seen great progress, but there is much more to be done. There is a new epidemic among men who have sex with men, and it is vital that we make available the preventive method. I can see that the Whip is getting slightly agitated on the Front Bench, so I will move to my conclusion.

Will the Minister outline the plans her department has to ensure that key populations in middle-income countries are not forgotten and are not left behind? Furthermore, can she assure me that the Government will not prevent the Global Fund operating in so-called middle-income countries? I thank your Lordships.

7.52 pm

Lord Patten (Con): My Lords, of all the issues facing all those concerned with diminishing the spread of AIDS and HIV that are highlighted in this report, one of the most intractable and difficult to deal with is the damage inflicted by stigma. It is, of course, very easy to call for different ways of approaching the problem: more money, for example—the UK is showing a lead in this area, and we should be proud of that—or indeed, bashing the pharmaceutical industry for its charges. I would caution all to remember that these companies are not a public but a private good, however much their drugs may do public good in the end. It is shareholder funds, not government or charitable donations that make such wonderful ground-breaking research possible—going off from paid-for antiretrovirals and spinning off into generics—so we need to work with them, not against them, all the way.

Changing attitudes is just as difficult, expensive and long term as is the research that provides those new drugs and eventually their generic equivalents. This remains a huge challenge, particularly in reaching the poorest and most marginalised, leaving no one behind. Stigma stops people going for HIV tests in the first place, finding support without shame, telling their family and friends or taking the potentially life-saving drugs—all this from the apparent fear of being rejected by those you love the most, of losing your job, of abuse from your community and the rest.

[Lord Patten]

I am told that we urgently need much more systematic stigma-reduction initiatives, particularly in Africa. Who told me this? Well, I listened during the debate on Syria—the one that bumped the noble Baroness's debate seven weeks forward into a new year—to the most reverend Primate the Archbishop of Canterbury, on the need to do more to protect Christians and other minority non-Christian faith groups in the Near East, citing as his source the work done on the ground by his daughter. Borrowing from the episcopal book, and listening to what the most reverend Primate had to say, I hope that if it is all right for him it is all right for me to lean on briefings that I have had from my daughter who, ever since she came down from university, has worked with the Catholic Agency for Overseas Development. That organisation has been working flat out on trying to help on stigma reduction in Africa since the epidemic began. CAFOD and its partners, of all faiths and none, implement a broad range of HIV-related programmes from providing information on transmission, care, prevention, counselling and spiritual support to those of all faiths and none.

In three African countries—Kenya, Zambia and Ethiopia—back in 2010, CAFOD set up what I believe to be a brilliant and ground-breaking survey into the causes of stigma carried out by local people living with AIDS who, after proper training, asked people about stigma. Its findings were shared very widely. It revealed invaluable information about, say, differences between urban and rural communities or what drives some, rather than taking the antiretrovirals available, to spend what must be to them fabulous sums of money on traditional medicines and on the purveyors of traditional medicines. Our daughter has seen and heard much of the efficiency of this research-based evidence in visits to each of the three countries, going right up to the Eritrean border. She will be there again in March this year, listening and talking in particular to women—Muslim women as well as to Catholic women or those with no religion at all. The more the work of CAFOD and other organisations like it is successful in reducing stigma, the greater will be the parallel reduction in the spread of the epidemic.

Unless stigma is reduced, so that people living with and affected by HIV are helped with advice on how to live—and, most of all, simply how to take their antiretrovirals—then all the money spent and all the scientific advances that are made will be all the less effective. That is for certain. I hope that Her Majesty's Government take stigma-reduction programmes very seriously indeed.

7.57 pm

Baroness Gould of Potternewton (Lab): My Lords, I also thank the noble Baroness, Lady Barker, for initiating this debate as it gives me the opportunity to raise the plight of women with HIV and the particular barriers that they face.

Since the start of the global HIV epidemic, women have remained at a much higher risk of HIV infection than men, with young women and adolescent girls accounting for a disproportionate number of new HIV infections. As the noble Baroness, Lady Barker, said, a consequence is that HIV remains the leading cause of death among women of reproductive age, yet access to HIV treatment remains low. This lack of comprehensive HIV and SRH services means that women are less able to look after their sexual health and are more at risk of HIV infection—a problem that is often made worse for young women as such services are available only for married women with children.

In Kenya, Rwanda and Senegal more than 70% of unmarried sexually active girls cannot receive contraception due to age restrictions. That is not helped by healthcare providers often lacking the necessary training and skills to inform women on how to protect themselves, and on how to use anti-retroviral drugs. While overall access to HIV testing and counselling is improving it is still far too low. Discriminatory social and cultural norms are translated into laws which stop women and girls accessing HIV prevention treatment, care and support services. Women often face stigma and judgmental attitudes to drug use, sex work and homosexuality, resulting in the denial of healthcare.

The situation is that women are being left behind in terms of access to HIV treatment, exacerbated by the high cost of treatment, which creates weak and insufficient health systems and supply chains. This situation could be improved by community and home-based testing as an effective way of reducing costs. There is a correlation between HIV and poverty. Addressing poverty has shown to reduce sexual risk behaviour. A study in Malawi showed how cash transfers that were conditional on keeping girls in schools reduced HIV and STI prevalence, as well as high-risk behaviour. The World Health Organization states that 30% of women worldwide have experienced intimate partner violence or have been physically assaulted. These women are more likely to acquire HIV. Women experiencing abuse are coerced into sex and unable to negotiate practices such as condom use. Very often it seems that the men who are committing the abuse are more likely to engage in risky behaviour. A woman who depends on her partner economically cannot afford to jeopardise the relationship, even when she suspects that he may be HIV positive.

One hundred and twenty five countries have legislation criminalising domestic partner violence, sexual violence, child sex abuse and sexual harassment, but despite this progress the evidence for establishing the crimes is very weak. For instance, only 52 countries recognise rape within marriage as a crime, again making it difficult for women to protect themselves from such sexual violence or negotiate safe sex.

DfID has identified the needs of women and girls as a clear priority for the UK Government, but to date has not explicitly made the connection between the women and girls agenda and the HIV response. I ask the Minister to clarify the position, for addressing HIV and AIDS is not an additional burden or add-on to DfID's core priorities—rather, it supports them. Will the Minister confirm that HIV is not being deprioritised and absorbed into other conditions? Surely our target has to be to end the epidemic and to increase focus on protection of women with HIV and AIDS, not the reverse. Additionally, the UK aid strategy makes no reference to HIV and AIDS and gives no indication of how the UK intends to contribute to meeting the SDG target.

In conclusion, it is widely recognised that gender equality is vital to an effective HIV response. There needs to be renewed political and financial commitment to eliminate gender inequalities and gender-based violence, and to increase the capacity of women and girls to protect themselves from HIV. We cannot forget, as so often seems to happen, that, in the words of the executive director of UNAIDS:

"This epidemic unfortunately remains an epidemic of women".

8.02 pm

Lord Black of Brentwood (Con): My Lords, I join others in congratulating the noble Baroness, Lady Barker, on securing the debate, which is quite literally about life and death, and therefore one of the most important subjects with which this House can deal. The report is extremely compelling and I support without hesitation its recommendations, particularly on the issue of paediatric treatments, which the noble Baroness mentioned briefly. There is something horribly cruel about babies and infants being infected with HIV, which is compounded by the poor levels of care available. The figures from the WHO and UNICEF, which show that by 2020 some 1.9 million children will require HIV treatment, are heart-breaking. The chances of even a majority of them getting such treatment are slender, but, as UNAIDS makes clear:

"Without treatment, about one third of children living with HIV die by their first birthday".

New energy and focus need to be brought to bear on this issue, and policy and programming given the same priority as the key populations.

The point I want to highlight is one already raised by my noble friend Lord Fowler and the noble Lord, Lord Cashman, and which we have debated with great passion on a number of occasions in this House: the link between the criminalisation of homosexuality and the spread of HIV. I promise noble Lords that the three of us have not colluded on our homework, but I hope that the message is clear. For, with the best will in the world, HIV treatments, when they are available, are of use only if people are prepared to come forward, get tested and then take the drugs. But in far too many parts of the world—the majority of them, as we have heard, shamefully in the Commonwealth—criminalisation and stigma, which my noble friend talked so powerfully about, mean that HIV spreads more quickly, that safe sex practices never take root because there is no education on the subject, that prevention programmes simply do not exist, that people at risk do not get a test, and that the treatments central to this report are therefore simply not an option.

The evidence is overwhelming, as the Human Dignity Trust and others have documented in compelling work on the subject. The most telling statistic comes from UNAIDS, which found that HIV prevalence among men who have sex with men rises from one in 15 in Caribbean countries where homosexuality is not criminalised to one in four where it is. In countries where homosexuality is unlawful, the risks for the entire community are heightened because trans women and men who have sex with men have concurrent relationships with men and women, with fatal consequences, as the noble Baroness, Lady Gould, said in such a compelling way.

As I have said before on this issue, criminalisation kills. We have heard about the sterling and extraordinarily courageous work of the noble Lord in the mid-1980s, when the phrase that very much came to the fore was, "AIDS: Don't die of ignorance". Now it would be "AIDS: criminalisation kills", so, "AIDS: Don't die of criminalisation", might be a better way of looking at it. Whether or not there is widespread access to effective treatments, the HIV/AIDS crisis can never be brought under control and the dream of an AIDS-free world by 2030, which the noble Baroness, Lady Barker, talked about, will remain impossible while consensual same-sex relationships remain criminal in so many parts of the globe.

That has massive implications for public policy and for the brilliant work going on in the area of treatment. The UK is quite rightly investing millions of pounds in managing and ameliorating the HIV/AIDS crisis in the developing world, yet we are still prepared to accept the criminalisation fuelling it. While criminalisation exists, much of this money, invested with the best of intent, is being wasted. Policy needs to be joined up. That needs to start with our leadership role in the Commonwealth since 40 of its 53 members criminalise, in a most shameful breach of human rights. Some 60% of all people with HIV currently live in the Commonwealth, yet it is still a subject which, I say with some irony, dare not speak its name. At a presentation entitled "Getting to Zero" at the Commonwealth Secretariat on World AIDS Day in December, there was not a single mention of the link between criminalisation and HIV, despite the overwhelming empirical evidence, nor even mention of men who have sex with men and trans women as high-risk groups. Progress will never be made while the Commonwealth has its head in the sand, yet until progress is made on this front important issues surrounding access to treatment are, in so many parts of the world, largely academic.

In commending this report, which contains so many vital recommendations that need to be acted on, please let us continue to remember, as we have heard from so many speakers today, that one of the most basic points about why HIV continues to spread and why treatment will never be as effective as it can be is down to criminalisation of gay men and women. Action on treatment will never be sufficient on its own until we make progress on that agenda too.

8.07 pm

Lord Paddick (LD): My Lords, I, too, congratulate my noble friend Lady Barker on eventually securing this debate. I have been getting to know a new friend over this weekend and I have been telling him about my life and my experiences. One of the things that I spoke to him about was the fact that, in the late 1970s and early 1980s, mainly because of social pressure, I was dating women rather than men, and in 1983 I married one. Had it not been for that social pressure, for my marriage to Mary and for living faithfully in that marriage for five years, I probably would not be here addressing noble Lords this evening—that, and the pioneering work of the noble Lord, Lord Fowler, when he was Health Minister. That is personal for me.

[Lord Paddick]

Thankfully, medical science has moved on from those days when there were so many—too many—deaths in western countries because antiretroviral drugs were in their infancy and not always effective. The problem then was lack of scientific knowledge. Today, lack of funding is causing unnecessary and completely preventable deaths, together with prejudice and discrimination, as many noble Lords have already said.

The way the pharmaceutical sector works is that new and effective medicines are developed at significant cost on the basis that the companies will see a return on their investment through high drug costs. Once the costs are recovered, there is the opportunity to produce generic drugs at lower cost. This is the situation that we are in generally with primary treatment for HIV. In many cases, people can be successfully treated using primary treatment at low cost, as my noble friend Lady Barker said. But the virus develops resistance and sometimes secondary and third-line treatments are necessary—but these drugs are too expensive for many low and medium-income countries to afford.

As many noble Lords have said, the other issue is high-risk groups where HIV is most prevalent: intravenous drug users, men who have sex with men, sex workers and the transgender community—people who not only face the highest risks but, because of society's prejudice in some countries, are the least likely to get treatment.

I am sure your Lordships will remember the UK Government campaign, "Don't die of ignorance", that the noble Lord, Lord Fowler, spearheaded. In a different sense, perhaps, people are still dying of ignorance: the ignorance that results in prejudice and discrimination. It is not just these high-risk groups that should have an equal right to treatment. The fact is that they infect others, not least unborn and infant children. As my noble friend Lady Barker said, 60% of new infections are among women. The excellent all-party group report on HIV and AIDS put it so well: this is not someone else's problem; this is everyone's problem.

Medical science has come a long way. For those who are being successfully treated for HIV, and whose levels of HIV virus in their bloodstream are so suppressed by medication that they do not show up in tests and whose immune system is healthy, it is almost impossible to pass on the infection to others. It is vital that people know whether the treatment they are receiving is effective, so access to regular viral testing is also an essential part of the solution.

There are new developments all the time. I am currently part of a clinical trial in the UK of pre-exposure prophylaxis, or PrEP, where a daily dose of medication can prevent HIV infection in the first place. The results of the trial so far show that it is a highly effective way of preventing further HIV infection—but again, whether it becomes available on the NHS is another cost question.

It is Oscar season and again this year the Elton John Aids Foundation will be holding its annual Oscar viewing party to raise money to fight HIV. But charities such as this—and there are many of them—that are trying to raise funds to eradicate HIV, which is now scientifically possible, cannot win this fight alone. They need Governments' financial support and willingness to join them in the battle, which will help such charities to raise funds themselves.

This is an important report at a time when we need to renew our commitment to an HIV-free world. All it needs is the political will to bring this about and I urge the Minister to ensure that this Government show leadership in committing the necessary resources and encouraging others to follow their example.

8.13 pm

Lord Collins of Highbury (Lab): My Lords, I, too, thank the noble Baroness, Lady Barker, for initiating this debate. The APPG report demonstrated progress on access to anti-retroviral therapies. The latest figures released by UNAIDS show that nearly 16 million people now have access compared with fewer than 1 million just 10 years ago. However, 22 million people living with HIV still do not have access to ARTs and an incredible 19 million remain unaware of their status.

Since the report's publication we have had DfID's new development strategy and the Government's strategic defence and security review, which alongside the Autumn Statement pledged significant new funding for global health. These strategies highlight the need for better integration between DfID and the FCO to address human rights abuses and, as noble Lords have pointed out, criminalisation of LGBT groups, which, as the noble Lord, Lord Fowler, said, contributes to access to treatment being denied. Can the Minister outline the process ensuring cross-Whitehall policy coherence so that development needs are not undermined by other political considerations?

SDG objective 3.3 is to end HIV/AIDS, TB and malaria by 2030, and 2016 marks the beginning of the next replenishment phase for the Global Fund. The Global Fund estimates that the combined external funding required to beat the three diseases in line with the SDGs will be $97 billion through to 2019. This will come from affected countries themselves and the countries contributing to the Global Fund, which will need some $13 billion over the period—slightly less than for the last replenishment period. As noble Lords have said, the UK has a proud record on the Global Fund, contributing up to £1 billion over the last replenishment period, making it the third largest contributor.

In addition to the Global Fund commitment, I welcome the Autumn Statement launching the £1 billion Ross fund with the Gates Foundation. The Opposition will hold the Government to account on how that co-operation is working in the months and years ahead. That £1 billion includes a £300 million package on malaria and £115 million to develop new drugs and insecticides for malaria and TB. I welcome that attention given to TB and malaria but, as noble Lords have indicated, the funds do not yet specifically cover new tools for HIV and AIDS, either for treatment or prevention. It is crucial that the Government recognise the importance of new and better tools to prevent and treat HIV to ensure that investments in eliminating the disease are ultimately sustainable and successful.

If the aim of ending AIDS as a public health threat by 2030 is to be achieved, the bulk of the progress

must be made in the next five years, as we have heard. The joint UN programme has accepted fast-track targets. These are that 90% of people living with HIV know their status; 90% of those people are accessing treatment; and 90% of those on treatment are virally supressed. That would significantly reduce the number of onward transmissions. Achieving universal access, however, remains a challenge. As my noble friend Lord Cashman said, affordable first-line generic drug treatments are denied to middle-income countries, which are excluded from licensing deals and are forced to buy at inflated prices, making second and third-line ARTs prohibitively expensive. The Global Fund must be allowed to provide critical bridging finance for middle-income countries. We cannot simply pull out and leave Governments to fill the gap when we know that they will not. So will the Minister commit to looking at providing technical support before funding is withdrawn to ensure that programmes do not collapse after withdrawal?

8.18 pm

The Parliamentary Under-Secretary of State, Department for International Development (Baroness Verma) (Con): My Lords, I join all noble Lords in thanking the noble Baroness, Lady Barker, for securing this debate. I also thank all noble Lords for their excellent contributions. The noble Baroness referred in her opening remarks to the pioneering approach of my noble friend Lord Fowler in ensuring that the debate around HIV/AIDS had considerable resource at a time when it was very difficult to discuss such matters.

As the noble Lord, Lord Collins, rightly said, UNAIDS estimates that nearly 16 million people are now on treatment but, despite this significant progress, 1.2 million people are still dying every year because they lack the essential drugs and prevention services.

As noble Lords have mentioned, the *Access Denied* report raised important issues. The UK remains committed to addressing these issues, getting to zero and ensuring that no one is left behind. The scale of the UK's financial commitment is testament to this. We remain the second largest international donor on HIV prevention, care and treatment and over the period 2014 to 2016 have pledged up to £1 billion to the Global Fund—a commitment that is yielding real results, with the Global Fund providing more than 8.1 million people with life-saving treatment.

As noble Lords have said, no child should be born with HIV, and when this happens it is a clear failure of health systems. In response to this, the UK spent £360 million in 2013-14 investing in strong and resilient health systems. With considerable UK support, the Global Fund has reached 3.1 million women with services to prevent transmission of HIV to their babies.

The APPG's report expresses concern over the affordability of second and third-line antiretroviral drugs. As a number of noble Lords raised that point, I want to assure them that the UK is heavily investing in tackling this important issue through our support to the Global Fund, UNITAID, the Medicines Patent Pool and the Clinton Health Access Initiative. Our support to the latter has helped secure more than $1 billion-worth of procurement cost savings. These savings have been reinvested to allow millions more to access treatment.

The report also highlights the importance of viral load testing. The cost of viral load testing remains a major challenge, and so my department is supporting a deal with Roche at $9.40 per test, a 40% reduction for many countries. In low and middle-income countries, this equates to an average price cut of more than 40%. While the agreement is by no means the final answer, it does represent an important step.

A number of noble Lords referred to middle-income countries. We agree with the report that the withdrawal of international financial support must be sensitive to the needs of key populations. At present, approximately 50% of the Global Fund's resources are targeted at middle-income countries, and we continue to use our place on the board to encourage such countries to focus on key populations. At the same time, we must remember the needs of lower-income countries, which simply cannot afford to provide universal access to HIV treatment and HIV prevention services on their own.

It is clearly unacceptable that every two minutes an adolescent girl is infected with HIV and that 1,000 young women are infected every day, the vast majority of whom are in sub-Saharan Africa. DfID—my department—puts the empowerment of girls and women at the heart of everything we do. Nearly 60% of Global Fund resources are invested in programmes that reach women and children, and we have committed more than £100 million to programmes to tackle gender-based violence.

Sadly, stigma and discrimination continue to drive key affected populations underground—populations such as men who have sex with men, sex workers, prisoners and injecting drug users—inhibiting prevention efforts, increasing people's vulnerability to HIV and reinforcing barriers to accessing medicines. Tackling such stigma, and securing evidence-based HIV prevention and treatment for key populations, remains one of the UK's HIV policy priorities. The UK is therefore proud to be a founding supporter of the Robert Carr civil society Networks Fund, through which we support these particularly vulnerable groups.

We are also one of the world's leading funders of research and development into infectious diseases. In 2014-15, we spent at least £86 million on health research. The innovative new Ross fund gives us an opportunity to continue this important investment, developing, testing and delivering a range of new products for infectious diseases which affect the poorest and most vulnerable people in the world.

A number of questions were raised, and I will endeavour to answer as many of them as possible. If I run out of time, I promise to write to noble Lords. I will start by giving noble Lords a personal commitment. I have spent as much of my life as I can remember fighting all kinds of discrimination. For me, any form of discrimination needs to be tackled head on. My role gives me a really privileged position from which I can push hard. I work with the noble Baroness, Lady Barker, and we share some common areas which need a cross-party political response. I hope that, where

[Baroness Verma]
noble Lords feel they can offer support, they will undertake to come forward. These issues are not for any one political party; they are for us all to come together on.

The noble Baroness, Lady Barker, and other noble Lords asked whether the Ross fund was new money or whether it was robbing Peter to pay Paul. It is a new fund—a new £1 billion research initiative that will focus on malaria and other infectious diseases. It will report regularly to a cross-government assurance board. I do not have enough detail to give much more information at the moment, but as more details come forward I will be very happy to share them with noble Lords who are interested.

A number of noble Lords mentioned the difficulties that middle-income countries will have if funding is taken away. I hope I have demonstrated that we do support those countries—50% of the funding goes there—but we need to ensure that we focus very much on the low-income countries with high burdens. Where the key groups are in middle-income countries, our support must be directed and targeted to them. However, we support the Global Fund's new funding model, which will focus where the need is greatest. We are pressing the fund to ensure that marginalised groups in middle-income countries are prioritised and that innovative mechanisms are developed to address their needs.

The noble Lord, Lord Collins, spoke about giving assistance to middle-income countries. One area in which we offer programmes is working with the Governments of middle-income countries to ensure that they know how to target those key populations.

The noble Baroness and others asked where HIV sat within the overall strategy. It is a high-level strategy and we do not name every disease. However, I hope it reassures noble Lords that we remain the second biggest international funder of HIV prevention, treatment, care and support. We are not reducing our presence, but we need to focus on how to make others join their pledges and deliver with as much enthusiasm and commitment as the UK.

My noble friend Lord Black and other noble Lords rightly highlighted the issue of paediatric treatment. Besides our contribution to the Global Fund, we have provided €60 million annually to UNITAID to continue its pioneering role in paediatric HIV diagnostics and treatment.

My noble friend—along with my noble friend Lord Fowler and the noble Lord, Lord Cashman—also highlighted the link between the criminalisation of homosexuality and the spread of HIV. We continue to urge all states with laws that criminalise homosexuality and discriminate against people based on sexual orientation or gender identity to urgently review their laws. I was proud to chair a round table on LGBT issues at the Commonwealth Heads of Government Meeting in November. It was really encouraging to see that the meeting was so well attended. I can assure noble Lords that, in my role, I am determined to ensure that we work towards much more inclusive communities. Wherever I go, the issues around inclusive responses and challenging those countries are always on the agenda.

I think that I am fast running out of time. As I have said, approximately 50% of the Global Fund resources go to middle-income countries.

My noble friend Lord Patten talked about stigma, as did other noble Lords. Given the sensitivity of this issue in some countries, our approach to LBGT rights is strongly guided by local civil society in each of those countries. We work on a case-by-case basis, building bottom-up pressure for change.

I have got the message to say that my time is up, so I would just like to reiterate my thanks to the noble Baroness, Lady Barker.

Immigration Bill

Committee (1st Day) (Continued)

8.30 pm

Amendment 43

Moved by ***Lord Ashton of Hyde***

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

"Labour market enforcement undertakings

Power to request LME undertaking

(1) This section applies where an enforcing authority believes that a person has committed, or is committing, a trigger offence.

(2) An enforcing authority may give a notice to the person—

(a) identifying the trigger offence which the authority believes has been or is being committed;

(b) giving the authority's reasons for the belief;

(c) inviting the person to give the authority a labour market enforcement undertaking in the form attached to the notice.

(3) A labour market enforcement undertaking (an "LME undertaking") is an undertaking by the person giving it (the "subject") to comply with any prohibitions, restrictions and requirements set out in the undertaking, as to which see section (Measures in LME undertakings).

(4) "Trigger offence" means—

(a) an offence under the Employment Agencies Act 1973 other than one under section 9(4)(b) of that Act;

(b) an offence under the National Minimum Wage Act 1998;

(c) an offence under the Gangmasters (Licensing) Act 2004;

(d) any other offence prescribed by regulations made by the Secretary of State;

(e) an offence of attempting or conspiring to commit an offence mentioned in paragraphs (a) to (d);

(f) an offence under Part 2 of the Serious Crime Act 2007 in relation to an offence so mentioned;

(g) an offence of inciting a person to commit an offence so mentioned;

(h) an offence of aiding, abetting, counselling or procuring the commission of an offence so mentioned.

(5) "Enforcing authority"—

(a) in relation to a trigger offence under the Employment Agencies Act 1973, means the Secretary of State or any authority whose officers are acting for the purposes of that Act (see section 8A of that Act);

(b) in relation to a trigger offence under the National Minimum Wage Act 1998, means the Secretary of State or any authority whose officers are acting for the purposes of that Act (see section 13 of that Act);

(c) in relation to a trigger offence under the Gangmasters (Licensing) Act 2004, means the Secretary of State or any authority whose officers are acting as enforcement officers for the purposes of that Act (see section 15 of that Act);

(d) in relation to an offence which is a trigger offence by virtue of subsection (4)(d) (including an offence mentioned in subsection (4)(e) to (h) in connection with such an offence), has the meaning prescribed in regulations made by the Secretary of State.

(6) In subsection (5), a reference to an offence under an Act includes a reference to an offence mentioned in subsection (4)(e) to (h) in connection with such an offence.

(7) In this section references to the Gangmasters (Licensing) Act 2004 are references to that Act only so far as it applies in relation to England and Wales and Scotland."

Lord Ashton of Hyde (Con): My Lords, these government amendments introduce new clauses to create a new regime of labour market enforcement—LME—undertakings and orders, backed up with a criminal offence for non-compliance. As such, they are an important part of the Government's response to the consultation *Tackling Exploitation in the Labour Market*, where respondents agreed that there was a need to tackle exploitation falling between routine breaches of labour market legislation and very serious offences, which are dealt with by the police or the National Crime Agency. This means that, for the first time, individuals within rogue businesses face the possibility of imprisonment for repeated or serious breaches of labour market legislation, many of which are currently punishable only by a fine. However, as I am about to describe, a business will have several opportunities to put matters right before facing prosecution.

Taking national minimum wage offences as an example, an initial offence would be dealt with using the existing civil penalty regime. Money owed to the worker would also be recovered and the new regime will not affect this. However, if a business decided to take the hit and continue underpaying its workers then a labour market enforcement undertaking could be sought, requiring the business to take reasonable steps to ensure compliance in future. This could be an update to its software, for example, a measure which a law-abiding business would have implemented on its own initiative. If the business refused to give or failed to comply with an undertaking, the enforcer could apply to the court for a labour market enforcement order. This would contain similar corrective measures, as ordered by the court. A court could also make such an order when sentencing for a labour market offence. Only where the business failed to comply with the order would prosecution be a consequence.

The new clause inserted by Amendment 43 allows one of the enforcement bodies to request that a subject enters into an LME undertaking where it believes that a trigger offence has been or is being committed. "Trigger offence" is defined as meaning,

"an offence under the Employment Agencies Act 1973 other than one under section 9(4)(b) of that Act … an offence under the National Minimum Wage Act 1998",

or,

"an offence under the Gangmasters (Licensing) Act 2004",

including secondary and related offences.

The new clauses inserted by Amendments 44 and 45 set out what measures may be included in an LME undertaking and their duration. These must secure compliance with labour market legislation, publicise the undertaking and subsequent remedial action or be a measure of a kind prescribed in regulations by the Secretary of State. We envisage this power being used to prescribe measures to protect workers such as taking steps to inform them of their rights or preventing the unlawful retention of documents. All the measures must be just and reasonable, and at least one measure must be necessary to prevent or reduce further offending. The undertaking must make clear how any such measures will secure compliance. An undertaking takes effect when accepted by the enforcing authority unless alternative arrangements are made within it, and can last for a maximum of two years. The enforcing authority may release the subject from an undertaking, and must do so if none of the measures within it is necessary to reduce or prevent further offending. The new clause inserted by Amendment 46 governs the service of a notice to request an undertaking, including where the suspected offender is a body corporate or a partnership.

The new clauses inserted by Amendments 47, 48 and 50 set out the arrangements by which the enforcing authority can apply to the court for an LME order and the measures it may contain. An application may be made where the proposed respondent has refused or failed to enter into an undertaking within a negotiation period of 14 days, or longer by agreement. An application may also be made where the proposed respondent has failed to comply with the undertaking. The court must be satisfied, on the balance of probabilities, that the trigger offence has been or is being committed. The court must also be satisfied that the order is just and reasonable. The measures that the order can contain are the same as the undertaking. The appropriate court is the magistrates' court, sheriff court or court of summary jurisdiction, according to where the conduct constituting the offence took place.

The new clause inserted by Amendment 49 makes provision for a sentencing court to make an LME order following conviction for a trigger offence. The new clause inserted by Amendment 51 states that an order may not be made in respect of a child and that its maximum duration is two years. When making an order, the court may release the respondent from any previous order or from any undertaking made in respect of the same trigger offence. The new clauses inserted by Amendments 52 and 53 make provision for orders to be varied, discharged and appealed.

The new clause inserted by Amendment 54 puts a duty on the Secretary of State to issue a code of practice on the exercise of the new enforcement regime. This will make it clear to enforcing authorities how the regime should be applied alongside their existing sanctions. The code of practice will be laid before Parliament and published, and the enforcing authorities must have regard to the current version.

The new clause inserted by Amendment 55 provides that the powers conferred on officers to investigate trigger offences may also be used when investigating breaches of an LME order. In the case of the Gangmasters and Labour Abuse Authority, these powers will be

[LORD ASHTON OF HYDE]
extended by Amendments 17 and 40, and it will therefore have the powers to investigate trigger offences under employment agency and national minimum wage legislation.

The new clauses inserted by Amendments 56 to 59 create a criminal offence where a respondent fails to comply with an LME order. The maximum penalty is two years' imprisonment and/or a fine on conviction on indictment, or 12 months' imprisonment and/or a fine on summary conviction. Where the offence is committed by bodies corporate, unincorporated associations or partnerships, an offence is also committed by the officers of the company, the members of the unincorporated association or partners respectively, where it is proved that the offence was committed with the consent or connivance of, or attributable to the negligence of, that individual. I beg to move.

Baroness Hamwee (LD): My Lords, I have some amendments in this group. The first is an amendment to government Amendment 47, on the power to make an LME order. Under subsection (1) of the new clause, the court must be,

"satisfied, on the balance of probabilities, that the person has committed, or is committing, a trigger offence".

My amendment would change the balance of probabilities to "beyond reasonable doubt". A trigger offence relates to offences under other legislation as well as being an offence in itself so I do not understand why the civil standard of proof is thought to be appropriate. If the answer to this is that it is in effect covered by the new clause in Amendment 49, which is different, then is there not a problem in having differing standards of proof? I would be grateful for an explanation here.

Amendment 50A is an amendment to government Amendment 50. It would leave out the provision that one of the purposes of a measure—a "prohibition, restriction or requirement"—included in an LME order is bringing it,

"to the attention of persons likely to be interested in the matter",

and other points. If this is about communication across the actors in labour market enforcement, should it not be for the director to make sure this happens? Why is it a measure in a court order? It does not seem a matter for the courts. I can see that it may be necessary, for instance, to inform employees about an order but it seems very cumbersome and not appropriate in this context.

My final amendment in the group is an amendment to government Amendment 57, which, dealing with "Offences by bodies corporate", defines an officer of a body corporate as including a "manager". My amendment would take that out. I am used to seeing directors, secretaries and so on as officers of a company but a manager—though I admit I will be very out of date on company law provisions—to me means something quite different and not with the same responsibilities as a director of a company.

Lord Kennedy of Southwark: My Lords, here again we have a series of government amendments in varying degrees of complexity. I want further information on some of these amendments in relation to other requirements and punishments relating to people who commit the offence under various Acts as listed in government Amendment 43 and other amendments in the group. Is the noble Lord saying that in all cases of alleged offences, first they will be dealt with under the Acts he referred to in his contribution and only later on will an LME be sought? Will he clarify that when he responds and also how it is all going to work?

A trigger offence is committed and action is taken, as the noble Lord outlined in his amendments. Then requirements are sought from individuals and that can be a prohibition, a restriction or a requirement for further action that will reduce the risk of the person not complying up to a maximum duration of two years. He said that this could be reduced on application by the enforcing authority. My concern is that the Government do not always have a particularly good record in ensuring that all these present requirements are enforced to the full extent. If you look at the enforcement activity for breaches of the national minimum wage, I would suggest it was not a record to be particularly proud of. Will these additional burdens make enforcement easier and more effective or not? It would be useful if the noble Lord could respond to that point as well.

My noble friend Lord Rosser made reference in a previous debate to the question of how, with increased work and cuts in resources, we can ensure that these increased powers will be properly resourced. The worry is that there will be so much stuff here that we will actually end up with poor enforcement, not better enforcement.

8.45 pm

I also noticed that, with new subsections (6), (7) and (8) proposed in government Amendment 46, we are moving into the 21st century: with some caveats a labour market enforcement notice can be sent to individuals by electronic means. That is certainly progress. Will the noble Lord, Lord Ashton of Hyde, bring that matter to the attention of his friends in BIS? I am thinking of the noble Baroness, Lady Neville-Rolfe. We have some contradiction between how people who have allegedly committed offences are treated and how law-abiding citizens are treated in the Trade Union Bill—it is going through this House on virtually the same timescale—under which they are not allowed to receive their ballot paper by electronic means. There could be some interesting amendments in the next few weeks. We have the Government supporting the use of electronic means here, but at the same time denying their use for people trying to get their ballot paper. That is a contradiction. I will leave it there and look forward to the Minister's response.

Lord Hylton (CB): My Lords, what I have to say follows from what the noble Lord, Lord Kennedy, has just said. Amendment 43 refers to offences under four existing Acts together with inciting, aiding, abetting or counselling such offences. These can trigger undertakings. Amendment 44 refers to notices, orders and enforcement. All this is bound to cost money. Resources have been repeatedly mentioned today, so I must ask: how much of this additional expenditure will be new money and how much will be transferred from the enforcement

mechanisms of the existing legislation? It would be a great waste of our time and effort to create a series of new offences without having the means to cope with them.

Lord Ashton of Hyde: My Lords, I thank noble Lords for their remarks. Before I move to the amendments spoken to by the noble Baroness, Lady Hamwee, I shall comment on the points raised on the government amendments.

I was asked when the new system, which the noble Lord, Lord Kennedy, described as burdensome, will be used. This is a new power to be used after the existing penalties have been applied under the existing Acts. For example, in national minimum wage regulations, the current penalty is naming and shaming. In other areas, there are civil penalties. These amendments are designed for egregious offences and repeated offences where, for example, some companies may decide to take the fine and continue to pay their workers less than the minimum wage. We have included these new powers to put an end to breaches of labour market rules. We think they are an important part of the new toolkit to address these serious matters.

Resources have been mentioned on several occasions this evening. I take the point that if these new powers are not properly enforced, there will be no point in having them. My noble friend has already committed to talk about resources and to write to noble Lords on that subject, and I will ask him to include this in his letter.

The noble Lord, Lord Kennedy, raised the subject of electronics. He cleverly included matters which are nothing to do with this Bill. Of course, electricity is dangerous when it is incorrectly applied. The electronic means in this Bill bring it into the 21st century, but that does not mean that they should be used in all cases.

The noble Lord, Lord Hylton, talked about the four current Acts which can trigger the possibility of going into enforcement, and—again—he mentioned money. I agree it is bound to cost some money. As I said before, my noble friend will include that in his reply, if I could leave it like that for the time being.

Of course, the Director of Labour Market Enforcement will set out in his strategy how the funding that is available for the enforcement agencies should be allocated. Every year he makes an annual report. It would be very surprising, if he were underresourced, that he would not refer to that in his annual report.

As I have said to the noble Lord, Lord Kennedy, routine cases will continue to be dealt with using existing powers. There will be LME undertakings, and then orders will be for the more serious cases.

I move on to the amendments in the name of the noble Baroness, Lady Hamwee, to which I listened carefully. Amendment 47A would change the court's power to make an LME order on application from an enforcement agency, so that the court would have to be satisfied beyond reasonable doubt that the person had committed or was committing a trigger offence.

We think it appropriate that a court should be able to make an LME order on application from an enforcement agency on the basis of the balance of probabilities rather than the criminal standard of proof. In these circumstances, the order is designed to prevent further offending, not as a means of sentencing the person on conviction for an offence. The amendment would limit the ability of enforcement agencies to invoke the LME order regime to secure compliance as an alternative to straightforwardly prosecuting the person for a trigger offence.

Amendment 50A would remove the court's power to include a prohibition, restriction or requirement in an LME order on bringing the order, the circumstances in which it was made and any action by the respondent to comply, to the attention of persons likely to be interested in the matter. However, we think it right that the courts, in making an LME order, should be able to require a business to make the matter known to interested parties, and failure to do so would result in a breach of the order with the possibility of prosecution for the consequent offence. It is properly for the courts, not the Director of Labour Market Enforcement, to impose this requirement. The amendment would significantly weaken this provision, possibly enabling those subject to an LME order to conceal it from its employees, creditors and trading partners.

Amendment 57A would remove from the provisions relating to offences by bodies corporate the possibility of a manager committing the offence of failing to comply with an LME order where they have consented or connived in the offence or it was attributable to their neglect. However, it is appropriate that managers, in addition to their companies, should be held liable for the offence of failing to comply with an LME order where the offence resulted from their neglect, consent or connivance. Secondary liability provisions of this kind, including liability for managers, are commonplace in other legislation. The principle that managers can be held liable for offences committed by their company in certain circumstances is well established.

In the light of what I have said, I hope that the noble Baroness will agree not to move her amendments.

Lord Kennedy of Southwark: The Minister made reference to a point I picked out about electronic communications. It is his party that decided to allow the use of electronic communications in this Bill for contacting people who may have committed some very serious offences. Another Bill, also on the Floor of this House around the same time, is denying law-abiding citizens to get their communications by electronic means. I asked the Minister if he would point out that contradiction to his friends in BIS, particularly the noble Baroness, Lady Neville-Rolfe. I would be grateful if he could confirm that he will do that.

Lord Ashton of Hyde: My Lords, I am very happy to report the noble Lord's comments to my noble friend Lady Neville-Rolfe. I would not necessarily call that a contradiction but I will certainly bring his remarks to her attention.

Baroness Hamwee: My Lords, I will go back and look at the standard of proof that is required. My concern was that an LME order is a step along the

[Baroness Hamwee]
way—a part of a process that seems to require, as an appropriate standard of proof, to be beyond reasonable doubt.

With regard to "an officer" including a manager, my concern is whether the term "manager" is understood in the same way by everyone. We know what a director is—it is defined in legislation, you sign up to it and so on—but there could be doubt as to whether an individual was actually a manager or not, and that is where my anxiety lies. I appreciate that the Minister is not in a position to make any further comment today but perhaps it is something that we can look at. This is not intended as an opposition political point; it is a real concern about how the legislation will work.

Lord Ashton of Hyde: I am happy to say that my noble friend is prepared to talk to the noble Baroness about that before the end of Committee—or before Report, anyway.

Amendment 43 agreed.

Amendments 44 to 46

Moved by ***Lord Bates***

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

"Measures in LME undertakings

(1) An LME undertaking may include a prohibition, restriction or requirement (each a "measure") if, and only if—

(a) the measure falls within subsection (2) or (3) (or both), and

(b) the enforcing authority considers that the measure is just and reasonable.

(2) A measure falls within this subsection if it is for the purpose of—

(a) preventing or reducing the risk of the subject not complying with any requirement imposed by or under the relevant enactment, or

(b) bringing to the attention of persons likely to be interested in the matter—

(i) the existence of the LME undertaking,

(ii) the circumstances in which it was given, and

(iii) any action taken (or not taken) by the subject in order to comply with the undertaking.

(3) A measure falls within this subsection if it is prescribed, or is of a description prescribed, in regulations made by the Secretary of State.

(4) The enforcing authority must not—

(a) invite the subject to give an LME undertaking, or

(b) agree to the form of an undertaking,

unless the authority believes that at least one measure in the undertaking is necessary for the purpose mentioned in subsection (5).

(5) That purpose is preventing or reducing the risk of the subject—

(a) committing a further trigger offence under the relevant enactment, or

(b) continuing to commit the trigger offence.

(6) An LME undertaking must set out how each measure included for the purpose mentioned in subsection (2)(a) is expected to achieve that purpose.

(7) In this section, the "relevant enactment" means the enactment under which the enforcing authority believes the trigger offence concerned has been or is being committed."

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

"Duration

(1) An LME undertaking has effect from when it is accepted by the enforcing authority or from the later time specified in it for this purpose.

(2) An LME undertaking has effect for the period specified in it but the maximum period for which an undertaking may have effect is 2 years.

(3) The enforcing authority may release the subject from an LME undertaking.

(4) The enforcing authority must release the subject from an LME undertaking if at any time during the period for which it has effect the authority believes that no measure in it is necessary for the purpose mentioned in section (Measures in LME undertakings)(5).

(5) If the enforcing authority releases the subject from an LME undertaking it must take such steps as it considers appropriate to bring that fact to the attention of—

(a) the subject;

(b) any other persons likely to be interested in the matter."

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

"Further provision about giving notice under section (Power to request LME undertaking)

(1) A notice may be given under section (Power to request LME undertaking) to a person by—

(a) delivering it to the person,

(b) leaving it at the person's proper address,

(c) sending it by post to the person at that address, or

(d) subject to subsection (6), sending it to the person by electronic means.

(2) A notice to a body corporate may be given to any officer of that body.

(3) A notice to a partnership may be given to any partner.

(4) A notice to an unincorporated association (other than a partnership) may be given to any member of the governing body of the association.

(5) For the purposes of this section and of section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of a person is the person's last known address (whether of the person's residence or of a place where the person carries on business or is employed) and also—

(a) in the case of a body corporate or an officer of the body, the address of the body's registered or principal office in the United Kingdom;

(b) in the case of a partnership or a partner, the address of the principal office of the partnership in the United Kingdom;

(c) in the case of an unincorporated association (other than a partnership) or a member of its governing body, the principal office of the association in the United Kingdom.

(6) A notice may be sent to a person by electronic means only if—

(a) the person has indicated that notices under section (Power to request LME undertaking) may be given to the person by being sent to an electronic address and in an electronic form specified for that purpose, and

(b) the notice is sent to that address in that form.

(7) A notice sent to a person by electronic means is, unless the contrary is proved, to be treated as having been given on the working day immediately following the day on which it was sent.

(8) In this section—

"electronic address" means any number or address used for the purposes of sending or receiving documents or information by electronic means;

"officer", in relation to a body corporate, means a director, manager, secretary or other similar officer of the body;

"working day" means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom."

Amendments 44 to 46 agreed.

Amendment 47

Moved by ***Lord Bates***

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

"Labour market enforcement orders

Power to make LME order on application

(1) The appropriate court may, on an application by an enforcing authority under section (Applications), make a labour market enforcement order against a person if the court—

(a) is satisfied, on the balance of probabilities, that the person has committed, or is committing, a trigger offence, and

(b) considers that it is just and reasonable to make the order.

(2) A labour market enforcement order (an "LME order") is an order which—

(a) prohibits or restricts the person against whom it is made ("the respondent") from doing anything set out in the order;

(b) requires the respondent to do anything set out in the order.

See section ().

(3) In this section "the appropriate court"—

(a) where the conduct constituting the trigger offence took or is taking place primarily in England and Wales, means a magistrates' court;

(b) where that conduct took or is taking place primarily in Scotland, means the sheriff;

(c) where that conduct took or is taking place primarily in Northern Ireland, means a court of summary jurisdiction.

(4) An application for an LME order under this section is—

(a) in England and Wales, to be made by complaint;

(b) in Northern Ireland, to be made by complaint under Part 8 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26))."

Amendment 47 agreed.

Amendment 47A not moved.

Amendments 48 and 49

Moved by ***Lord Bates***

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

"Applications

(1) An enforcing authority may apply for an LME order to be made under section (Power to make LME order on application) against a person (the "proposed respondent") if—

(a) the authority has served a notice on the proposed respondent under section (Power to request LME undertaking), and

(b) the proposed respondent—

(i) refuses to give an LME undertaking, or

(ii) otherwise fails, before the end of the negotiation period, to give an LME undertaking in the form attached to the notice or in such other form as may be agreed with the enforcing authority.

(2) An enforcing authority may also apply for an LME order if the proposed respondent—

(a) has given an LME undertaking to the enforcing authority, and

(b) has failed to comply with the undertaking.

(3) In subsection (1) "the negotiation period" means—

(a) the period of 14 days beginning with the day after that on which the notice mentioned in paragraph (a) of that subsection was given, or

(b) such longer period as may be agreed between the enforcing authority and the proposed respondent."

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

"Power to make LME order on conviction

(1) This section applies where a court deals with a person in respect of a conviction for a trigger offence.

(2) The court may make an LME order against the person if the court considers it is just and reasonable to do so.

(3) An LME order must not be made under this section except—

(a) in addition to a sentence imposed in respect of the offence concerned, or

(b) n addition to an order discharging the person conditionally or, in Scotland, discharging the person absolutely."

Amendments 48 and 49 agreed.

Amendment 50

Moved by ***Lord Bates***

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

"Measures in LME orders

(1) An LME order may include a prohibition, restriction or requirement (each a "measure") if, and only if, the measure falls within subsection (2) or (3) (or both).

(2) A measure falls within this subsection if it is for the purpose of—

(a) preventing or reducing the risk of the respondent not complying with any requirement imposed by or under the relevant enactment, or

(b) bringing to the attention of persons likely to be interested in the matter—

(i) the existence of the LME order,

(ii) the circumstances in which it was made, and

(iii) any action taken (or not taken) by the respondent in order to comply with the order.

(3) A measure falls within this subsection if it is prescribed, or is of a description prescribed, in regulations made by the Secretary of State.

(4) Where an LME order includes a measure for the purpose mentioned in subsection (2)(a), the order must set out how the measure is expected to achieve that purpose.

(5) In this section the "relevant enactment" means the enactment under which the trigger offence concerned has been or is being committed."

Amendment 50 agreed.

Amendment 50A not moved.

Amendments 51 to 56

Moved by ***Lord Bates***

51: After Clause 7, insert the following new clause—

"Further provision about LME orders

(1) An LME order has effect for the period specified in it but the maximum period for which an order may have effect is 2 years.

(2) An LME order may not be made against an individual who is under 18.

(3) If a court makes an LME order, the court may also—

(a) release the respondent from any LME undertaking given in relation to the trigger offence concerned;

(b) discharge any other LME order which is in force against the respondent."

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

"Variation and discharge

(1) The appropriate court may by order vary or discharge an LME order—

(a) on the application of the respondent;

(b) if the order was made under section (Power to make LME order on application), on the application of the enforcing authority who applied for the order;

(c) if the order was made under section (Power to make LME order on conviction), on the application of the enforcing authority whose officer conducted the investigation which resulted in the prosecution of the respondent for the trigger offence.

(2) In this section "the appropriate court"—

(a) in relation to an LME order made on an application under section (Power to make LME order on application), means the court that made the order;

(b) in relation to an order made in England and Wales under section (Power to make LME order on conviction), means a magistrates' court;

(c) in relation to such an order made in Scotland, means the sheriff;

(d) in relation to such an order made in Northern Ireland, means a court of summary jurisdiction.

(3) An application for an order under this section is—

(a) if made to a magistrates' court in England and Wales, to be made by complaint;

(b) if made to a court of summary jurisdiction in Northern Ireland, to be made by complaint under Part 8 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26))."

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

"Appeals

(1) A respondent may appeal against—

(a) the making of an LME order on an application under section (Power to make LME order on application);

(b) the making of, or refusal to make, an order under section (Variation and discharge).

(2) An appeal under subsection (1) is to be made—

(a) where the order was made or refused by a magistrates' court in England and Wales, to the Crown Court;

(b) where the order was made or refused by the sheriff, to the Sheriff Appeal Court;

(c) where the order was made or refused by a court of summary jurisdiction in Northern Ireland, to a county court.

(3) On an appeal under subsection (1) the court hearing the appeal may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just and reasonable.

(4) An LME order that has been varied by virtue of subsection (3) remains an order of the court that first made it for the purposes of section (Variation and discharge).

(5) A respondent may appeal against the making of an LME order under section (Power to make LME order on conviction) as if the order were a sentence passed on the respondent for the trigger offence."

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

"LME undertakings and orders: supplementary

Code of practice

(1) The Secretary of State must issue a code of practice giving guidance to enforcing authorities about the exercise of their functions under sections (Power to request LME undertaking) to (Variation and discharge).

(2) The Secretary of State may revise the code from time to time.

(3) The Secretary of State must lay before Parliament, and publish, the code and any revised code.

(4) An enforcing authority must have regard to the current version of the code in exercising its functions under sections (Power to request LME undertaking) to (Variation and discharge)."

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

"Investigative functions

(1) An officer acting for the purposes of the Employment Agencies Act 1973—

(a) may also act for the purposes of taking action where it appears that a person has failed to comply with an LME undertaking or an LME order where the trigger offence to which the undertaking or order relates is an offence under that Act, and

(b) in doing so, has the same powers and duties as he or she has when acting for the purposes of that Act.

(2) An officer acting for the purposes of the National Minimum Wage Act 1998—

(a) may also act for the purposes of taking action where it appears that a person has failed to comply with an LME undertaking or an LME order where the trigger offence to which the undertaking or order relates is an offence under that Act, and

(b) in doing so, has the same powers and duties as he or she has when acting for the purposes of that Act.

(3) An officer acting as an enforcement officer for the purposes of the Gangmasters (Licensing) Act 2004—

(a) may also act for the purposes of taking action where it appears that a person has failed to comply with an LME undertaking or an LME order where the trigger offence to which the undertaking or order relates is an offence under that Act, and

(b) in doing so, has the same powers and duties as he or she has when acting as an enforcement officer for the purposes of that Act.

(4) In this section references to the Gangmasters (Licensing) Act 2004 are references to that Act only so far as it applies in relation to England and Wales and Scotland."

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

"Offence

(1) A person against whom an LME order is made commits an offence if the person, without reasonable excuse, fails to comply with the order.

(2) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, to a fine or to both;

(b) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months, to a fine or to both;

(c) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both;

(d) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months, to a fine not exceeding the statutory maximum or to both.

(3) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in subsection (2)(b) to 12 months is to be read as a reference to 6 months."

Amendments 51 to 56 agreed.

Amendment 57

Moved by ***Lord Bates***

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

"Offences by bodies corporate

(1) If an offence under section (Offence) committed by a body corporate is proved—

(a) to have been committed with the consent or connivance of an officer of the body, or

(b) to be attributable to any neglect on the part of such an officer,

the officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In subsection (1) "officer", in relation to a body corporate, means—

(a) a director, manager, secretary or other similar officer of the body;

(b) a person purporting to act in any such capacity.

(3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate."

Amendment 57 agreed.

Amendment 57A not moved.

Amendments 58 to 62

Moved by ***Lord Bates***

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

"Application to unincorporated associations

(1) In a case falling within subsection (2), an unincorporated association is to be treated as a legal person for the purposes of sections (Power to request LME undertaking) to (Offence).

(2) A case falls within this subsection if it relates to a trigger offence for which it is possible to bring proceedings against an unincorporated association in the name of the association.

(3) Proceedings for an offence under section (Offence) alleged to have been committed by an unincorporated association may be brought against the association in the name of the association.

(4) For the purposes of such proceedings—

(a) rules of court relating to the service of documents have effect as if the association were a body corporate, and

(b) the following provisions apply as they apply in relation to a body corporate—

(i) section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates' Courts Act 1980;

(ii) sections 70 and 143 of the Criminal Procedure (Scotland) Act 1995;

(iii) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I 26)).

(5) A fine imposed on the association on its conviction of an offence is to be paid out of the funds of the association.

(6) If an offence under section (Offence) committed by an unincorporated association is proved—

(a) to have been committed with the consent or connivance of an officer of the association, or

(b) to be attributable to any neglect on the part of such an officer,

the officer, as well as the association, is guilty of the offence and liable to be proceeded against and punished accordingly.

(7) In subsection (6) "officer", in relation to any association, means—

(a) an officer of the association or a member of its governing body;

(b) a person purporting to act in such a capacity."

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

"Application to partnerships

(1) If an offence under section (Offence) committed by a partner of a partnership which is not regarded as a legal person is shown—

(a) to have been committed with the consent or connivance of another partner, or

(b) to be attributable to any neglect on the part of another partner,

that other partner, as well as the first-mentioned partner, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Proceedings for an offence under section (Offence) alleged to have been committed by a partnership which is regarded as a legal person may be brought against the partnership in the firm name.

(3) For the purposes of such proceedings—

(a) rules of court relating to the service of documents have effect as if the partnership were a body corporate, and

(b) the following provisions apply as they apply in relation to a body corporate—

(i) section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates' Courts Act 1980;

(ii) sections 70 and 143 of the Criminal Procedure (Scotland) Act 1995;

(iii) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I 26)).

(4) A fine imposed on a partnership on its conviction of an offence is to be paid out of the funds of the partnership.

(5) If an offence under section (Offence) committed by a partnership is proved—

(a) to have been committed with the consent or connivance of a partner, or

(b) to be attributable to any neglect on the part of a partner,

the partner, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.

(6) In subsections (1) and (5) "partner" includes a person purporting to act as a partner.

(7) For the purposes of this section a partnership is, or is not, "regarded as a legal person" if it is, or is not, so regarded under the law of the country or territory under which it was formed."

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

"Supplementary provision

Consequential and related amendments

Schedule (Consequential and related amendments) (consequential and related amendments) has effect."

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

"Regulations under sections 1 to (Interpretation)

(1) The Secretary of State must obtain the consent of the Scottish Ministers before making—

(a) regulations under section 3 or (Power to request LME undertaking) which prescribe a requirement, function or offence in a case where provision imposing the requirement,

conferring the function or creating the offence would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament, and

(b) regulations under section (Functions in relation to labour market) which confer a function in a case where provision conferring the function would be within the legislative competence of that Parliament if contained in an Act of that Parliament.

(2) The Secretary of State must obtain the consent of the Welsh Ministers before making—

(a) regulations under section 3 or (Power to request LME undertaking) which prescribe a requirement, function or offence in a case where provision imposing the requirement, conferring the function or creating the offence would be within the legislative competence of the National Assembly for Wales if contained in an Act of that Assembly, and

(b) regulations under section (Functions in relation to labour market) which confer a function in a case where provision conferring the function would be within the legislative competence of that Assembly if contained in an Act of that Assembly.

(3) The Secretary of State must obtain the consent of the Office of the First Minister and deputy First Minister before making—

(a) regulations under section 3 or (Power to request LME undertaking) which prescribe a requirement, function or offence in a case where provision imposing the requirement, conferring the function or creating the offence would be within the legislative competence of the Northern Ireland Assembly if contained in an Act of that Assembly made without the consent of the Secretary of State, and

(b) regulations under section (Functions in relation to labour market) which confer a function in a case where provision conferring the function would be within the legislative competence of that Assembly if contained in an Act of that Assembly made without the consent of the Secretary of State.

(4) Regulations under section 3, (Functions in relation to labour market) or (Power to request LME undertaking) may make such provision amending, repealing or revoking any provision of any enactment, including sections 1 to (Interpretation), as the Secretary of State considers appropriate in consequence of the regulations."

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

"Interpretation

In sections 1 to (Interpretation)—

"enactment" includes—

(a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;

(b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;

(c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales;

(d) an enactment contained in, or in an instrument made under, Northern Ireland legislation;

"enforcing authority" has the meaning given by section (Power to request LME undertaking);

"financial year" means a period of 12 months ending with 31 March;

"labour market enforcement function" has the meaning given by section 3;

"LME order" has the meaning given by section (Power to make LME order on application);

"LME undertaking" has the meaning given by section (Power to request LME undertaking);

"non-compliance in the labour market" has the meaning given by section 3;

"respondent" has the meaning given by section (Power to make LME order on application);

"subject" has the meaning given by section (Power to request LME undertaking);

"trigger offence" has the meaning given by section (Power to request LME undertaking)."

Amendments 58 to 62 agreed.

Clause 8: Offence of illegal working

Amendment 63

Moved by ***Lord Rosser***

63: Clause 8, page 5, line 6, at end insert ", without reasonable excuse,"

Lord Rosser: At Second Reading we expressed support for measures to toughen the penalties against employers who exploit employees. However, we expressed our concern about the provisions in the Bill in respect of those who work without leave to remain or beyond the restrictions of their visa, and which classify wages earnt in such employment as proceeds of crime. For employees in this situation the Bill creates a new criminal offence that is strict and without any defence, since it is committed if the individual employed does not have the right immigration status, and could result in a sentence of up to a year in prison.

No defence is set out in Clause 8. Our position is that there should not be such an offence for employees, but we also have an amendment in this group that would provide a defence of "reasonable excuse". That amendment will provide the Government with an opportunity to clarify whether there is any defence to this new offence and, if they consider that there could be circumstances in which the offence would not be committed by an employee who did not have the right immigration status, to say why they have not included that, or provided for that situation, in the Bill.

What would be the position, for example, of people who were working in the belief that they had the right immigration status to do so—perhaps because they were sponsored by the employer—and then it emerged that they had committed this new offence because, without their knowing it, their employer had not completed all the necessary arrangements for sponsorship? Is the employee guilty of committing the new criminal offence, thus becoming a criminal? Unless there was a defence under the Modern Slavery Act—that certainly would not be the case in the situation I have outlined—Clause 8 would appear to say yes. Is that fair, just and proportionate?

9 pm

The Government's line to date appears to be that the Director of Public Prosecutions can give guidance on whether a prosecution is in the public interest and that a court also has powers to stop an inappropriate prosecution for abuse of process. This, of course, could apply only if the process for taking action against an employee had already commenced. However, in the potential situation I have just outlined it cannot be right to leave the decision whether to proceed to the

discretion of the Director of Public Prosecutions, because surely such discretion is meant to be applied to the known offence and known defences to that offence. Under the Bill there is no defence to the offence of illegal working, which is triggered by not having the right immigration status. Surely, if a proper case can be made as a defence by an employee against the new offence of illegal working, it ought to be in the Bill, put there by Parliament, rather than left to the discretion of the Director of Public Prosecutions. This discretion should surely be in respect of how a laid-down defence should operate in individual cases in relation to whether a prosecution would be in the public interest, rather than, in effect, leaving it to the DPP to introduce a back-door defence that is not in the Bill and would not be an appropriate use of the DPP's guidelines.

Clause 8 also appears to create a disparity between employers and employees on the issue of illegal working. It would appear that under Clause 9, employers are guilty of the offence of employing an illegal worker only if they do so "knowing",

"or having reasonable cause to believe",

that the employee does not have the required immigration status. That presumably means there is a test of reasonableness before they can become criminalised. There is no such test of reasonableness for employees in Clause 8. So, in a situation where an employer reasonably believed they had completed the necessary processes to sponsor an employee, but it subsequently emerged that, without their realising it, they had not, the employer has a potential defence; but the employee, who likewise had every reason to believe they were properly sponsored by their employer, and then found out that they were not, would have no defence. Perhaps the Minister can confirm that that is an entirely credible scenario under the Bill as it stands, and explain why an employee does not have the same kind of defence available to them as an employer in respect of the offence of illegal working.

We have also tabled Amendment 66, which would introduce a test of recklessness rather than negligence for the offence of employing an illegal worker, to reduce the possibility of hidden discrimination by employers wanting to avoid the risk of falling foul of this new criminal offence when deciding who to employ.

We think it would be better if Clause 8 was not in this Bill at all, because it will increase the likelihood and extent of exploitation and potentially put at risk some of the good work being achieved in this regard by the recent Modern Slavery Act. Migrants and vulnerable employees are very vulnerable under current conditions and often feel that they cannot come forward to explain to anyone what is happening to them, for fear, as the Migration Advisory Committee has said, of being sacked or deported. If the offence of illegal working is for the first time to be applied to employees, there is a distinct likelihood that the most exploited and vulnerable will become more exploited and vulnerable as they feel pushed further and further away from any legal protection. One can virtually guarantee that an unscrupulous employer would not hesitate to use the threat of being prosecuted for illegal working, receiving a criminal record and going to prison for 12 months, as a means of ensuring that a vulnerable and exploited employee did not speak out. The more vulnerable workers are, the stronger the hand of the gangmasters or unscrupulous employers who seek to employ them, and the less likely vulnerable workers are to come forward to report their abusers.

Even among those who have a right to work here, awareness of their rights does not always appear high. According to the National Crime Agency, in cases that it has taken up, 78% of those who have been exploited for their labour in the UK have the right to work here as EEA nationals. Among people whose understanding of their rights is limited, one can be sure that, with this new criminal offence of illegal working, the threat of 12 months' imprisonment and criminalisation will also be exercised against those who have a right to be here and working, as well as those who do not, with the no doubt unintended consequence of making it less likely that people will come forward to report their abusers.

There are three drivers of exploitation that those who campaign on this issue and work in this field have identified. One is the feeling among migrant workers that they deserve less or have fewer rights than UK citizens; another is the lack of checks on labour standards in the workplace, including everything from health and safety to minimum wage enforcement; and the final one is a fear of officials, especially of immigration officials or those who might have links to immigration officials. Clause 8, with its new offence for employees of illegal working, will make the first and last of those drivers of exploitation even more powerful.

On the second driver—the lack of enforcement against non-compliance with labour standards—it is worth noting that one of the organisations that campaigns and works to reduce exploitation told the Immigration Bill Committee in the other place that what would prevent people who should not be here, or not still be here, from working here would be enforcement of labour standards across the board, as the demand for workers who should not be here is due not to employers preferring such workers over those who have a right to be here, but to the fact that they cannot as easily pay workers who have a right to be here less than the minimum wage as they can workers who do not have the right to be in and work in this country.

If the Government want to address the extent of illegal working, they should concentrate on enforcement of labour standards rather than introduce a clause that creates a new offence of illegal working for employees, which will make it less, not more, likely that cases of labour exploitation and abuses of labour standards come to light. There is no significant evidence of which I am aware that this offence for employees is needed, as there are existing offences under which such employees can be charged if they are in this country when they should not be here or still be here. No one has been going round saying that an illegal working offence for employees is needed to solve that problem.

The only argument that the Government have produced for this new offence and its potentially significant and damaging unintended consequences relates to the recovery of earnings under the Proceeds of Crime Act 2002 from those who have been working in this country when they no longer have an immigration status that entitles them to do so, such as overstayers, and an apparent government concern expressed by the Minister

[LORD ROSSER]
in the other place that in this situation the courts do not always regard earnings derived from working illegally as the proceeds of crime when considering cash seizure or asset confiscation cases. If that is the problem, no doubt the Minister will take the opportunity in his response to place on record the size and nature of it, and the amounts of money involved and the likelihood of it being recovered, since it would appear that this new offence is designed to tackle a much smaller number of individuals and their proceeds than those working illegally.

The Crown Prosecution Service guidance on proceeds of crime identifies a need to prioritise the recovery of assets from serious organised crime and serious economic crime. Pursuing workers who should not be here or still be here and who are working for little money and living a subsistence existence, consequently having limited realisable assets, will presumably not be a priority in line with the guidance, since it will not be cost effective or in the public interest to pursue confiscation proceedings against such people.

It would be helpful if the Minister could say to what extent the Government have sought to find other ways of addressing the problem that concerns them in respect of the Proceeds of Crime Act without leaving employees who are already being exploited facing threats, accurate or inaccurate, from those exploiting them of potentially being prosecuted, criminalised and sent to prison for 12 months with the intention of further discouraging them from daring to report their abusers. One would have thought that encouraging employees to report abuse should be the objective.

Clause 8 is potentially very damaging in its no doubt likely unintended consequences. The Government will no doubt say that the approach to dealing with those who have entered the country illegally and committed an offence will be to deport rather than prosecute. If that is the point the Government are going to make, then Clause 8, with the offence of illegal working by employees because of their immigration status, adds absolutely nothing. Instead, it will make it less likely than ever that such people will come forward and whistleblow about what is being done to them, and as a result it will frustrate the desire we all have to tackle illegal working and labour exploitation.

I hope the Minister will indicate that the Government will think again on the introduction of this new offence for employees, which is more likely to reduce the extent to which those being exploited or abused in the labour market will come forward and whistleblow on their abusers than to reduce the incidence of illegal working. I beg to move.

Baroness Hamwee: My Lords, my noble friends and I have very considerable objections to Clause 8 which, while I was going to say will achieve nothing, will possibly achieve too much. It is not a positive and helpful development in any way and will cause very considerable difficulties and negative consequences. The noble Lord, Lord Rosser, has covered the ground very thoroughly, but I do not think I can stress our objections too heavily.

I add to some of the things that he has said by a reference to what happened in Italy. The email from which I quote comes from the executive secretary of the Council of Europe Convention on Action against Trafficking in Human Beings. I met her and some of her colleagues a few months ago when she mentioned what had happened in Italy. She followed this up by explaining that in 2009 Italy criminalised irregular entry and stay, a situation equivalent to ours. She said that it was,

> "criticised for creating an overly-bureaucratic system … which push migrants into illegality … the introduction of the offence of illegal entry and stay has created additional difficulties in securing convictions as witness statements given by irregular migrants are not considered as trustworthy and they are afraid to report cases of exploitation … for fear of being detained and expelled. The UN Special Rapporteur on trafficking in persons, especially women and children, has stressed in her recent report the negative consequences of the criminalisation of irregular migration for victims of trafficking".

The outcome of the problems was that, in January 2014, Italy's Senate overwhelmingly approved the Italian Government's decriminalisation of illegal immigration. There we have a real-life example.

Of course this is not entirely new. Criminal offences were created for Romanian, Bulgarian and Croatian workers working without authorisation. I know that the Immigration Law Practitioners' Association has asked the Home Office for statistics on the numbers of prosecutions for those offences, and also whether the employers were prosecuted or made subject to a civil penalty when the employee was prosecuted. The ILPA has not received that information. It would help us all if we could see figures to understand whether offences resulted in a displacement of enforcement activity away from employers to the workers.

9.15 pm

The noble Lord talked about the deterrent effect of a criminal offence on those who might otherwise feel able to report exploitation and abuse. What safeguards will there be with regard to the identification of trafficking and forced labour indicators? Will those be written into guidance on enforcement?

I am not sure whether the noble Lord added to his list of concerns the specifics of not risking referral to the national referral mechanism if there is a negative conclusive grounds decision. That would achieve the very opposite of what a victim would be hoping for. There is also the concern that traffickers may use the offence as another tool to coerce victims in exploitation.

With regard to what the noble Lord has indicated is the only reason for an offence—the realisation of assets—those who would be the subject of this would be likely to have very limited realisable assets. I confess that I have not looked at the impact assessment on this, which might show what the Government think they could claw in as a result, but will it really be cost-effective or in the public interest to pursue confiscation proceedings?

We added our names to Amendment 63. I support what the noble Lord said regarding the possibility of a defence under the Modern Slavery Act, but only to a limited extent—it is better not to prosecute at all.

We have our own probing amendment on voluntary work and volunteering. I had not realised until recently that voluntary work was considered work for the

purposes of the restrictions on asylum seekers working. It is particularly harsh, for reasons that we will come to in debate later in the Bill on the right of asylum seekers to work, that they cannot even undertake voluntary work—volunteering is different. I would simply summarise it as the importance of self-respect on the part of asylum seekers and the wish to contribute to society, as well as boredom. Those are among the concerns.

Finally, we have an amendment that would substitute,

"is reckless as to whether",

for,

"has reasonable cause to believe that",

an employee is disqualified. That would make it a higher hurdle. Amendment 67 would also insert,

"reckless as to whether the employee is an adult subject to immigration control".

On that basis, most asylum seekers do not actually have "leave". They are on temporary admission while their applications are considered. That is a technical point as to whether the legislation will be correctly framed.

However, I would like to see the back of this altogether. I hope that at least making that point on these clauses will not be relevant because we might not be considering them for much longer. One lives in hope.

Baroness Lister of Burtersett (Lab): My Lords, I support the opposition to Clause 8 standing part of the Bill and I also support Amendment 63. At Second Reading a number of noble Lords expressed fears about potential exploitation as a result of Clause 8, reflecting the worries of organisations working on the ground. The Minister tried to reassure us that our fears were unfounded, but the range of organisations that are worried about it must give cause for concern. Also a number of organisations, including the Law Society, have stated that the clause is unnecessary. The Law Society argues that,

"the creation of parallel criminal offences is wrong in principle and creates confusion".

My noble friend Lord Rosser raised the point about the disparity between the defence of reasonableness that is available to employers not being available to employees who are accused of illegal working. That was a point which was raised in the Public Bill Committee by more than one Member, but as far as I can see it was not addressed by the Minister there in his response, so I hope that the Minister here will be able to say something about it today. Why is there no parallel defence for employees?

As well as the risk of exploitation, I am concerned that the state will in effect be exploiting undocumented workers when it seizes their wages. I am not a lawyer, but it seems to me as a lay person that there is a distinction to be made between the confiscation of assets that are the proceeds of a crime such as stealing, burglary or fraud and those that are the result of the criminalisation of the sale of one's labour. In support of my rather basic lay understanding, I pray in aid ILPA's briefing. It points out, as did my noble friend Lord Rosser, that,

"the Crown Prosecution Service Guidance on the Proceeds of Crime says that it should prioritise recovery of assets from serious organised crime and serious economic crime".

Surely we are not talking about that here. ILPA continues by stating that:

"A confiscation order must be proportionate to the aim of the legislation, which is to recover the financial benefit that the defendant has obtained from the criminal conduct … The purpose of the legislation is not to further punish the offender by fining them, or to act as a deterrent. If the confiscation order is not proportionate then it will be a violation of the right to peaceful enjoyment of property under Article 1 of Protocol No. 1 to the European Convention on Human Rights".

It would appear that potentially an important human rights issue is being raised here.

The noble Baroness, Lady Hamwee, referred to the experience in Italy. Another aspect of that was put by the organisation FLEX in its briefing, which states that evidence from that experience,

"demonstrates the impracticality of attempts to seize undocumented workers' assets. Under an 'irregular migration offence' provided for in the 'Bossi-Fini Law 2002' undocumented workers could be fined for working without documents in Italy. This offence was ultimately repealed in 2014, one of the reasons for which was the heavy bureaucracy and limited success associated with gaining financial penalties from undocumented workers".

On both principled and potentially human rights grounds, as well as practical and pragmatic grounds, I really do believe that the clause should not stand part of the Bill.

Lord Green of Deddington (CB): My Lords, I thought that the noble Lord, Lord Rosser, made rather a good case for inserting the words "without reasonable excuse", and I certainly agree with the noble Baroness, Lady Hamwee, about voluntary work. But perhaps I may raise a wider issue. Making illegal working a specific offence will fill a gap, as the noble Lord, Lord Bates, pointed out in his helpful letter of 8 January. It means that those who have entered illegally or who have overstayed their visas could now be prosecuted for working in the UK.

When I gave evidence to the Public Bill Committee of the other place, a former DPP said that in practice he had not known of a case where it was necessary to have this law because other provisions could be brought to bear. However, impressions matter. The present situation must be an excellent selling point for anyone who happens to be a people smuggler. Indeed, at this very moment there are literally thousands of young men camped near Calais. They are there because they believe that if they once get into the UK they can work illegally and send home what to them are very substantial sums of money. If detected, they can claim asylum and be here for a considerable period longer.

The fact that working illegally in the UK is not even an offence sends out entirely the wrong message, as the Mayor of Calais never tires of telling us. She is right; we should change the law. This is about deterrence and it is especially important in present circumstances.

Baroness Ludford (LD): My Lords, I support other noble Lords who have objected to Clause 8 and the introduction of the offence of illegal working.

The noble Lord, Lord Green, said that it sends out a powerful message if there is such a criminal offence, but my fear is that it would send out a message that empty window dressing statute is redundant and that

[Baroness Ludford]
it is not effective law if we end up with no prosecutions and no confiscations. As other noble Lords have mentioned, the guidance from the CPS on proceeds of crime suggests that there will be very few cases when it would be in the public interest to pursue confiscation proceedings. The question has rightly been asked by my noble friend Lady Hamwee. On the question of whether there have been any prosecutions of Romanian, Bulgarian and Croatian workers for working without authorisation, I confess that it was news to me that there were already such criminal offences. I thank ILPA for that fact. We do not know whether there have been prosecutions of employees or whether employers were prosecuted in the same cases. It would help to know whether there has been a displacement of enforcement activity away from employers to employees, or whether we have offences on the statute book that have simply proved inoperative.

That is what would bring the law into disrepute. I have a feeling that if this was coming out of Brussels, it would rightly be criticised as a useless piece of legislation—not least by the present Government. It might be quite right to do so. There can already be prosecutions of people for breaching immigration law in arriving in the country in the first place. I do not know how many prosecutions there are—perhaps the Minister could tell us. The alleged purpose of this offence is to fill the gap that is said to exist whereby the Proceeds of Crime Act cannot be deployed. It seems very unlikely that that would be used because of the disproportionate nature of taking such action. We will end up with something on the statute book that frankly does not add up to a row of beans—all for the sake of window dressing and sending signals to certain parts of the press and the electorate, presumably.

9.30 pm

I find extremely powerful—much more powerful than anything I could say—the evidence given to the Public Bill Committee in the other place by Tony Smith, who spent 40 years in the Immigration Service, ending up as director-general of the UK Border Force. He said:

"The main lesson we learned",

from an experiment about doing this kind of thing,

"was that the criminal justice system is not the most effective way to manage immigration offenders. It tied up the police and the courts unnecessarily and failed to fulfil the required intention of the Immigration Law",

which is to remove people who breach such law. He continued:

"It was deemed more effective and efficient to serve a notice of intention to deport … than to prosecute",

under immigration offences. As came out at Second Reading, most of us who objected to Clause 8 said that the focus of remedies for breach of immigration law is to remove those people who are in breach. If you prosecute it is enormously expensive and time-consuming.

Mr Smith went on to say about proceeds of crime that,

"illegal workers invariably have very limited means at their disposal. They are usually paid at or below the minimum wage; and any funds they do accrue are quickly remitted overseas. This is not a sensible group to target under the Proceeds of Crime Act—nor will it act as a deterrent. In the same way that deploying scarce resources on prosecutions will limit the capacity of immigration enforcement to achieve more removals, deploying scarce resources on POCA work to seize assets that don't exist will be wasteful and unproductive".

I cannot do better than that. I hope that the Minister, in his response, will give us some indication that the Government will accept that Clause 8 is a waste of space.

Lord Hylton: My Lords, I am not happy about the inclusion of Clause 8, on the grounds that it creates a new offence that can be punishable with up to one year's imprisonment and/or a fine. I also note that it is one year for England and Wales, but only six months for Scotland or Northern Ireland. That seems pretty inconsistent.

As regards Amendment 64, I always understood that asylum applicants could undertake voluntary work, provided that they were not paid, of course, and that they kept themselves available for interviews, whenever those might be required. Perhaps the Minister would say whether I am right, or whether the noble Baroness, Lady Hamwee, is right.

The Minister of State, Home Office (Lord Bates) (Con): My Lords, the Government have four amendments—Amendments 65, 68, 69 and 70—in this group. I shall speak to the amendments and then come back to the very legitimate points that have been raised and questions posed. I shall respond to them in turn.

Noble Lords are familiar with the reason why the Government are creating the offence of illegal working: to address a genuine gap in the law which currently impedes our ability to address the economic incentives behind illegal work where they exist. It is against this explanation and the safeguards to ensure its appropriate use that I turn to the amendments that have been tabled.

The Government have carefully considered the amendment to introduce the defence of "without reasonable excuse". However, we believe that this introduces considerable ambiguity. Introducing such a wide defence risks making it very difficult to achieve a successful prosecution. The Government have also considered the amendment to remove voluntary work from the ambit of the offence. However, we believe that this is unnecessary because someone undertaking genuine voluntary work would not be working under the purposes of a contract. Therefore, genuine voluntary work is not caught by new Section 24B(9), introduced by Clause 8, and it therefore falls outside the ambit of the offence.

I share the concerns of noble Lords who want to ensure that this offence is used appropriately. The offence is not aimed at the victims of modern slavery, where the statutory defence in Section 45 of the Modern Slavery Act will still apply, as will common-law defences, such as duress. The circumstances of someone's illegal working will be taken into account by the CPS and prosecutors in Northern Ireland and Scotland when deciding whether it is in the public interest to prosecute.

I also urge noble Lords to see the creation of this offence in the context of other measures in the Bill and

elsewhere to increase the protection and support for victims of slavery and trafficking, strengthen enforcement against exploitation through the creation of the Director of Labour Market Enforcement and taking tougher action against employers of illegal workers.

We should remember that individuals with an irregular immigration status are already likely to be committing a criminal offence, regardless of whether they are working. The Government's policy remains unchanged and they will continue to seek the removal of illegal workers from the UK, and prosecute only where the CPS or prosecutors in Northern Ireland and Scotland consider that their prosecution is in the public interest. This remains the right approach. The new offence, however, will serve as an important deterrent to illegal economic migrants and close a gap in the Proceeds of Crime Act powers, which do not necessarily require a conviction.

I have listened carefully to noble Lords' concerns regarding the strict liability nature of the offence. While I am of the opinion that there are sufficient safeguards to ensure that the offence is used appropriately and that victims of modern slavery are protected, I can assure noble Lords that I will reflect very carefully on today's discussions and the points which have been made ahead of Report.

I now turn to the offence of employing an illegal worker in Clause 9 of the Bill. The Government's intention in using "reasonable cause to believe" as the test is to provide a more objective test for the existing offence of employing illegal workers and so make the offence easier to prove. The test is intended to capture those employers who have wilfully turned a blind eye to someone's immigration status when employing them so that the employer cannot be said to have known.

Introducing a test of recklessness would not resolve the difficulties in establishing an employer's state of mind that the Government are seeking to address in the Bill. This is because the test of recklessness would remain subjective, requiring proof that the employer foresaw a risk that the person had no right to work, yet went on to take that risk and employ them.

The test of reasonable cause to believe is not the same as negligence. The intention is to continue to apply the civil penalty sanction to those employers who are simply negligent—that is to say, who act without reasonable care and skill—in terms of not checking a person's right to work, or not doing so correctly.

The Government's amendment requires an employer positively to have a reason to believe that the individual cannot accept the employment. It will enable prosecutions to be brought against employers who choose not to undertake the necessary checks because they have reasonable grounds to believe that such checks will reveal that the employee has no right to work. This is in addition to the Government's intention to continue to prosecute those who we can show actually know that someone has no right to work here, as we can do now under the current wording of the offence.

I now turn to some of the points raised during our debate. The noble Baroness, Lady Ludford, asked about the projected size and suggested that the sums that we were talking about were fairly minuscule. I refer noble Lords to my letter to the noble Lord, Lord Rosser, on 8 January, to which the noble Lord, Lord Green, referred. On page 2, it says:

> "In 2014-15, the courts approved the forfeiture of cash totalling £542,668 seized by immigration officers. Following criminal convictions for immigration-related offences courts ordered the confiscation of assets totalling £966,024. We expect that in-country seizure could double with the use of the extended powers enabled by the new illegal working offence".

Therefore, I do not think that these are inconsequential amounts—£1 million is quite a substantial amount. It is twice the budget of the relevant employment agency body. As I say, these are significant sums.

There is a slight sense that we were looking at destitute, highly vulnerable people, and that they would be the target of these initiatives. We are talking here about people who have on their person a significant amount of cash in excess of £1,000.

Baroness Lister of Burtersett: I am sorry to interrupt but I meant to mention that because I saw it in the noble Lord's very helpful letter. But where is it in the legislation? I looked for it but I could not find any reference to a £1,000 limit or anything. I wondered whether I had missed it.

Lord Bates: It comes under the Proceeds of Crime Act. What we are doing here is simply drawing that element into line. The accusation appears to be being made that somehow the Government are targeting people who are here illegally. Of course, if they are here illegally, they should not be here and they should rightly be removed. However, it is odd that under the legislation to which I referred, we can currently prosecute those who have permission to be in the UK and are working in breach of their conditions. We can confiscate the relevant sums under the Proceeds of Crime Act for those who are legally here in breach of their conditions. However, if someone is illegally here, or they have overstayed, we cannot do that. Noble Lords will need to comment on that themselves. However, if they believe that this provision is too punitive for people who are working illegally in this country, they ought also to say—I am not inviting them to do this by Report—that people who breach the terms of their existing stay in the country, such as students who work beyond the hours legally allowed, ought to be exempt as well. The fact that there is one rule for people who are legally here but breach their conditions, and another for people who are illegally here, seems to me wrong as there is a gap. We are trying to close that gap.

Baroness Ludford: I am grateful to the noble Lord for giving way and apologise for interrupting. My question may simply reflect my ignorance of immigration law but I am reminded that I asked at Second Reading why immigration law could not be changed. We have so much immigration law that I should have thought that the situation was covered. So, for the offence of breaching conditions attached to immigration status, you can be prosecuted and your proceeds removed, but if you work in breach of immigration law as a whole—that is, you have totally driven a coach and horses through immigration law through being here at all—you apparently cannot be prosecuted and be subjected

[Baroness Ludford]
to POCA. Therefore, it seems to me that the root of the problem stems from immigration law and that the solution is not to create a new offence of illegal working but to go back to immigration law to determine why you can deal with some people breaching it but not others doing so.

9.45 pm

Lord Bates: This is an Immigration Bill. I take the point that of course we need to continue to look at all these points. I am simply saying that it has somehow been portrayed that we are being inconsistent in singling out people who have fallen on hard times and are having a tough time in life, and mercilessly pursuing them. In fact, all we are doing is ensuring equality of treatment. Moreover, and more seriously, if we were introducing this measure in 2014, I would feel a lot more uneasy about it. Since the Immigration Bill 2014—taken through by my noble friend Lord Taylor of Holbeach—we have introduced the Modern Slavery Act, Section 45 of which is a statutory defence for people who are the victims of crime. This is widely welcomed and appreciated. That defence was not there in the Immigration Bill 2014 but is there now, and we are plugging a gap.

The noble Lord, Lord Hylton, asked why there are different sentences across the UK. The maximum prison sentence for a Clause 8 offence is the same across the UK. This will remain the case until Section 281(5) of the Criminal Justice Act 2003 is commenced. This reflects devolution and is set out at subsection (3) of the new offence. If that does not make it crystal clear to the noble Lord, I can assure him that he is not alone. If, when we read that in the *Official Report,* further explanation is needed, I will be happy to provide it. The gist is that the sentence is consistent across the United Kingdom.

The noble Baronesses, Lady Ludford and Lady Hamwee, both asked how many prosecutions had taken place of Bulgarian, Romanian and Croatian nationals. Parliamentary Questions 12752 and 12753 on this were answered in 2015. Between 2007 and 2013 there were three prosecutions where this was the principal offence—that is, the offence where the heaviest penalty may be imposed. During the financial years 2006-07 to 2013-14, a total of 491 penalty notices were issued. This offence, and penalty, only related to those migrants who were subject to accession regulations, while the new offence will relate to all migrants who work illegally in the UK.

It is not the case that an employer of an asylum seeker with permission to work has no protection unless the asylum seeker has leave to be in the UK. Section 24 of the Immigration, Asylum and Nationality Act 2006 ensures that those on temporary admission, including asylum seekers, are deemed to have leave for the purposes of the Section 21 offence. Therefore, if, as an exception, they have permission to work, they will not be committing an offence simply because they do not have leave.

A number of noble Lords asked about voluntary work. For work to fall within the ambit of the offence it must be under or for the purposes of a contract. Genuine voluntary work should not be subject to a contract. Volunteering must not be used as a pretence for paid work. A question was asked about whether visitors can undertake activities on a voluntary basis. The answer is yes, they may volunteer, providing this is incidental to the purpose of their visit to the UK, is unpaid and for a period of less than 30 days. I was also asked about an illegal migrant who starts as an illegal worker but whose working conditions deteriorate to the point where they may become a victim of modern slavery. For illegal workers to benefit from the statutory defence, their illegal working must be as a direct consequence of their slavery or human trafficking. They will therefore not have the defence for any illegal working committed prior to the deterioration of their working conditions to the extent that they became a victim of modern slavery. However, their subsequent slavery or human trafficking will be relevant factors for the Crown Prosecution Service to take into account when considering whether a prosecution is in the public interest. For absolute clarity, only the wages earned before the statutory defence applies to them would be recoverable under the proceeds of crime legislation.

I think I have covered most of the points raised. If there are any that I have missed, I will be happy to deal with them. I covered the point about reasonable excuse and reasonable cause in my main contribution. It remains our view that what is unfair is firms undercutting their competitors through exploitative use of illegal labour, so distorting competition, and those illegal workers taking jobs that should be available to all workers who are legally here and legally part of the labour market. I therefore commend the amendment standing in my name in this group, and ask the noble Lord to consider withdrawing his amendment at this stage.

Baroness Hamwee: I have two points, if I may. The Minister might have realised that referring to voluntary work and volunteering provoked quite a lot of chuntering around me, and on the Cross Benches. Listening to him, it seemed that the concepts of volunteering and voluntary work were being confused. When I looked at this a little while ago, I understood that they are different. I was confused at the beginning of the Minister's speech when he talked about voluntary work not involving a contract. I am not sure whether that is always the case. I do not think we will be able to debate this now, but it would be very helpful if we could understand it a little more clearly—I think I speak for at least four of your Lordships, and possibly those behind me as well.

The other point is quite different. I would not necessarily agree with them but I followed the Minister's comments about recklessness. He said that if the words "reasonable excuse" were included in the new illegal working provision in Clause 8, it would mean fewer successful prosecutions. That is indeed self-evident but it does not answer the point about whether it should be a defence, or whether the offence should be one where there is no reasonable excuse. Earlier in the debate, the noble Lord, Lord Rosser, raised the possible situation of someone being confused by what permission he had, or by the documents and so on. I would like, at any rate, to understand better what I heard from the Minister on that point.

Lord Bates: It is the same argument as before: whether the same test applies to people who are here legally—in one form—but are exceeding or abusing the terms by which they are in the UK. The noble Baroness may be saying that if that provision contained the phrase "without reasonable excuse", it should be read across. But there is no ability to say that you can be prosecuted for the proceeds of crime unless you have a reasonable excuse. It is therefore consistent to apply the same test to somebody who is here illegally as to somebody who is here legally but exceeding the terms of their permission to be here.

Lord Rosser: Before I respond to the Minister, I thought he said earlier that he would be reflecting on certain aspects ahead of Report. I wonder whether he would mind repeating what issues he will reflect on before Report.

Lord Bates: The short answer is, of course, that I reflect on all the comments made by noble Lords ahead of Report. I have nothing specific in mind, but it would be helpful if the noble Lord came back with a further question.

Lord Rosser: Is the Minister agreeing to reflect on the points made in the debate this evening and to come back with a response, negative or positive, before Report? Is that what he is agreeing to do, without any specific commitment?

Lord Bates: The new offence will serve as an important deterrent. I have listened very carefully to the noble Lord's concerns. Although I am of the opinion that there are sufficient safeguards to ensure that the offence is used appropriately and that victims of modern slavery are protected, I said that I would reflect on that point very carefully, listen to the debate and come back with further remarks on Report. The particular point was about whether the defences are sufficient for those who may have been the victims of modern-day slavery.

Lord Rosser: Do I understand that it will not cover the example that I referred to and which the noble Baroness, Lady Hamwee, has just referred to? That is where an individual had effectively been told by their employer that they could be employed, but it was subsequently found out, for example, that the employer was not properly sponsoring them because for some reason or other they had not completed the necessary paperwork correctly, and therefore the individual found themselves in a situation where they were not entitled to work. That was, in essence, the point I was raising.

I appreciate it is probably unfair to expect the Minister to respond to that point now, but I get the impression from what he has said that the area he has agreed to reflect on is very limited. I would hope that he might be willing to say, without making any commitment, that he will reflect on the necessity of this whole issue relating to the offence of illegal working for employees. I accept that this is not the only argument that has been raised, but the principal argument is that the threat of action being taken will be used to deter vulnerable people who may be being exploited, to a greater or lesser degree, from coming forward to expose and report their abusers. That is the principal effect that this new offence is likely to have, and it is likely to be used in that way by unscrupulous employers. I do not think that the Minister has responded directly to that point and I simply urge him to reflect on what has been said on that particular issue—without, I accept, making any commitment—between now and Report.

Lord Bates: I am very happy to do that. If it would be helpful, I would also be very happy to meet with the noble Lord and other interested Peers, with the relevant officials, to talk through our experience on that, which is what has led us to the position that we have taken, and to hear what evidence they may wish to present to the contrary. I think both sides will find that very helpful ahead of Report.

Lord Rosser: In that case, I will not say any more other than to express my thanks to the Minister for agreeing to do that. I beg leave to withdraw my amendment.

Amendment 63 withdrawn.

Amendment 64 not moved.

Clause 8 agreed.

Clause 9: Offence of employing illegal worker

Amendment 65
Moved by ***Lord Bates***

65: Clause 9, page 7, line 6, leave out subsection (1) and insert—

"(1) Section 21 of the Immigration, Asylum and Nationality Act 2006 (offence of knowingly employing illegal worker) is amended in accordance with subsections (1A) to (2).

"(1A) In subsection (1) for the words from "an adult" to the end of the subsection substitute "disqualified from employment by reason of the employee's immigration status."

(1B) After subsection (1) insert—

"(1A) A person commits an offence if the person—

(a) employs another person ("the employee") who is disqualified from employment by reason of the employee's immigration status, and

(b) has reasonable cause to believe that the employee is disqualified from employment by reason of the employee's immigration status.

(1B) For the purposes of subsections (1) and (1A) a person is disqualified from employment by reason of the person's immigration status if the person is an adult subject to immigration control and—

(a) the person has not been granted leave to enter or remain in the United Kingdom, or

(b) the person's leave to enter or remain in the United Kingdom—

(i) is invalid,

(ii) has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise), or

(iii) is subject to a condition preventing the person from accepting the employment.""

Amendment 65A (to Amendment 65) not moved.

Amendment 65 agreed.

Amendments 66 and 67 not moved.

Amendments 68 to 70

Moved by ***Lord Bates***

68: Clause 9, page 7, line 9, leave out "In that section,"

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

"(2A) Section 22 of the Immigration, Asylum and Nationality Act 2006 (offences by bodies corporate etc) is amended in accordance with subsections (2B) and (2C).

(2B) After subsection (1) insert—

"(1A) For the purposes of section 21(1A) a body (whether corporate or not) shall be treated as having reasonable cause to believe a fact about an employee if a person who has responsibility within the body for an aspect of the employment has reasonable cause to believe that fact."

(2C) In each of subsections (2) and (4) after "21(1)" insert "or (1A)".

(2D) In section 24(a) of the Immigration, Asylum and Nationality Act 2006 (temporary admission etc) for "21(1)" substitute "21(1B)"."

70: Clause 9, page 7, line 17, after "21(1)" insert "or (1A)"

Amendments 68 to 70 agreed.

Clause 9, as amended, agreed.

Amendments 71 and 72 not moved.

10 pm

Clause 10: Licensing Act 2003: amendments relating to illegal working

Amendment 72A

Moved by ***Lord Kennedy of Southwark***

72A: Clause 10, page 7, line 31, at end insert—

"( ) Regulations under subsection (2) which make provision about Scotland may only be made with the prior consent of the Scottish Parliament, and regulations which make provision about Northern Ireland may only be made with the prior consent of the Northern Ireland Assembly."

Lord Kennedy of Southwark: My Lords, this amendment and the two other amendments in both my name and that of my noble friend Lord Rosser are very straightforward and come to your Lordships' House following the concerns raised by the report of the Constitution Committee published on 11 January. The amendments require the consent of the relevant devolved institution before regulations can be made covering their nation. The clauses that these amendments seek to amend presently allow the Secretary of State to by regulation make provisions in the other nations that would have similar effect to the provisions enforced in England—English provisions.

The Government take the view that the clause does not engage the conventions so the legislative consent Motions are not required. This has been disputed by many interested parties including the Law Society of Scotland, for example. It would be helpful for the House if the noble Lord, Lord Bates, in responding could set out carefully the reasoning behind the Government's decision not to seek approval via the legislative consent Motion process. I am also grateful to the Constitution Committee for highlighting the differential legislative approaches adopted in respect of England and other parts of the United Kingdom and the difference in the degree of scrutiny that that implies. I for one am not convinced that this is a good way to handle these important matters. Again, I would be grateful if the noble Lord, Lord Bates, could outline why he thinks this is appropriate. I beg to move.

Lord Bates: I am grateful to the noble Lord, Lord Kennedy, for moving the amendment and giving me an opportunity to say more on the record. I also pay tribute to the work of the Constitution Committee. I know that a number of recommendations in the report will have further bearing on our discussions in Committee. However, immigration is a reserved matter and the subject matter of all these amendments relates to parts of the Bill that remain within the immigration reservation which have not been devolved or transferred to a devolved legislature.

Amendment 72A relates to the measures to prevent illegal working on licensed premises. The Bill integrates protection against illegal working into the existing licensing regime, including by adding the Home Secretary to the list of responsible authorities for the purpose of the Licensing Act, by making the prevention of illegal working an objective of the licensing regime, and by requiring licence applicants to have the requisite right to work. The noble Lord, Lord Kennedy, raised the questions posed by the Constitution Committee on whether legislative consent Motions will be required. The legislation has a reserved purpose. It is necessary to amend devolved licensing laws in consequence of that reserved purpose. Legislative consent from devolved legislatures is not required.

We have consulted the devolved Administrations as the provisions have been developed. Alcohol and late-night refreshment licensing legislation in Scotland and Northern Ireland is complex and, in the case of Scotland, that legislation itself is subject to prospective amendment by the Scottish Parliament. We have therefore been working with the Scottish and Northern Irish Governments on the provisions to ensure that they can operate effectively within their licensing regimes. This work is ongoing and will continue in order to make equivalent provisions in regulations, using the order-making powers in the Bill once it has come into force.

Amendment 157A relates to the provisions in the Bill about residential tenancies. These provisions restrict the access of illegal migrants to private residential accommodation in the UK and concern the reserved area of immigration control. This is not an area in which Wales, Scotland or Northern Ireland have the competence to legislate and their consent is not required for the UK Government to legislate in this area. It is therefore inappropriate for the application of the residential tenancy provisions in the Bill to the rest of the UK to be subject to the consent of Wales, Scotland and Northern Ireland. It could lead to separate immigration controls applying in different parts of the United Kingdom, which would be to no one's advantage, and to illegal migrants moving to jurisdictions which are perceived to be more lax.

Amendment 236A relates to provisions in Part 5 which will make it easier to transfer unaccompanied migrant and asylum-seeking children from one local authority to another and enable the Secretary of State

to require local authorities to co-operate in the transfer of unaccompanied migrant children from one local authority to another, should voluntary arrangements fail. Immigration is a reserved matter, and immigration legislation already provides a UK-wide framework for migrants' access to local authority services. The dispersal of migrant children is not an area in which Wales, Scotland or Northern Ireland have the competence to legislate and their consent is therefore not required for the UK Government to legislate in this area. The Government have been clear that they hope that the arrangements will remain voluntary and have been liaising with the devolved Administrations to see how this might extend to Wales, Scotland and Northern Ireland, but we must avoid the repetition of the situation we saw in Kent in the summer, so we will enforce dispersal if necessary to promote and safeguard the welfare of children. The regulations in Clause 43 are subject to the affirmative resolution procedure, so they will be scrutinised by Parliament before they come into law.

I will write to the Constitution Committee shortly to respond to its helpful report in more detail. Further, the Government propose to publish the text of the licensing regulations to extend the measure to Scotland and Northern Ireland before Report. We are unable to produce regulations immediately on residential tenancies because we are working out how this will interplay with the Private Housing (Tenancies) (Scotland) Bill currently making its way through the Scottish Parliament. On the final measure in respect of children, discussions continue with the devolved Administrations.

I hope that in the light of these reassurances and the commitments I have made this evening the noble Lord will feel able to withdraw his amendment at this stage.

Lord Kennedy of Southwark: My Lords, I thank the Minister for his helpful response. At this stage, I am very happy to withdraw my amendment. I will look at the record when it is published and reflect on it. I beg leave to withdraw the amendment.

Amendment 72A withdrawn.

Clause 10 agreed.

House resumed.

House adjourned at 10.07 pm.

Grand Committee

Monday, 18 January 2016.

Arrangement of Business

Announcement

3.30 pm

The Deputy Chairman of Committees (Baroness Henig) (Lab): My Lords, if there is a Division in the House, the Committee will adjourn for 10 minutes.

General Dental Council (Fitness to Practise etc.) Order 2015

Motion to Consider

3.30 pm

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

That the Grand Committee do consider the General Dental Council (Fitness to Practise etc.) Order 2015.

Relevant document: 11th Report from the Joint Committee on Statutory Instruments

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, the Dentists Act 1984 established the General Dental Council and sets out its functions and processes. The GDC is responsible for regulating the dental workforce in all parts of the UK. It has powers and duties which include setting the standards of conduct, performance and behaviour that dentists and dental care professionals are expected to adhere to. In addition, it is responsible for investigating any complaints or concerns which suggest that a dental professional may have failed to meet those standards.

The Government are keen to ensure that the GDC has the appropriate framework in place so that it can carry out its statutory responsibilities effectively. At present, the legislation governing the early stages of an investigation into a dental professional's fitness to practise does not provide sufficient flexibility to enable the GDC to carry out this function in the most effective and efficient way. Legislative change is needed to address this.

This order, made under Section 60 of the Health Act 1999, amends the Dentists Act 1984 to reform the investigation stages of the GDC's fitness-to-practise procedures. The Department of Health has publicly consulted on the proposals contained in the order and the vast majority of respondents agreed that the measures should be introduced and would have a positive effect on the GDC's fitness-to-practise procedures. Through this Section 60 order I propose to provide the GDC with the powers to make five key amendments to its processes.

First, the GDC will be provided with a rule-making power that will allow it to delegate the decision-making functions currently exercised by its investigating committee to case examiners. The GDC's current framework requires that following the triage of a fitness-to-practise complaint about a dental professional, if that complaint falls within the GDC's remit it must be considered by an investigating committee. This means a panel must be convened for every case that reaches this stage. By introducing case examiners, it is anticipated that there will be a swifter resolution of fitness-to-practise cases, as a full investigating committee will not need to be convened for every case and instead allegations will be considered by two case examiners. The faster resolution of cases will enhance public protection. It will also remove some of the stress from the procedure for all parties involved. In addition, greater consistency in decision-making should be achieved, because case examiners will deal with a higher volume of allegations than the investigating committee, as the committee is convened from a large pool of individuals.

I realise that the fact that case examiners will be employees of the GDC may be a cause of anxiety for some. It is important to remember that they will not be making findings of fact in respect of whether a registrant's fitness to practise is impaired. They will make the decision as to whether a case needs to proceed to the adjudication stage and be considered by a practice committee.

Additionally, the GDC, in its rules and guidance, will provide that the case examiners must make decisions based on documentary evidence which will be supplied to them in the same manner as is currently the case for the investigating committee. The case examiners will not be involved in evidence-gathering. There will also be one lay and one registrant case examiner, from the same part of the register as the individual whose case is being considered, considering an allegation, which will provide another safeguard in the process ensuring fairness.

I am also aware that interested parties will be keen that case examiners are recruited, trained and supported in the right way. I have been assured by the GDC that case examiners will receive comprehensive and robust training. The GDC is developing a robust system of review and appraisal that will monitor and support performance and ensure appropriate decision-making. The quality of the case examiners' decisions will be underpinned by ongoing training and detailed guidance. The GDC will also introduce mechanisms for auditing decisions on a routine basis and will apply the lessons learnt from the audits to the guidance material.

Secondly, provision will be made to allow both the case examiners and the investigating committee, in certain cases, to address concerns about a registrant's practice by agreeing appropriate undertakings with that registrant. This will be instead of referring them to a practice committee.

Undertakings will be applied, where appropriate, at the end of the investigation stage of the fitness-to-practise process. The introduction of this change will mean that some cases that are currently referred to a practice committee may not need to be. This would be in instances where it is determined that the agreement of undertakings would lead to the resolution of a case in a way that is sufficient to protect patients and the public. For example, if a case involved an allegation that a registrant's health was affecting their fitness to practise, it may be possible to agree undertakings that would address any risks posed to the public and to the registrant themselves as a result of this health condition.

[Lord Prior of Brampton]
This would also avoid the anxiety, time and cost incurred by referring the case for a full hearing. Rules will provide that a registrant must not be invited to comply with undertakings if there is a realistic prospect that if the allegation were referred to a practice committee, the registrant's name would be erased from the register.

Thirdly, the GDC will be provided with the power to make rules to provide, first, for a review of a decision that an allegation should not be referred to the case examiners or to the investigating committee, and, secondly, for a review of a decision that an allegation should not be referred to a practice committee. However, this will not be an unfettered power. Through rules, the GDC will provide that a review can be undertaken by the registrar if it is considered that the original decision was materially flawed or if new information has come to light which may have altered that decision and a review is in the public interest. Such a review can occur only within two years of the original decision to close the case. Allowing the review in these circumstances adds a further safeguard to the system. Providing the GDC with the power to take suitable action will improve public protection and maintain public confidence in dental regulation.

This order will also introduce a power to enable the investigating committee and the case examiners to review their determination to issue a warning. A registrant will be able to request such a review within two years of the original decision to issue the warning. At present, there is no mechanism through which a registrant who is issued with a warning can appeal this decision with the GDC. Instead, the only route of appeal open to them is to apply for judicial review. This can be costly for both the registrant and the GDC and stressful for the registrant. Warnings can remain on an individual's record for a number of years, for as long as the warning has been issued, and accessed by patients and employers. Providing individuals with a route of appeal that does not require application for a judicial review is a fairer and more proportionate approach.

Finally, provision will be made to ensure registrants can be referred to an interim orders committee at any time during the fitness-to-practise process. Currently, the legislation is ambiguous around when a case can be referred to an interim orders committee at certain points in the process. This amendment will remove any ambiguity and maintain public protection and confidence throughout the entire fitness-to-practise process. It will provide a higher level of patient protection, ensuring that those who are potentially unsafe to practise can have their registration suitably restricted while inquiries and investigations are made. In addition to enhancing patient safety and improving the fitness-to-practise processes for a registrant and all parties concerned, it has been identified that making these amendments will create approximately £2.5 million of efficiency savings per annum over the next 10 years.

In summary, these proposals to reform and modernise the GDC's fitness-to-practise processes will make the system more efficient and effective, benefiting patients, practitioners and the health service. They will result in improved public protection and an increase in public confidence in the GDC. I commend the order to the Committee.

Lord Colwyn (Con): My Lords, I thank my noble friend for his explanation of the order, and I look forward to reading in *Hansard* what exactly it is. It is complicated. I declare my interest as listed on the register.

I am sure all noble Lords will agree with me that the measures included in the order are a welcome and very long overdue step in the right direction toward speeding up the overall process of complaints handled by the GDC. The current legal framework hinders improvements to the effectiveness and efficiency of this process—improvements which, with a major case backlog and cases costing an average of £78,000 to process, the GDC badly needs. However, I will make some brief comments about some conditions that must be met for the implementation of these changes to make a meaningful difference.

First, the case examiners this order introduces must be properly independent from the GDC, as well as appropriately trained and supported in carrying out their new duties. The success of the new system will lie with the calibre and qualifications of the individuals carrying it out. Case examiners might be exposed to significant internal and external pressure when carrying out their functions, and their credibility will ultimately rest on their independence from the GDC. It is also crucial that the clinical case examiner should always be a professional from the same profession as the individual whose case is being examined. That is very important.

However, it is equally important that, for the new system to bring the expected time and cost savings, we need to see a proper culture change in the regulator's management of fitness-to-practise cases. The BDA has raised with me the hard-line approach of the GDC in its fitness-to-practise investigations. Dentists say that the GDC tends to treat even the most vexatious or minor complaints as potential cases, which leads to heightened and often undeserved stress for the dentists concerned. I share their fear that if this culture prevails, the new case examiners might simply become an additional layer in the fitness-to-practise process, without any meaningful reduction of case loads and costs.

I hope that the GDC will take these points into consideration when implementing the order, so that these changes achieve a decrease in the cost and increase in the speed of decision-making in fitness-to-practise cases—which we all want to see.

3.45 pm

Lord Hunt of Kings Heath (Lab): My Lords, I, too, thank the Minister for his careful explanation of the order. I welcome the opportunity to debate it as well as the performance of the General Dental Council.

This is one of a number of Section 60 orders that the Minister has brought before your Lordships' House in the absence of a Bill following up the Law Commission's work. Will the Minister be able to update the Committee on exactly where we stand with the Government's intention with regard to whether they see that any part of the Law Commission's work will lead to legislation in the future? On the order itself, its terms seem unexceptional, although I would like to raise a few points with the noble Lord. The real question before us is whether the General Dental Council is a fit and proper organisation, capable of implementing the changes.

I shall start, however, with the order and will come on to the issues with the GDC and the various reports that have been published about its poor performance over the past four years. On the order, first, I refer to paragraph 8.4 of the Explanatory Memorandum, which refers to a number of organisations which have commented. The British Dental Association is not listed there. I have received a briefing from the British Dental Association, and I wondered whether it had submitted a response to the department. If it has, I am surprised that it is not listed in paragraph 8.4.

The other point I want to make about the order concerns the question raised by the noble Lord, Lord Colwyn, which is about the performance of the GDC. The BDA briefing that I have received states that while the GDC is,

"Britain's most expensive healthcare regulator",

it,

"is also the least efficient, most troubled and enjoys little confidence among",

either dentists or the Professional Standards Authority. It states that the GDC failed to meet eight out of 24 of the PSA standards of good regulation in its 2014-15 performance review and, crucially, fully met only one of the 10 standards relating to fitness-to-practise processes, representing what the PSA describes as,

"a significant decline in its performance compared to the assessment of the year before".

The BDA points out that, in comparison, last year, the GMC met every one of the 24 standards while charging its members less than half of the annual retention fee that the GDC charges.

I also pick up the point raised by the noble Lord, Lord Colwyn, about the importance of the independence of case examiners. This is a point that we have raised before on some of these Section 60 orders. It is crucial because of the problems that have arisen from the way the GDC has conducted cases in the past, as identified by the various inquiries. I very much support the noble Lord in emphasising that case examiners must be, and be seen to be, independent.

We then come to the real issue for me, which is GDC governance. The Minister will be aware that in February 2013, the Professional Standards Authority published a report following the resignation of the GDC's chair, Alison Lockyer, in May 2011. The Department of Health had asked the PSA to investigate several concerns which the then chairman had raised in a letter she had written to the Secretary of State on her resignation.

The PSA's findings were complex. It did not find that the GDC was failing, but it identified some general learning which could be gained from the experiences of the GDC. Following the PSA's report into the allegations made by Lockyer, it wrote that new evidence had come to light about poor practice in the support and operation of the GDC's investigation committee. In July 2013, a member of the investigation committee raised concerns under the GDC's whistleblower policy that certain processes were compromising the independence of the investigating committee's decision-making. The GDC also commissioned an independent review into the concerns of the whistleblower, which was published in 2014, but in April 2014 the PSA started its own investigation. This was published on 21 December 2015.

The PSA came to a number of conclusions and found several areas of improvement for the GDC. I will come to the main recommendation but I read this report with considerable disquiet. I do not think I have ever seen a report relating to a statutory regulator quite like it. It was published only a few weeks ago, before Christmas. Paragraph 2.1 of the summary states:

"The approach taken by the GDC to recruiting, training and supervising the Investigating Committee Secretaries is likely to have contributed to the development/continuance of objectionable practices".

These are objectionable practices by the statutory professional body concerned with dentistry. It is a very long report of more than 300 pages but, to get the flavour of it, here are some of the objectionable practices listed that the PSA looked into. First, there are:

"Discussions about cases between Investigating Committee Secretaries and Investigating Committee Chairs prior to Investigating Committee meetings".

Then, quite remarkably, there is,

"advance drafting of Investigating Committee decision documents/ reasons by Investigating Committee Secretaries".

There are irregularities around the,

"provision of legal advice by Investigating Committee Secretaries to the Investigating Committee during Investigating Committee meetings … Inappropriate interventions/undue influence by Investigating Committee Secretaries during Investigating Committee meetings",

and,

"amendment of Investigating Committee decision documents after Investigating Committee meetings by Investigating Committee Secretaries without appropriate authorisation".

There are other identified irregularities but I do not need to go into them; I have made the point. The PSA report goes through this in great detail and its overall recommendation is:

"The GDC's Council, executive management team and the relevant committees should consider this report in full, both individually and collectively, in order to identify all the lessons that should be learnt in particular in relation to governance, accountability and management oversight, as well as the actions the GDC should take to address our recommendations".

The point I want to make about this is that these matters now go back some years. It was 2011 when the then chairman first raised those issues. This report was started in 2014 and finished only a few weeks ago. It clearly found continuing improper practices—or at least those that would not accord with good practice. Reading between the lines, I see here a culture of utter complacency within the GDC. It looks as though the GDC has simply not accepted the core conclusions of the various reports written about its conduct and carried on with that complacent culture. It is also clear from reading between the lines of the report and the careful way it has been put together that the PSA lacks confidence in the performance of the GDC. Frankly, I would have expected the entire board of the GDC to resign in the light of that report just before Christmas. I understand that the chief executive has resigned but no one else on the board seems prepared to take responsibility for a culture that has clearly lasted over a good many years. That is not acceptable. Can there be any confidence that this organisation is fit for purpose?

I now understand the concerns that the profession has about the GDC. I had not realised until I went

[Lord Hunt of Kings Heath]
through this information just why there was so much angst within the profession. It is absolutely justified. I would be doubtful of putting any order through in relation to the GDC unless we were absolutely certain that it is able to carry out its job properly.

Lord Prior of Brampton: My Lords, a number of points have been raised. I will start with those raised by my noble friend Lord Colwyn. He said that independence is critical for the case examiners; I will address that issue first. It is important to remember that case examiners will not be making findings of fact in respect of whether a registrant's fitness to practise is impaired. They will make the decision about whether a case needs to proceed to the adjudication stage and be considered by a practice committee.

Additionally, in its rules and guidance, the GDC will provide that the case examiners must make decisions based on documentary evidence, which will be supplied to them in the same manner as is currently the case for the investigating committee. The case examiners will not be involved in evidence-gathering. There will be one lay and one registrant case examiner considering an allegation. I accept, however, that they will be employees of the GDC. Nevertheless, our feeling is that sufficient safeguards are built into the way that case examiners will work.

The issue raised by my noble friend and expanded on by the noble Lord, Lord Hunt, is fundamental. If the GDC is not a fit organisation—if its governance and performance are not right—that is a much more profound worry than the details of the order before us today. Before I address this, I will deal with one other point that the noble Lord raised. He asked whether the BDA had submitted anything. It has; it was omitted in error and is now being attached.

Clearly, we are concerned about the performance of the GDC. The report from the PSA is indeed extremely worrying. As the noble Lord said, this has not happened just recently; it goes back many years. It is very important that the council takes responsibility for the proper running of its organisation. My colleague Ben Gummer is the Minister with direct responsibility for the GDC and he has a meeting coming up in the very near future to discuss the GDC's performance in the light of the PSA report. It is not all bad news in that report. There are some signs that the GDC is working hard to improve. Nevertheless, as my noble friend and the noble Lord have both said, there is a lack of confidence in the GDC among the profession and that confidence must be rebuilt.

Perhaps I might bring to Ben Gummer's attention the comments that have been made by my noble friend and the noble Lord and ask him to draw them to the attention of the GDC when he meets it in the near future. Clearly, he will wish to keep a very close eye on the performance of the GDC as we go forward. I do not think I can say much more today about that. I do not have the information with which to comprehensively address the issues that the noble Lord has raised. Is he content on that basis? If he would like to meet my honourable friend Ben Gummer, I can arrange for him to do that.

4 pm

Lord Hunt of Kings Heath: My Lords, I am very grateful. One of the problems is that this was scheduled very late and therefore I was able to look at the information only over the weekend. I suspect that I would have put a Motion down for a debate in the Chamber if I had had time to do that.

Secondly, I realise that this is quite a difficult situation. Clearly, the independence of the regulators of the health profession is very important and I have always been keen to protect it. The PSA has a crucial role and I think it does a great job. I pay tribute to the chairmanship of my noble friend Lady Pitkeathley, and Mr Harry Cayton, the chief executive. I think they have done a fantastic job, but it seems to me that there is a gap.

It is patently obvious when you look at it from the outside that the board should have read those reports, accepted its ultimate responsibility and stood down. I accept the invitation; I would be very glad to meet Mr Gummer. Of course, this will be debated tomorrow in the other place, and other Members may come back on that. This message clearly needs to go to the GDC council: that it is not good enough and the members should consider their position. I wonder whether it is right that the board carries on willy-nilly simply because the chief executive has stood down.

I am not someone who rushes to say that this, that or the other board should resign because something has gone wrong, but this has been a continuing problem. I accept that improvements have been made, but only a few weeks ago the PSA had to publish a report that continues to draw attention to what is, essentially, the culture of the organisation. Therefore, I very much hope that Ministers will take the appropriate action; that is all that they can do. Ultimately, I am surprised that the board of the GDC feels that it is able to carry on and I think there needs to be a change.

I am grateful to the Minister for the way that he has responded; clearly, he understands the issues that are being faced.

Lord Prior of Brampton: My Lords, perhaps we can leave it on the basis that I will organise for the noble Lord to meet Ben Gummer and perhaps ask Harry Cayton to come along, too, as he fundamentally authored the report, so that the noble Lord can express his concerns directly to them. On that basis, I beg to move.

Motion agreed.

Legal Services Act 2007 (Claims Management Complaints) (Fees) (Amendment) Regulations 2016

Motion to Consider

4.02 pm

Moved by ***Lord Faulks***

That the Grand Committee do consider the Legal Services Act 2007 (Claims Management Complaints) (Fees) (Amendment) Regulations 2016.

Relevant document: 10th Report from the Joint Committee on Statutory Instruments

The Minister of State, Ministry of Justice (Lord Faulks) (Con): The Legal Services Act 2007 (Claims Management Complaints) (Fees) Regulations 2014 enable the Lord Chancellor to charge fees to regulated claims management companies to recoup the costs of the Legal Ombudsman's work in handling complaints about these companies. Since January last year, the Legal Ombudsman has been able to consider consumer complaints against claims management companies. It is funded for this work by grant-in-aid from the Lord Chancellor, and the 2014 fees regulations enable the Lord Chancellor to recoup the costs from the companies themselves. It is right that the costs of handling such complaints fall on the claims management sector and not on the taxpayer.

The draft regulations before us amend the level of fees set out in the existing 2014 fees regulations for the financial year beginning 1 April 2016 and for subsequent years. This will ensure that the Lord Chancellor can recover the full costs of the Legal Ombudsman in dealing with complaints about the claims management industry in the 2016-17 financial year.

The Legal Ombudsman has one year's experience of operation of the complaints scheme. During this time, the Legal Ombudsman has dealt with fewer cases requiring an ombudsman decision than expected, although the number of complaints is increasing. The number of initial consumer contacts and inquiries to the scheme has been substantially more than envisaged.

In the light of its experience so far, the Legal Ombudsman has revised downwards its estimate for the number of cases that will require ombudsman resolution during the next financial year and therefore the expected costs. However, in addition to the Legal Ombudsman's expected costs for 2016-17 we also need to recover a shortfall in the amount invoiced for 2014-15 and 2015-16. This was the result of a greater number of market exits than was estimated in the fee model. This means that the total cost to be recovered from the market for 2016-17—around £2.3 million—remains broadly similar to that for 2015-16. Due to the contraction in the market, however, fees have had to be increased. Effectively, it is a smaller cake.

Noble Lords will be aware that a fundamental review of the regulation of claims management companies is currently taking place. The review is considering what powers and resources are required for a strengthened regulatory regime and what other reforms may be necessary, and is due to be completed in early 2016. As such, I cannot say any more about it at the present time.

The claims management sector has undoubtedly acquired a poor reputation as a result of a small number of companies engaging in poor business practices. The Legal Ombudsman provides redress for consumers of regulated claims management companies, including the potential for awards of compensation, and will continue to assist the claims management regulator in driving out poor standards and practices in the market.

I know that noble Lords welcome the fact that the Legal Ombudsman is now able to deal with complaints about claims management companies. It is therefore right that the Legal Ombudsman's costs relating to regulated claims management complaints continue to be met by the claims management sector, in the same way that the costs relating to complaints about the legal services sector are met by that sector. I commend the draft regulations to the Committee.

Lord Beecham (Lab): My Lords, the Government are right to take action in this matter, and I certainly endorse the new arrangements that have been laid out, but it has a rather curious history. Looking at paragraph 4.2 of the Explanatory Note, I can see that it was some seven years after the passage of the 2007 Act before steps were taken to deal with this issue. The paragraph contains this rather curious sentence:

"This provision treats the designated Claims Management Regulator as an approved regulator to be levied in the same way as other approved regulators for the costs of the Legal Ombudsman".

It goes on to say:

"However, there is currently no designated Claims Management Regulator and the function is fulfilled by the Secretary of State".

One might have thought that he had more important things to do. Obviously, Mr Gove and his predecessor will not have been involved in this personally, but it is a curious situation that for some years there apparently was no functioning regulator in post.

The position appears to be, as the Minister has indicated, that a £500,000 shortfall has occurred in a very short period. I do not know whether he is able to indicate how many cases there were. He said that there were not many, but £500,000 is a reasonably large amount of money. It will be interesting to know how many cases there were and how many of those were from small companies, which appear to be leaving the market. But the very fact that after all these years there are clear deficiencies in how some of those providing this service are operating raises questions about the degree to which their activities are regulated in advance of the unfortunate outcome, which sometimes leads them to be subject to charges for maladministration or their conduct. Does the review to which the Minister referred encompass looking at the qualitative regulation of the industry? Should there not be a floor above which the resources of these companies should be fixed? If not, we will continue to have a situation in which, quite apart from the financial implications for the Government, people who have consulted these companies presumably are being short-changed. One wonders what has happened to valid claims that have gone astray as a result of maladministration. That side of it does not seem to be touched on at all in relation to this order, but it may be encompassed within the review. I certainly hope that that is the case, but if it is not, perhaps the Minister could undertake to look into the nature and quality of the supervision that ought to be exercised and, if necessary, what improvements should be made to what has gone on recently.

Lord Beith (LD): My Lords, I very much agree with the noble Lord, Lord Beecham, about the rather curious nature of the regulatory arrangements for claims management companies. The Lord Chancellor left himself holding the baby when the original legislation was taken through. I never thought that this arrangement

[Lord Beith]
would last as long as it has. It is quite right that it should be subject to review. It is obviously right that the costs of dealing with what the noble Lord called the maladministration in the industry is visited upon the industry and not the taxpayer. Therefore, I support the order and the principle behind it.

The history of claims management companies has been one of things that go beyond individual complaints. There have been systemic changes to the way the legal system operates and attempts to turn it into an ambulance-chasing activity. We all have some worries about whether, in another area, the necessary referral fee bands have actually brought some of the claims management activities in-house, into some solicitors' practices, where once they were precluded. This is a very difficult area and the regulatory problems that it generates are not just individual cases being badly dealt with but systemic weaknesses. I hope that when we dispatch this order successfully as an appropriate means of dealing with the costs arising from individual claims, we will not neglect some of the wider issues that this industry has generated.

Lord Faulks: My Lords, I am grateful for that short debate and for the contributions of the noble Lord, Lord Beecham, and the noble Lord, Lord Beith, who, I know, when he was chair of the Justice Select Committee had considerable concern, possibly in relation to the Compensation Act going back to 2006. At that time the question of claims regulations was certainly raised, with the emergence of claims management companies and the possibility that they were and would be engaging in unacceptable practices. That is a matter of concern generally to the Government.

The claims management regulation unit in Burton-on-Trent has been doing a good job but the Government are by no means complacent about this activity. The review being conducted by Carol Brady is wide-ranging and I do not want in any way to pre-empt its conclusions, but the Government are not going to lose sight of the potential dangers that this claims management activity can present. I take the noble Lord's point about referral fees and the possibility that they might have the unintended consequence of driving claims away from lawyers towards claims management companies.

On the plus side, I think that the increased powers to fine companies have been a positive step, together with the fact that a number of the less reputable companies have left the market. There is something like half the number of claims management companies in existence that there were. This is at least some indication that the better ones are still active rather than the less reputable ones.

The wider point that both noble Lords make about claims management is valid. I hope that the review will assist; the Government are very much aware of the field and whether it is desirable in the long term that these companies should exist, as well as the need for regulation.

4.15 pm

I am glad that there is acceptance that there is a need to recoup the costs of the Legal Ombudsman in dealing with complaints against claims management companies. The noble Lord, Lord Beecham, referred to the slightly strange hiatus evident from the Explanatory Notes. Unfortunately, I understand that there was an issue with the original legislation, whereby the existing levy in the Legal Services Act 2007 could not be used as the Secretary of State fulfilled the role of claims management regulator. This meant that additional primary legislation was needed and a suitable vehicle for this needed to be found; this was done in the Financial Services (Banking Reform) Act 2013. Following the passage of that new legislation, the Government had to consult affected parties and work to ensure that the necessary operational and financial regulations were in place. That is the explanation; it is simply an omission, effectively, which had to be regulated by the appropriate vehicle.

The noble Lord was concerned about why there was a shortfall in fees collected this year. That was a result of more companies having left the market than was estimated, as I think I indicated, with a difference between the fees calculated and the fees being charged and a higher number of exits than expected prior to the beginning of the 2015 financial year. It was not because the companies failed to pay the fees. They left for a variety of reasons but, certainly, the overall aim is to ensure that the right companies remain and there is effective regulation of those companies.

I hope that, notwithstanding the reservations that have been expressed about the length of time it took to set up this system, and notwithstanding the general concern that the Committee has about claims management companies, noble Lords will accept that there is an importance in providing the route for redress for consumers of regulated claims management companies that is provided, and that it is right that the companies should pay for the costs of complaints handling rather than the taxpayer.

Lord Beecham: I entirely endorse what the Minister has said, but the danger is that the process of finding companies works only if the companies are in existence and have resources. Therefore, it seems to me that the regulation needs to be at an earlier stage to ensure that they do not carry on business unless they can demonstrate that they have the financial capacity to meet their liabilities. I assume—but it would be good to have the confirmation, if not today than perhaps subsequently—that that element is being considered as part of the review to which the Minister referred.

Lord Faulks: I am grateful for that, and I understand the noble Lord's concern about having prior approval rather than waiting for things to go wrong; I think that is effectively what he is saying. I do not want to pre-empt what is in the wide-ranging report. Of course, there are a number of ways of ensuring that, including the possibility of professional indemnity insurance, or something of that sort. But I accept his point that it is important that there is protection before, rather than after, the event. I do not undertake that the review will cover that point, but it is none the less a valid concern.

Motion agreed.

Legislative Reform (Exempt Lotteries) Order 2016

Motion to Consider

4.19 pm

Moved by ***The Earl of Courtown***

That the Grand Committee do consider the Legislative Reform (Exempt Lotteries) Order 2016.

Relevant Document: 15th Report from the Regulatory Reform Committee

The Earl of Courtown (Con): My Lords, this order removes unnecessary regulation on certain types of small lotteries to enable greater opportunities for fundraising for charities and good causes. These are small-scale, locally run lotteries such as a raffle held at a school fair or a workplace sweepstake. They are known in the Gambling Act as "exempt lotteries", being lotteries that are so small they are exempt from the licensing system.

The first change is to lotteries held incidental to an event. Currently, if an organisation holds a lottery alongside a commercial event, the organiser cannot retain the proceeds of the event, such as entrance fees, food or drink sales. The proceeds of the event, as well as the proceeds of the lottery, must be donated to charity. The end result is that organisers of commercial events are discouraged from holding lotteries at their events and charities are deprived of vital opportunities to raise funds.

Article 2 of the order therefore removes the requirement that the connected event be non-commercial. We think that allowing pubs, clubs, event and concert organisers, and other businesses to keep money from entrance fees, sponsorship deals, food and drink sales or commissions from traders will see an increase in the amount of money raised for charity. Most importantly, this will not affect the profits of the lottery. All profits of the lottery held in connection with an event will still be required to be donated to charitable causes.

At present, the results of a lottery must also be made during the event itself. Article 2 also removes this requirement. This now means lotteries that do not produce a result on the day—for example, a balloon race—can benefit charities.

Another way in which charities miss out on opportunities to maximise their fundraising efforts is through the restrictions placed on private society lotteries. At the moment, these lotteries are allowed to be held only where they benefit that particular society. The impact of these restrictions was made very plain in the responses to the consultation. Several charities said they had been approached by members of clubs wishing to support the charity through small private society lotteries, often as a thank you for support of a family member. However, under the current framework these lotteries cannot take place. Article 3 removes this restriction. Private societies will now be able to promote lotteries within their societies for the purposes of donating the proceeds to charity.

Article 3 also lifts restrictions on work and residents' lotteries raising money for charity. Take for instance a sweepstake on the Grand National. Currently, the proceeds of lotteries such as this in workplaces or by groups of residents, for example in a university's halls of residence, may not be used for anything other than prizes and the expenses of the lottery. This is an unnecessary restriction. Work and residents' lotteries will now be able to make a profit and that profit will be able to be donated to charity. However, it is not the Government's intention to make it mandatory for all work and residents' lotteries to give their profits to charities; these lotteries are often played for fun and this element will be retained. Where a work or residents' lottery is held for a non-charitable purpose, the "no profit" prohibition remains.

Article 3 also removes certain ticketing requirements for these lotteries. Tickets will no longer be required to display the name and address of the organiser and other information about the arrangements for the lottery. Given that tickets in these lotteries are restricted to a single site or premises, it is unnecessarily bureaucratic to require this level of information. We are allowing the organisers of such lotteries to ticket their event as they deem appropriate.

Article 4 amends Section 261 of the Gambling Act 2005 to extend the offence of misusing the profits of an exempt lottery to apply to these new, profit-allowed work and residents' lotteries, ensuring them the same level of protection against fraud. Article 4(2) makes minor consequential amendments to the 2005 Act and the Licensing Act 2003 upon the removal of the requirement for incidental lotteries to be held in connection with a non-commercial event.

This order also creates common sense changes that remove unnecessary regulation of the very smallest lotteries. The order will allow many more people to hold fun and innovative events to raise money for charity. I commend the order to the Committee.

Lord Clement-Jones (LD): My Lords, I thank the Minister for his very succinct introduction, and I thank all those who put the papers together, so to speak. Even though this is a relatively small piece of law reform, having a Keeling schedule is an enormously helpful thing—the sort of thing we cry out for on more complex legislation. My goodness, it certainly makes a huge difference when you are looking at something with this level of detail.

After something like eight hours' debate last Wednesday on the subject of inappropriate statutory instruments, it seems rather strange to be welcoming a statutory instrument that amends primary legislation. However, it is a good thing that one is able to make amendments of this kind by an LRO because it would otherwise take years for the wheels to grind and come round to something of this kind, which, although relatively small, could have a significant effect on the objects of its reform and for the benefit of some of the smaller charities. Therefore it is heartening that the Red Tape Challenge extends in this way and that it can be implemented in this way.

We have all been brought up with raffles, and I like the way the impact assessment is quite blunt about the fact that we are talking about raffles here. However, I suspect that an awful lot of people who conduct raffles have no idea of the legal context in which they happen.

I suspect that an awful lot of raffles are strictly illegal as regards what goes on. That applies to many workplaces, and—dare I say it?—may even apply to events organised by some political parties. Therefore, it is interesting that we can now look forward to raffles being conducted with a rather higher degree of legality.

In response to the paperwork—the impact assessment and what the Minister has had to say—there is a slightly apologetic tone to the impact assessment as regards the amount of evidence available on the possible benefits of this reform, which is quite interesting. It says:

"Reviewing the available literature, it is clear that there is an absence of basic facts, as well as detailed information on raffles as a form of giving".

You do not often see that in an impact assessment. In a sense, we are being asked to make a leap of faith that this will benefit smaller charities. In this case perhaps we will not be so rigorous about demanding evidence-based policy, and let us hope that we see a positive impact on some of those smaller charity events, which will now be able to take place—dare I say it?—down our local. That would be extremely welcome.

I hope, however, given that there is very little evidence about what could happen, that the Government will at a certain point review how the operation of this reform has taken place—I do not know whether that will be after a year or two years—to see whether it is working out in a proper fashion or whether these changes have had unintended consequences. That would be beneficial for all of us.

4.30 pm

Lord Stevenson of Balmacara (Lab): My Lords, I, too, thank the noble Earl for his easily absorbed comments on the reasons for doing the LRO in this way. It was good to capture it in the way he did. I agree with the noble Lord who has just spoken that the benefits of using the LRO system also have spin-offs in terms of the clarity of the documentation, which again I commend to your Lordships. It is very good to have it. Of course, the Keeling schedule is a delight. Oh, for Keeling schedules for everything we did!

I have only a couple of questions about the wording of the document, which I am sure will not take the noble Earl long to respond to. The Explanatory Note says, with reference to Article 3:

"A work lottery or a residents' lottery is now exempt in two circumstances, where the lottery … is promoted wholly for a purpose other than that of private gain"—

that is clear. Then there is a double negative which caught me up and perhaps the Minister could read into the record what it is meant to mean. It says that a lottery is now exempt if it,

"is not organised in such a way as to ensure that no profits are made".

Is that the same as saying, "is organised in such a way as to ensure that it is not profit-making"? One gets caught by these things sometimes and I just wanted to be clear. I would be grateful if, once he has had the advice, he could clarify this.

The Explanatory Note makes a possibly interesting point about Article 4, which is that,

"the maximum imprisonment for an offence committed under section 261(1)(ba) is six months",

but then goes on to say:

"When section 281(5) of the Criminal Justice Act 2003 comes into force, this will increase to 51 weeks".

Whatever happened to inflation? I know this is not the Minister's department but does he have any idea when we are likely to see that change? Clearly, a change from 26 weeks to 51 weeks is quite a big one and, even then, given that this was 2003, perhaps it ought to be higher than that, given the way in which people are behaving. But I do not really want to hold up the Committee with that light-hearted point.

The noble Earl will recall that he responded to a debate in the Chamber about the National Lottery just before Christmas. A number of points were made in that debate, most importantly about the balance to be struck in public policy between the National Lottery, which is of course a monopoly aimed at making the maximum amount of funds available from the gambling intentions of the public to good causes as defined in the legislation, and the impact that is being made on the National Lottery, it is alleged, by a number of society lotteries that are now growing up across the country. The debate, which attracted contributions from all round the House, was broadly characterised by saying that there were growing but not yet serious concerns that the so-called society lotteries—there is one called the Health Lottery; and there is one that is a postcode lottery, which is organised in a slightly different way—are trying to wear the clothes of a national lottery because obviously it serves their purposes better if they can be seen to be competing with the National Lottery.

However, as the noble Earl will recall, the point about this is that the society lotteries have different rules applying to them in terms of where their proceeds may go—and I am not saying in any sense that they do not support good causes, but they are different from those specified in the National Lottery—yet they are benefiting from being seen as a sort of national lottery, to which perhaps those rules should apply. Secondly, the cost framework for the society lotteries is different from that of the National Lottery, which is specified in regulation and limits the extent to which the company operating the National Lottery on behalf of the good causes can charge costs and expenses, which of course does not apply to the society lotteries.

This is familiar territory for the noble Earl. I am sure he is well briefed to respond to it. His response to the comments from around the House in the previous debate was that there was to be a review, which would deal with a number of these points, building on some work done, I think, three years ago now, which seemed to suggest that the National Lottery was not being affected by society lotteries. The volume of responses that I have received—and I think other noble Lords have had the same correspondence since that debate—prompts me to ask whether or not there is any progress on the review of the National Lottery versus the society lotteries and, if there is any news on that, when we might expect to see some output from that review. These things are part of this overall package.

Having said that, we have no specific objection to what has been proposed. I take the point made by the noble Lord, Lord Clement-Jones, that this brings a

number of people who are probably operating outside the law back into the law but does so in a way that I think will benefit good causes, and we have no objection to that.

The Earl of Courtown: My Lords, I thank both noble Lords for their contributions to this short debate. I thank the noble Lord, Lord Clement-Jones, for his support of the order and his comments on the success of the Red Tape Challenge. He made a number of comments, in particular about what happened in the Chamber last week. Of course, he would not expect me to comment on that. One should also look at the responses given to the consultation by the various stakeholders, which answer one of the points that the noble Lord made. The Lotteries Council, Cancer Research UK, the British Red Cross, Sue Ryder and Marie Curie cancer care all consider that this will help to increase the amount of money raised for these very important and valuable charities.

The noble Lord, Lord Stevenson, mentioned a number of matters and I will do my best to answer them all. As ever, if I do not answer them in enough detail I will write to him. He started by talking about a review of the performance of this order. We will take the noble Lord's words into account and speak to the Gambling Commission on this issue. The noble Lord also mentioned the House of Commons Select Committee report on society lotteries, published in March 2015. He basically asked if the Government will adopt the recommendations set out in that report. The department is taking action on this. The committee said that the Government should seek advice from the Gambling Commission in relation to those recommendations. We have done so and await that advice. Any proposals will need to receive the approval of Ministers, which will happen in due course.

Lord Clement-Jones: Can I just check that the Minister is specifically saying that there will be a review by the Gambling Commission of this set of reforms? After how long will that take place?

The Earl of Courtown: It is probably best if I write to the noble Lord and give him the exact details of what is planned. Obviously, as I said from this position, there are some points that we will take back to the Gambling Commission. Once I have checked with the department, I will write to the noble Lord with exact details of any review. I will ensure that the noble Lord, Lord Stevenson, is also included in that.

Lord Stevenson of Balmacara: My Lords, I think we are slightly mixing up two issues here. The point made by the noble Lord, Lord Clement-Jones, was about this order and the effect it will have on those small lotteries and events run for residents. The question was whether there would be a review of that and I think the Minister will write to him about it. My point was about society lotteries and I did not refer to the House of Commons Select Committee. I could have done but chose not to because I wished to let the Minister know that the outcome of the debate we had in the House just before Christmas was a number of letters, including ones from those responsible for operating society lotteries. I wondered whether there was any progress there. I think the Minister was in the process of explaining that that is also being progressed.

Lord Clement-Jones: My Lords, that is precisely why I asked the question: there seems to have been a conflation of the two points.

The Earl of Courtown: I thank both noble Lords for explaining that position. The noble Lord, Lord Stevenson, made an important point relating to the Explanatory Notes. There is a mistake there, for which we apologise. The new text, which I am sure it is very important to have on the record, is that a work lottery or a residents' lottery is now exempt in two circumstances: where the lottery is promoted wholly for a purpose other than of private gain; or where it is organised in such a way as to ensure that no profits are made. I hope that clarifies the position to the noble Lord. I will let him know what action needs to take place on that issue.

The noble Lord, Lord Stevenson, also referred to Article 4 and the changes to penalty. I should write on that in greater detail than I have available at present. As I understand it, this would bring the penalty into line with other offences under Section 261 of the Gambling Act 2005, but it is best if I write to him with greater detail on that issue.

The noble Lord also mentioned the debate that took place in the Chamber before Christmas last year. Yes, there was much mention around the House of this issue, and I know that the department is considering carefully what was said in that debate. If anything has arisen since then, I will write to the noble Lord on that.

I thank both noble Lords who have contributed to the debate and very much commend the order to the Committee.

Motion agreed.

Agricultural Holdings Act 1986 (Variation of Schedule 8) (England) Order 2015

Motion to Consider

4.41 pm

Moved by ***Lord Gardiner of Kimble***

That the Grand Committee do consider the Agricultural Holdings Act 1986 (Variation of Schedule 8) (England) Order 2015

Relevant document: 13th Report from the Joint Committee on Statutory Instruments

Lord Gardiner of Kimble (Con): My Lords, I am pleased to introduce this instrument, which updates agricultural tenancy compensation provisions set out in Schedule 8 to the Agricultural Holdings Act 1986. This relates to compensating outgoing tenant farmers for short-term improvements that they have made to the holding during their tenancy which have value to incoming tenants—for example, the application of manure to land to improve soil condition.

This instrument applies to all landlords and tenants in England who have agricultural tenancy agreements governed by the 1986 Act. There are approximately 21,500 of these tenancies in England, accounting for approximately 17% of agricultural land. These agricultural tenancies tend to be traditional lifetime tenancies with succession rights of up to two generations.

The relationship between landlord and agricultural tenant is governed partly by the terms of their individual tenancy agreements and partly by agricultural tenancy legislation. The 1986 Act sets out detailed provisions for the terms and conditions of agricultural tenancies covered by the Act.

The instrument before your Lordships today will deliver the final reform in a package of proposals that the Government consulted on in 2014 to update and modernise the 1986 Act. The changes have the support of industry representatives for both landlords and tenants.

Why are we proposing this instrument? Schedule 8 to the 1986 Act is now out of date with current farming practices in the following way. First, compensation can currently be claimed only for improvements derived from purchased manure and fertiliser applied to the land. This excludes improvements resulting from applied manure that has been made on the farm and other beneficial material such as digestate—the by-product of anaerobic digestion—and soil improvers such as compost, which are now commonly used on farms to improve soil condition.

Secondly, manure is currently compensated for only if it comes from horses, cattle, sheep, pigs or poultry, thereby excluding other species now found on farms, such as deer, alpaca and llama.

What changes are we making? To bring Schedule 8 to the 1986 Act in line with current farming practices the instrument does the following. For improvements from inputs applied to the land, we have broadened the list to include digestate and soil improvers; for example, compost. In addition, we have removed the restriction of compensating only for purchased manure and fertiliser applied to the land. This is because how the manure or fertiliser was acquired, whether paid for or not, has no bearing on the resulting soil improvements delivered. For manure on the holding held in storage, we are broadening the scope of the schedule to allow compensation for manure derived from a wider range of livestock and equidae. This means that any animal now kept on the holding for agricultural purposes will be included. Equidae includes horses and related species such as donkeys and asses.

In conclusion, this instrument will update and modernise Schedule 8 to the 1986 Act to provide a more effective incentive to outgoing tenants to leave the soil in good condition for incoming tenants. The changes are supported by the Tenancy Reform Industry Group, which includes representatives of tenant farmers, landlords and professions such as agricultural valuers, surveyors and solicitors. For these reasons, I commend the instrument.

4.45 pm

Baroness Jones of Whitchurch (Lab): My Lords, I am very grateful to the noble Lord for introducing the instrument. It makes very good sense in both the extended definition of the animals that can contribute to farmyard manure and the added inclusion of digestate and other soil improvers such as compost to the estimate of land value.

As I was until recently a member of the board of WRAP, I would not dare to challenge its estimates of the value of usage of these new soil enhancers to the overall value of the land. Clearly, anything which encourages consistent improvement of soil quality leading up to the end of tenancies makes sense, and these proposals seem to have been very well thought through.

I have only one question. The variations to the schedule became necessary because farm practices and the science of effective soil enrichment have moved on since 1986. It would be regrettable if we found ourselves behind the curve again with new additives for improving soil and yields. That is particularly the case as the pressures to recycle and reuse organic materials increase to avoid landfill. Can the Minister reassure me that other materials are not currently being developed which would be excluded from the revised regulations but are destined to be adopted as soil enhancers by the farming community in the near future? It would be a shame if we had to wait another 30 years before tenanted farmers could be compensated for their use.

I am aware that there is also a wider discussion to be had about how we can encourage longer-term tenancies for tenant farmers so that these calculations for compensation become less crucial, but I realise that that goes wide of the subject of the revised order before us, so perhaps I shall reserve my comments on that for a future date. In the mean time, I look forward to the noble Lord's response and confirm that we support the changes.

Lord Gardiner of Kimble: My Lords, I am most grateful to the noble Baroness for her support for the order. It is one of these occasions when a lot of very good work has been done by all parties and we have come forward with something which will assist the agricultural sector.

I am conscious of the experience that the noble Baroness brings to these matters, and she was absolutely right to seek reassurance that materials adopted in future as soil enhancers will not be excluded from the revised schedule. I can assure her that our proposal to include "soil improvers" is deemed sufficiently broad to cover future developments in soil enhancers where those new inputs could be shown to improve the soil. I am very pleased to say that on this occasion, we will not have to wait another 30 years; this point has deliberately been covered so that that can be taken forward.

I also noted the noble Baroness's other point. This is probably for another day but it is very important that we ensure that we have a thriving agricultural sector and that all the plans we have in Defra for the next 25 years for the food and farming sector include new people coming into the industry and the enhancement of agri-technology so that we produce food for the nation and also export a great deal of our wonderful products. We want to ensure that there are people coming into the sector and that they bring skills with them which will be so valuable to us.

This order will update and modernise Schedule 8 to the 1986 Act to bring it in line with current farming practices which will ensure tenant farmers can claim compensation for the short-term improvements they have made which have value to the incoming tenant. This ensures end-of-tenancy compensation provisions set out in Schedule 8 provide an effective incentive to outgoing tenants to leave the soil in good productive condition for incoming tenants. I think this is something that we would all commend. I therefore commend this order to your Lordships.

Motion agreed.

Committee adjourned at 4.51 pm.

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