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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

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

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House of Lords

Monday, 8 February 2016.

2.30 pm

Prayers—read by the Lord Bishop of Chester.

Refugees: Unaccompanied Children

Question

2.35 pm

Asked by Lord Roberts of Llandudno

To ask Her Majesty's Government what action they are taking to relieve the situation of unaccompanied refugee children.

The Minister of State, Home Office (Lord Bates)

(Con): My Lords, the Government are working with the UNHCR to resettle unaccompanied refugee children from conflict areas where it is in the best interests of the child to do so. These are likely to be exceptional cases: for most children, their needs are best met in the region. We are providing an additional £10 million of support for vulnerable children in Europe.

Lord Roberts of Llandudno (LD): On 2 December, the Prime Minister said that he was thinking again about our moral duty towards these children. That was 10 weeks ago. What has happened in that 10 weeks, and what is going to happen in the next 10 weeks, to those children who are spread out in so many ways? They are deserving of our compassion, and those who are showing compassion are the people—young people especially—working as volunteers in Calais, Dunkirk and other places. As a House, we should express our appreciation of everything that they are doing.

Lord Bates: I certainly endorse what the noble Lord says about the volunteers who are giving up their time to help those people in need. The noble Lord asked what has happened since 2 December. On 28 January, the Prime Minister made a Statement outlining what he had done in the interim period, and he announced four new initiatives. He said that he was going to send the Independent Anti-Slavery Commissioner, Kevin Hyland, to look at the hotspots, as they are called, or reception centres, to see what was happening to children. We announced an additional £10 million of support, particularly for children who had arrived there. He also said that we would meet the UNHCR and Save the Children, and that is happening this Thursday. However, I thought the noble Lord might have given a passing mention to the fact that, last week, the Prime Minister announced a doubling of the aid we are giving to Syria—from £1.1 billion to £2.3 billion—by the end of the Parliament, which I am sure is welcomed by everyone in the House.

Lord Alton of Liverpool (CB): My Lords, following the statement last week by Brian Donald, the head of Europol, that 10,000 children had disappeared and an entire criminal infrastructure dedicated to exploiting migrants had been established, will the Minister tell the House what representations we have made to

Europol and what discussions we are having with it about tackling this? Also, given that the 100,000 people now massing at Oncupinar, on the Turkish border with the Aleppo province, are facing an aerial bombardment campaign and the borders are closed to them—many of those refugees will be children—what action are the Government taking to ask that those borders be opened to allow the refugees safe passage across?

Lord Bates: The noble Lord is absolutely right to focus on this. Europol estimates that some 90% of people who arrive at Calais have been trafficked by criminal gangs. That is why the Prime Minister announced that we are setting up the Organised Immigration Crime Task Force, and there have been some early successes, although we need to work much harder on that. That is also why Kevin Hyland—I know the noble Lord knows him and respects his work—is looking at those issues. On the situation in Turkey, that is why we have announced a further £275 million as part of the EU-Turkey agreement, to provide aid to that southern border.

Lord Lexden (Con): My noble friend recently told the House he hoped that more local authorities would extend a warm welcome to refugee children and ensure that they are well cared for, in accordance with the traditions of our country. Has there been progress?

Lord Bates: I must admit that I wish there had been more. My noble friend is right to raise this matter. Kent is bearing an unfair share of the burden of caring for unaccompanied asylum-seeking children: more than 1,000 are being cared for there. The Home Secretary, the Secretary of State for Education, and the Secretary of State for Communities and Local Government wrote in November asking local authorities to come forward. So far we have had interest from 24—but that is out of 440. Only eight children out of 1,000 have so far been offered places. I would like to think that all Members of this House who have links to their local authorities would be encouraging them to look again and see what can be done to help Kent in its hour of need.

Baroness Kinnock of Holyhead (Lab): My Lords, as the Minister may know, Eritrean children are fleeing from their country because of their experience of the most brutal human rights violations, often described as crimes against humanity. Will the Minister comment on the fact that, on the most recent evidence, the UK continues to reject Eritreans, including children, on the basis of a discredited Danish report, rather than using a balanced UN report?

Lord Bates: The noble Baroness asked a Question on this subject a couple of weeks ago. We still accept a large number of Eritreans who come here, because of the open-ended nature of the military service that they have to undertake. So far, we have accepted a large number of them. The UN report to which the noble Baroness refers did not have access in-country; our policy is based on in-country information from our embassy, and we will continue to keep the situation under review.

The Lord Bishop of Rochester: My Lords, as one of the bishops from Kent, may I take the Minister back to his previous answer? In fact, some 1,300 unaccompanied refugee children are housed in Kent, and the local authorities and the voluntary agencies are under very significant pressure. May I push him a little as to whether, in the light of the somewhat unencouraging response from other local authorities, Her Majesty's Government intend to do anything else to ensure a more effective national dispersal programme—given that we are talking not just about this moment, but about the likely 10 years that will be needed to get a young person from the point of arrival to full integration, with all the work in education, language and healthcare needed to go with that, and the considerable investment required? Some assurance would help my colleagues in Kent.

Lord Bates: It is absolutely right to raise that point: we have a particular problem there, and we need more local authorities to come forward. We will take some action: the Immigration Bill before your Lordships' House includes a provision that will allow the Secretary of State, where people do not step forward, to impose a settlement on local authorities—and that comes not only with the child, but with about £40,000 of funding per head. So we are not simply asking people to take additional responsibilities. If there is anything that can be done through the diocese of Kent to exert pressure on local authorities more widely to take their fair share, we would of course all welcome that.

Lord Dubs (Lab): Is the Minister aware that all over the country, the British public are anxious to do something to help Syrian refugees, particularly children? There is an enormous surge of enthusiasm to do something. Could the Minister, and the Government, not make a more positive appeal? I hear from people who want to be foster parents: foster parents will be forthcoming. We cannot leave these children to fester somewhere in Europe, uncared for and vulnerable to trafficking gangs.

Lord Bates: Absolutely right—and I certainly join the noble Lord in appealing for more foster carers to come forward, to help not only children who are refugees but all children; there is a great shortage. But I also hope that the people of this country can take some pride in the fact that through their aid—through their taxes, which go through the Government—we shall be able to provide £2.3 billion-worth of aid, which is keeping 227,793 children in education and providing livelihood assistance to 600,000 families in the region, 2 million medical interventions and 15 million food rations. That is something we can be proud of.

Creative Industries *Question*

2.43 pm

Asked by Baroness Afshar

To ask Her Majesty's Government what steps they are taking to nurture and support the creative industries to ensure their continuing success.

The Earl of Courtown (Con): My Lords, the latest statistics, released in January, show the creative industries going from strength to strength, with growth of almost 9% in 2014, nearly double that for the UK economy as a whole. The core sector was worth more than £84 billion in 2014—just over 5% of the UK economy. The Government support the UK creative industries in a number of ways, through direct and indirect funding, infrastructure provision, facilitation, advocacy and the production of statistics.

Baroness Afshar (CB): I am grateful to the Minister for that Answer and for the information about how active the industry is and how it is one of the best industries in the country. I declare an interest: my daughter is a music teacher. However, given the role that the industry plays, there is a fear that if music—which is one of the bases of the creative industry—and art are not part of the compulsory bacc, many schools would choose not to teach them and, therefore, the industry would not be able to continue to play the part it has played in the economy. Would the Government consider including both music and creative art in the EBacc?

The Earl of Courtown: My Lords, the noble Baroness draws attention to music in education, in particular in the EBacc. Young people should have the opportunity to study art subjects alongside the strong academic core curriculum, including the EBacc. Music is a compulsory subject within the national curriculum for five to 14 year-olds. All pupils in maintained schools will therefore study music for a minimum of nine years.

Lord Clement-Jones (LD): My Lords, I share the concerns of the noble Baroness, Lady Afshar, about EBacc. However, turning to another aspect of the creative industries, does the Minister agree that Channel 4 and BBC Worldwide make a major contribution to the creative industries, both here and abroad? Will he commit the Government to supporting and protecting Channel 4 and BBC Worldwide, subject to their current arrangements, so that they can continue to deliver those benefits?

The Earl of Courtown: My Lords, as ever, the noble Lord makes an important point relating to overseas, the BBC and Channel 4. I know he is aware that the charter review is in progress at the moment and many representations have been made. I also know that there was a Question last week on Channel 4, which was answered by my noble friend.

Baroness McIntosh of Hudnall (Lab): My Lords, on the Answer given by the noble Earl to the noble Baroness, Lady Afshar, it is true that the creative industries are doing very well just now. However, she made a serious point about whether they will do so in the future. Does he agree that the problem about them not being included in the EBacc is that there is a systematic erosion of their status in education and that, over time, the implication grows that they are not important and will not lead to good jobs? This is fundamentally untrue and unhelpful. Will he talk to his colleagues in the Department for Education to see whether that can be changed?

The Earl of Courtown: My Lords, the DCMS and the Department for Education liaise on all these matters, particularly in relation to music. I should add that, between 2012 and 2016, the Department for Education invested £246 million in a network of music education hubs. These hubs have a number of roles, including ensuring that all children have the opportunity to learn to play a musical instrument.

Lord Grade of Yarmouth (Con): Does the Minister agree that there cannot be much wrong with the creative industries in the United Kingdom if they can produce anything that will be missed as much as “War and Peace” on the BBC over the past few weeks? I am mourning it already—I do not know what I am going to do with Sunday nights. The growth of the creative industries in this country through the recession and so on is a testimony to successive Governments’ policies in respect of the creative industries. Does the Minister agree that the best thing the Government can do is to leave well alone?

The Earl of Courtown: I hope my noble friend finds something to do on Sunday afternoons. Apart from that, I agree with him entirely.

Lord Wigley (PC): My Lords, does the noble Earl accept that the creative industries make a massive economic contribution to these islands? The cuts that may be affecting them may emanate from local government, but the benefit of the economic input does not come to local government. Can central government find some way of ensuring that we do not lose out on the creative arts and the economic benefit that they bring to these islands?

The Earl of Courtown: My Lords, I do not agree with the noble Lord that we are losing out on creative arts, but I can tell him about examples of our funding, such as creative content tax relief. The noble Lord is no doubt aware of that. BIS, DCMS and UKTI offer access to finance, skills and export funding programmes. Then there is funding via arm’s-length bodies and other organisations, such as the British Film Institute, Arts Council England and Innovate UK.

Lord Stevenson of Balmacara (Lab): My Lords, the Enterprise Bill introduces an apprenticeship levy and the Government have said that they recognise the need to discuss with the creative industries how to increase their apprenticeship levels without destroying the four voluntary levies currently run very successfully by Creative Skillset. What progress is being made on these discussions? Will the Minister reassure the industry that it is the Government’s intention to ensure that the apprenticeship levy is aligned with the current voluntary levies so as to protect the skills investment fund?

The Earl of Courtown: My Lords, the noble Lord, Lord Stevenson, asked about the apprenticeship levy in relation to this department. The levy will put apprenticeship funding in the hands of employers, encouraging them to invest in their apprentices and take on more. It will be collected by HMRC at a rate

of 0.5% of an employer’s pay bill via monthly pay. In addition, the noble Lord mentioned the SIF, which is another way in which we have been developing training throughout the United Kingdom.

Tourism Question

2.51 pm

Asked by Lord Lee of Trafford

To ask Her Majesty’s Government what is their latest assessment of tourism’s contribution to the economy of the United Kingdom.

Lord Lee of Trafford (LD): I beg leave to ask the Question standing in my name on the Order Paper and declare an interest as chairman of the Association of Leading Visitor Attractions.

The Earl of Courtown (Con): My Lords, the Office for National Statistics estimates that tourism directly contributed £59.6 billion to the UK economy in 2014, accounting for nearly 4% of the UK’s gross domestic product. Through our five-point plan, this Government are committed to further growing the tourism industry and spreading the benefits of its growth across the whole of Britain by encouraging more visitors to travel beyond the capital.

Lord Lee of Trafford: My Lords, I am delighted that the Houses of Parliament are making a significant contribution. Parliament gets around 1 million visitors a year; 33,000 people sat in our Gallery last year and the purpose-built dedicated education centre is now operating at full capacity. It can take 100,000 pupils a year or 20 school groups a day. May I urge the noble Earl to pay tribute to the 100 or so staff who work in Visitor Services here and urge more parliamentarians to visit the superb education centre?

The Earl of Courtown: My Lords, the noble Lord took most of my answers. He is quite right: everyone who works in Visitor Services does a great job. As the noble Lord suggested, last week I went to have a look at the education centre in Black Rod’s Garden, where I was told that 100,000 children will visit each year and how they have the different rooms available to look at. I very much recommend that all noble Lords go and take a look.

Lord Harrison (Lab): Given the importance of the tourism and hospitality industries to the United Kingdom, and the importance of the free movement of people and services within the single market of 28 countries in which we prosper, has the department made any analysis of the jobs that would be lost and the businesses that would close as a result of our absencing ourselves from that crucial market?

The Earl of Courtown: My Lords, the noble Lord made a point about how important the entertainment industry and those supporting it are to the economy as a whole and to all those who work in it—what a great job they do. I cannot say whether there has been any

[THE EARL OF COURTOWN]

assessment of the situation to which the noble Lord referred, but I congratulate all those who work in that area on the work they do.

Lord Glenarthur (Con): My Lords, can my noble friend say what proportion of the £59.6 billion to which he referred can be attributed to Scotland?

The Earl of Courtown: My Lords, no. I will write to my noble friend.

Lord Gordon of Strathblane (Lab): My Lords, would the Minister acknowledge, a great success story though British tourism is, that it is important that we do not price ourselves out of the market? There is a grave danger of us doing that because we are one of only four countries in Europe that charges VAT at the full rate on hotels and other tourism products. Will he ask his colleagues in the Treasury to model the effect of a major reduction in VAT on tourism? It may be that the lump sum that comes to the Treasury would be greater as a result of the growth of tourism.

The Earl of Courtown: The noble Lord makes a very good point. I know from other Questions that I have answered on similar subjects that my right honourable friend the Chancellor always keeps these matters under review.

Lord Cormack (Con): My Lords, will my noble friend take the opportunity to pay another tribute to those volunteers without whom many of our most notable visitor attractions, such as English cathedrals, could not be properly open?

The Earl of Courtown: My Lords, my noble friend is quite right, in particular when he brings to mind cathedrals, where many people volunteer without any recompense whatsoever.

The Earl of Glasgow (LD): My Lords, 20 years ago there were hundreds of tourist information centres all over Britain. They are now becoming very rare because local tourist boards and councils cannot afford to maintain them. I hope that the Government will agree that tourist information centres are really important to tourism in this country. Is there anything that the Government can do, possibly through VisitBritain, to try to revitalise tourist information centres in Britain?

The Earl of Courtown: My Lords, the noble Earl makes a good point. In 2007 there were 510 information centres; there are now 390. But it is important to note that each location and destination has different views as to what its funding and operational focus should be. One should not ignore the effects of the internet and the information available there for people who want to visit certain areas. Over the weekend I inquired locally where I am in the Cotswolds, which is a big destination area. More than 1 million hits go to our local website from people looking for what they can do in the area.

Lord Stevenson of Balmacara (Lab): I am very surprised to hear that the Minister can get on to the website, given where he lives. In the current edition of *The House Magazine*, the Secretary of State explains

that another major issue clogging up his in-tray is the Government's aim of providing superfast broadband. He goes on to confess that providing a service which is fast becoming as essential as electricity is easier said than done. Last month, 52 chambers of commerce representing 750,000 companies said that companies' performance is being "severely affected" by poor broadband. Many of these companies work in the tourism sector. Other than wringing their hands, what are the Government doing to remedy this sorry state of affairs?

The Earl of Courtown: My Lords, the noble Lord referred to where I live and my broadband speed. He will no doubt be very glad to hear that, for 18 months now, we have had fast broadband in Gloucestershire. I will not tell noble Lords what the mobile signal is like, but the broadband is quite excellent. We have been working at a number of different areas. In my area, Fastershire has been providing much improved broadband in the three counties surrounding Gloucestershire. The noble Lord is quite right that there is still much to do.

Lord Grocott (Lab): The noble Earl referred to 100,000 people coming through the education centre each year. Will he tell the House, if not now, by letter, what proportion come from the London area, and what from the other countries and regions of the United Kingdom? Those figures would be useful.

The Earl of Courtown: My Lords, the noble Lord makes a very good point. I will write to him, because I do not have the exact details, but the whole point of our tourism strategy and the Discover England fund is to get people out of London and into the other areas of the United Kingdom to visit these attractions. I will write to him.

Allied Health Professionals: Training Question

2.59 pm

Asked by **Baroness Finlay of Llandaff**

To ask Her Majesty's Government what discussions they have had with Health Education England to ensure that the number of student commissions for 2016–17 supports the goal of increasing the number of student places for allied health professionals set out in the comprehensive spending review, and ensures stability in allied health professionals' education provision and workforce supply.

Baroness Finlay of Llandaff (CB): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and I declare an interest as the honorary president of the Chartered Society of Physiotherapy.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, Health Education England plans to commission, overall, 7,554 AHP training places in 2016–17—an increase of 344, or 4.8%, compared to 2015–16. The announcement in the 2015 spending review to move nursing, midwifery and AHP students on to the standard student loan system is for new students commencing their courses from 2017 only and therefore does not affect students commencing their courses in 2016–17.

Baroness Finlay of Llandaff: Do the Government recognise that 500 more physiotherapy places will be needed in training each year until 2020 just to meet current needs? With Health Education England proposing cuts in training places in six out of 10 of the allied health professions—cuts ranging from 3.4% to 9.7%—how will the new models of care in prevention, patient treatment and reablement be met, given that they depend on these professionals taking on extended roles? This goes across sectors commissioned by the NHS and by other departments, including the Department for Education, the Home Office and the Ministry of Defence.

Lord Prior of Brampton: My Lords, Health Education England is proposing a net increase of 334 places in 2016-17 and we expect a growth in overall numbers of nurses and AHPs from 2017 onwards as a result of moving on to the standard student loan system.

Lord Hunt of Kings Heath (Lab): My Lords, will the Minister clarify that? He says that there is to be a net increase, but he will know that in relation to some specialties there is actually to be a reduction next year. This is a shambles. The Government have announced an increase in figures by 2020, but next year we are going to see an actual reduction in some of those places. What is going on?

Lord Prior of Brampton: My Lords, as I said, overall there is a small net increase of 334. That is largely for paramedics, where HEE believes that there is a more serious shortage than for other allied health professions. As I said, we have seen a significant increase in AHPs of more than 16% over the last five years and we expect that growth to continue after 2017.

Baroness Walmsley (LD): My Lords, how will the Government achieve their objectives in relation to modernised cancer treatment and an enhanced role for radiographers when Health Education England is cutting the number of training places for therapeutic radiographers by 4.3%?

Lord Prior of Brampton: Actually, I think the number of radiographers is going up slightly. I will check, if I can, and write to the noble Baroness. It is also worth mentioning that the number of medical endoscopists is planned to go up by 200 over the next three years.

Lord Quirk (CB): My Lords, while I welcome the 4.8% increase for the allied health professions, I deplore the fact that this increase is accompanied by really quite savage cuts in some of the professions concerned: 6% in the case of speech therapy. Does the Minister accept that our ageing population presents us with an increased incidence of stroke and dementia, and that the skills of speech therapists are essential to maintain and repair the language faculty? As a past president of the Royal College of Speech and Language, I urge the Government to think again. Is the Minister aware that costs would be far exceeded by benefits and that, for example, the west Birmingham rapid response team has saved the NHS more than £7 million a year by making unnecessary 17,000 bed days per annum?

Lord Prior of Brampton: My Lords, I entirely agree with the noble Lord that the role of speech and language therapies, particularly in treating people with stroke and other serious conditions, is absolutely vital. Perhaps I may correct a previous answer that I gave to the noble Baroness, Lady Walmsley. Therapeutic radiographers have gone down slightly but diagnostic radiographers will go up slightly.

Lord Harris of Haringey (Lab): My Lords, the Minister told us that the increase is among paramedics, which presumably balances the cuts in other areas. Is this the Government's strategy for sorting out the problems in the ambulance service, which around the country is failing to meet emergency targets? Do the Government hope that by training some more paramedics, they will somehow solve the problem and money will magically become available for the ambulance service to function?

Lord Prior of Brampton: My Lords, having more paramedics is part of the solution, but the major part of the solution is to treat more people outside A&E departments, so that people do not require ambulances to take them into A&E departments but are treated at home.

Baroness Howe of Idlicote (CB): My Lords, can the Minister tell the House how diabetic patients' needs will be met by maintaining foot care and thereby decreasing the risk of amputations, given Health Education England's proposed decrease in training places in podiatry of 9.7%? That is at the top end of the list which my noble friend Lady Finlay was talking about.

Lord Prior of Brampton: My Lords, I first extend my congratulations to the noble Baroness: it is her birthday today. I of course understand the vital importance of podiatrists. We are looking at a very small reduction in the planned number of training places next year of some 35 places. I would also make a more general point: in the mandate to Health Education England, we have set it a target of reducing the attrition rate among people starting training by 50%.

Riot Compensation Bill *First Reading*

3.06 pm

The Bill was brought from the Commons, read a first time and ordered to be printed.

Criminal Cases Review Commission (Information) Bill *First Reading*

3.07 pm

The Bill was brought from the Commons, read a first time and ordered to be printed.

Immigration Bill

Motion to Approve

3.07 pm

Moved by **Lord Bates**

To move—

(1) that the order of commitment of 22 December 2015 be varied so that the provisions which have not yet been considered in Committee (from after Clause 43 to Clause 65, Schedules 10 to 12 and the Title) be considered in Grand Committee;

(2) that the Instruction to the Committee of the Whole House of 12 January (order of consideration of clauses and Schedules) be an Instruction to the Grand Committee; and

(3) that on completion of consideration of the Bill in Grand Committee the Bill be reported to the House in respect of its consideration in both Committee of the Whole House and Grand Committee.

Motion agreed.

Education and Adoption Bill

Third Reading

3.08 pm

Clause 3: Other warning notices

Amendment 1

Moved by **Lord Nash**

1: Clause 3, page 4, line 4, at end insert—

“(5) In section 69B (power of Secretary of State to direct local authority), in subsection (3)—

(a) omit paragraph (c);

(b) in paragraph (d), for “60A(10)” substitute “60A(1)(b)”.”

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, I am delighted to be opening the Third Reading of the Education and Adoption Bill. I take this opportunity to express my thanks for the support, challenge and rigorous scrutiny that the Bill has received in your Lordships’ House. It has been a pleasure to see the expertise that Peers from all sides of the House have brought to bear on the important matters of ensuring that our children receive an excellent education and improving our adoption system. I hope noble Lords will agree that our debates have been constructive and that the Bill has been improved as a result of the comments and contributions of your Lordships’ House.

Turning to the amendments the Government have tabled, Amendment 1 would make it explicit that two further sections of the Education and Inspections Act 2006 will be amended as a consequence of the Bill. The purpose of Amendments 4 and 5 is to tidy up the drafting of the Bill by removing and replacing a cross-reference which would misdirect the reader of the Bill and lead to confusion. Our aim in tabling these amendments is to ensure correct cross-referencing within the Bill and that consequential amendments to other

Bills are identified. I hope noble Lords will agree that these amendments are straightforward and I beg to move.

Amendment 1 agreed.

Amendment 2

Moved by **Lord Addington**

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

“Regional Schools Commissioners

(1) The Secretary of State must make widely available to the public a coherent document that sets out the powers and responsibilities of the Regional Schools Commissioners which are connected with the provisions of the Education and Adoption Act 2016.

(2) The document under subsection (1) must contain—

(a) a list of the Acts of Parliament and regulations from which each responsibility and power of the Regional Schools Commissioners is drawn;

(b) a user-friendly executive summary.”

Lord Addington (LD): My Lords, it became obvious during the progress of the Bill that the action proposed by Amendment 2 was needed. Regional schools commissioners are a new subject for us all. I became increasingly aware of just how important they are to the new structure roughly at the same time as the entire House of Commons did; nevertheless, we do what we can. It became clear that we could not find out very easily how this occurred. It needed a little bit of digging, and I thank Thomson Jones—a young lad who has been helping in my office—who did some of it. He is good at reading back on bits of legislation. Several bits had to be referred to, to find exactly what was going on and how it functioned and fitted together. Legally it was there, but you could not find it. Anecdotally, a lot of people are telling me that education authorities have people phoning up and saying, “What do I do about the academy?”. They do not know the new chain of command.

This is merely a sin of omission, but if we can get it right now, we will save a great deal of trouble for ourselves in the future. Even if we do not like the structure that is coming, it is clearly going to be with us for a while, so we must make it function properly. The objective of the amendment—and presumably those which have been tabled as amendments to it—is to make sure there is a clear way of getting to the legal basis for operation. The schools commissioners are soon going to have far more of the problems of the education system put on their doorstep to deal with. I hope the Minister can give positive answers to show exactly how this is going to be done, even if he does not—for some bizarre reason—choose to accept this amendment. I beg to move.

Amendment 3 (to Amendment 2)

Moved by **Lord Watson of Invergowrie**

3: At end insert—

“(c) a guide for parents; and

(d) information on other matters to do with the powers and responsibilities of Regional Schools Commissioners as may be appropriate.”

Lord Watson of Invergowrie (Lab): Amendment 3 seeks to add two further requirements to the document on regional schools commissioners mentioned in the amendment tabled by the noble Lord, Lord Addington. Since noble Lords considered the Bill on Report, the House of Commons Education Committee has published a report entitled *The role of Regional Schools Commissioners*, which was not exactly uncritical of the role of these commissioners and the manner in which they have operated since they came into being in September 2014. Indeed, the report contains a total of 24 recommendations, to which the Minister will, no doubt, respond in detail in due course. I hope his response will not be delayed for long and that he will accept and implement most, if not all, of the very thoughtful suggestions made after hearing evidence from a variety of sources—not least the Minister himself. I dare say he will regard the report as carrying a considerable amount of weight, given that it was produced by a committee which is chaired by a member of his party, which has an inbuilt majority on the committee.

It is striking that there remain so many questions about the precise role of the regional schools commissioners and in whose interests they operate. This means that a guide for parents, as suggested in Amendment 3, is a necessity. Ensuring parents understand who to hold accountable for their child's experience at school and how to do so is vital, yet the Bill consistently treats parents with disdain. I have given examples before, but if a group of parents wants to break away from a maintained school and establish their own free school, they are welcomed with open arms by the Government and given every assistance, as well as considerable amounts of cash, to enable them to do so. Put simply, they are listened to and treated with respect. However, should another group of parents want their children's maintained school to keep that status in the face of forced academisation, they are ignored, told the decision is nothing to do with them and that the change will take place no matter what they think. Put simply, they are not listened to and are effectively treated with contempt. So under the Bill, parents are denied the right to have a say when the school attended by their children is forced to become an academy. We have said on various occasions that consultation is appropriate for all parents if they want to take advantage of it.

3.15 pm

When the Bill was discussed in Committee, the Minister assured noble Lords that governing bodies of academies would include parental representatives. It was understood that those representatives would, in some limited form at least, have the ability to hold their school to account and have an influence in areas such as hiring senior staff, monitoring budgets and standards. Well, my Lords, just last month it was announced that those notions had been effectively thrown out of the window by the E-ACT academy group which, as noble Lords may be aware, has unilaterally decided to scrap local governing bodies for the 23 schools that it operates. There will be a centralised process for monitoring standards, and the governing bodies will be replaced by so-called advisory bodies, the chairs of which, to no one's surprise, will be appointed by the academy chain. That is not merely a top-down but a

closed-door approach, which it appears will brook no questioning of how the chain operates.

The fact that this has been handed down by an organisation that receives £135 million of public funds annually makes it even more serious. It appears that E-ACT is content to treat the public purse with respect, but quite unwilling to treat the public with respect. This behaviour would be serious enough for a chain that was operating effectively, but in 2014 E-ACT had the control of 10 of its academies taken away after Ofsted raised serious concerns about its performance. Not only its educational competence has been questioned; until July last year, the Education Funding Agency forced the chain to operate under a financial notice to improve. One might have thought that such inadequacy would have produced some humility at E-ACT, but as we have heard, the opposite is the fact. Perhaps the Minister can give noble Lords his take on this rather sorry state of affairs, including the action, if any, of the various regional schools commissioners, under whose auspices the chain operates.

My Lords, there are no circumstances in which a regional schools commissioner should stand by when an academy chain seeks to exclude parents, staff, local businesses and local politicians from the governance of their local schools. If regional schools commissioners are not there to ensure that academies operate to the highest standards, what, one might ask, is their purpose?

The education report highlighted a number of questions about whether the key role of regional schools commissioners was to help raise standards or whether it is simply to bring about more academies and free schools as quickly as possible. The key performance indicators institutionalise this confusion, which is a problem that must be dealt with, and soon.

It is not appropriate at this stage to go into greater detail on the recommendations of the Select Committee, which I believe has carefully put together a report that requires careful scrutiny. I am sure the Minister will scrutinise that report, but I hope that in doing so he will bear in mind the importance of parents being able to have some say in the way their children receive their education and how it is framed and delivered by academies. For that reason, I beg to move.

Lord O'Shaughnessy (Con): My Lords, as we are dealing with this issue of regional schools commissioners, I thought it might be useful to share with the House a personal story giving our experience at Floreat Education Academies Trust, which I founded, of dealing with the regional schools commissioners and of their role in regulating the system as it stands today. The noble Lord, Lord Watson, chose the example of E-ACT, which has had some problems in recent times, but it is important to note that the regional schools commissioner system has helped to generate the changes that have happened—schools have been taken away from E-ACT. To me, that is an example of a system that is working to crack down on low quality rather than one that is not working.

Lord Watson of Invergowrie: Does the noble Lord know whether E-ACT consulted the regional schools commissioner before it decided to scrap the governing bodies for the schools that it operates?

Lord O'Shaughnessy: I have no idea. I was referring to the fact that schools of low quality were taken away from E-ACT.

The Select Committee report, to which noble Lords have referred, talks about in a specific recommendation the importance that,

“the Government reflect on the need to improve understanding of the role of the RSCs”.

I think that is what lies behind the amendments, so I welcome the sentiment, if not the vehicle itself. Our own experience at Floreat is from dealing with two RSCs: Dominic Herrington in south London and the south-east and Martin Post in south-central and north-west London. As a new provider, we found them open and responsive in a way that dealing just with the department would not have been by dint of the capacity at the department. So far, there has been just the right amount of support and challenge, which is at the heart of the role.

An example of the support offered—in this case, by Dominic Herrington's schools commissioner region—was for multi-academy trust leaders' training sessions: getting together with others, learning what works, being exposed to the new Ofsted framework, and so on. An issue of challenge would be around understanding the capacity and capability of a multi-academy trust to take on new schools and open new schools, and whether we have the finance and the expertise for doing so. That is a conversation that I had with our commissioner, Martin Post, on Friday.

So far, the experience has been of a productive relationship based very clearly at all times on raising standards for pupils. That shared purpose comes through clearly at all times. While I agree that it is necessary, given the importance of RSCs, to continue to explain in more detail the importance of the role and what it can and cannot do, I do not see that it requires an amendment to the Bill to achieve this, and I hope to hear positive news from the Minister about how the Government will actively promote the regional schools commissioners from now on.

Lord Nash: My Lords, I shall speak to Amendment 2, moved by the noble Lord, Lord Addington, and Amendment 3, tabled by the noble Lords, Lord Watson and Lord Hunt. Both concern the responsibilities and powers of regional schools commissioners. The noble Lord, Lord Addington, has proposed that the Secretary of State should be required to publish a document that would describe the powers and responsibilities of RSCs arising from the provisions in the Bill and other Acts of Parliament. Amendment 3 would extend this requirement to specify that the document must include a guide for parents and any other information to do with the powers and responsibilities of RSCs as may be appropriate.

I am grateful to the noble Lord, Lord Addington, for raising this issue once again, following the exchanges that he had with my noble friend Lady Evans on this matter on Report in this House. Since the last debate, he has also met officials from the Department for Education and he and I have had a number of exchanges on the matter. I hope that he has found these discussions helpful and has been reassured that the Government are committed to meeting the objectives of his amendment.

As my noble friend Lady Evans explained in the previous debate, RSCs are not defined in legislation: they are civil servants, and exercise only the powers and duties of the Secretary of State that he chooses to delegate to them. Accountability for the decisions made by RSCs rests with the Secretary of State, who remains fully accountable to Parliament. It is important to emphasise that the role of RSCs is very different from the role of local authorities. RSCs operate within a clearly defined framework, with the focus on monitoring and tackling educational underperformance in academies and free schools, approving new academies, advising on free school applications and approving changes to open academies, such as expansions or age-range changes.

To support these functions, RSCs also work to develop the sponsor market in their regions. Subject to the passage of the Bill, RSCs will also take on responsibility for formal intervention in underperforming maintained schools. RSCs carry out their functions within a national framework and individual decisions are made in accordance with the relevant legislation, academy funding agreement and/or published criteria.

Information on the work of RSCs is already publicly available. We have already set out the remit of our RSCs and the membership of each head teacher board, published registers of interest and made available the criteria for RSC decision-making. Academy funding agreements are publicly available, as are the criteria for other individual RSC decisions. For example, the criteria that RSCs use to assess schools applying to become academies are set out online in the guidance document, *Convert to an Academy: Guide for Schools*. Notes of board meetings that detail each decision made are also published on a monthly basis.

In addition, we have recently consulted publicly on revising the statutory *Schools Causing Concern* guidance that describes the responsibilities and powers delegated to RSCs resulting from the provisions in the Bill, and how they will be used in practice by RSCs to intervene in failing and coasting maintained schools and academies. Alongside this document the Government are also required, under the Academies Act 2010, to provide an annual report to Parliament on the expansion of the academy programme and the performance of academies during the year. This year's report will include commentary on RSCs.

We recognise, however, that we need to go further. We acknowledge that RSCs are a new concept and that, as more schools become academies and the RSC remit expands, we need to clearly articulate the role, improve understanding of its responsibilities and increase transparency. Noble Lords will be reassured to hear that the new national schools commissioner, Sir David Carter, considers raising awareness, particularly among parents, as one of his top priorities and he made this clear in a Radio 4 interview last month.

As with any new system, we expect the level of awareness to increase over time, but to expedite this I am today making a clear commitment to the House that the Government will publish a full description of the RSC role and a guide to all RSC powers and responsibilities. We will ensure that this more detailed information is in understandable form, includes a succinct summary of the role and has clear links for

the public to find more detailed information should they require it. We will make clear that this information is for parents and the sector.

The information will be published on the education pages of the government website, GOV.UK. This is the website where all government policies, publications, statistics and consultations are published. It is already used by parents to find information on matters such as school admissions, school performance and childcare. It is used extensively. In January of this year alone, there were nearly 1.3 million visitors to the education pages of GOV.UK. The website is designed for the public and is intended to be simple, clear and quick to find information. We will make sure that the information is collated and published in good time for the Bill coming into force. Furthermore, I assure noble Lords that we will keep the information up to date and revise it as necessary, following any changes to legislation or to RSCs' non-statutory responsibilities.

Alongside publishing more detailed information, we recognise that it is equally important to ensure the public know where to find it. Once the new information is published, we will alert parent and governor groups such as the National Governors' Association and the National Confederation of Parent Teacher Associations and encourage them to direct their members towards it. We will also publicise the information through the email which the Department for Education issues direct to schools at the start of every term and which sets out important changes. RSCs will also be carrying out a range of activities within their regions to improve awareness, to raise their profile and to ensure the sector understands and is prepared for the new legislation.

As the noble Lord has described, since we last debated this matter the Education Select Committee has published its report on the establishment of RSCs. While the committee welcomed the introduction of RSCs as a pragmatic approach to the expanding workload of academies oversight, the report also made a number of recommendations, including that the Government should reflect on the need to improve understanding of the role of RSCs. I assure noble Lords that the Government take this issue very seriously and will increase and improve the information available to the public on RSCs, with a particular focus on simplifying and improving the information for parents.

The noble Lord, Lord Watson, referred to the situation in relation to E-ACT and parents. I can assure him that we regard the involvement of parents in education as crucial. The best way to do this is not necessarily through having two parents on a governing body. An equally good or better way may be to have parent forums. I understand that E-ACT has plans to do this and is meeting with Sir David Carter this week to discuss this further.

Lord Watson of Invergowrie: I certainly accept what the Minister is saying about parent forums, but why should that be to the exclusion of parent representatives from governing bodies? Can the two not exist equally well together?

Lord Nash: They can. They will have parents on their advisory boards and E-ACT is required, as are all multi-academy trusts if they do not have local

governing bodies, to have two parents on their multi-academy trust board. So parents will still be intimately involved in decisions.

3.30 pm

Lord Watson of Invergowrie: Perhaps I may follow that up. That is two parents in a multi-academy chain board. E-ACT has been mentioned by me. As I understand it, it has 23 schools and one academy chain board. Out of all those schools, only two parents would have any kind of representation. They could not possibly be representative in any way of the views of the parents in 21 other schools.

Lord Nash: That is why, as I understand it, they will have advisory bodies, which will consist of parents. As I have said, the same point can be made about individual schools. Two parents cannot necessarily be representative of the body of parents, which is why a parents' association may be a much better way of engaging with parents across a broader church.

I hope that, given the further explanations and reassurances I have been able to give in relation to information about the RSCs, the noble Lord will be assured that we are committed to improving understanding and increasing transparency relating to RSCs and will be content to withdraw his amendment.

Before I sit down, I would like to take this opportunity to put my wider thanks on the record for the careful consideration the Bill has received throughout this House. First, I thank my noble friends on the government Benches, in particular my noble friend Lady Evans, who has provided strong support and kept the Bill on track over the past few months. I also thank my noble friend Lady Perry for her continuing support and advice and my noble friend Lord Harris for his passionate words on Report about the difference that becoming a sponsored academy can make.

I also thank my noble friends Lord O'Shaughnessy and Lord True. I would particularly like to thank the noble Baroness, Lady Howarth, for ensuring that the best interests of children are always at the forefront of all our considerations. Of course, I must pay tribute to my right honourable friend the Secretary of State for Education who is committed to taking forward essential reforms to achieve real social justice for all children and young people.

I also particularly thank the noble Lords, Lord Watson and Lord Storey, who have provided strong and thorough opposition alongside their colleagues the noble Lords, Lord Hunt and Lord Addington, and the noble Baronesses, Lady Massey and Lady Pinnock. I also thank the noble Baronesses, Lady Morris and Lady Hughes, for their contributions. While we may have crossed swords on many things, their challenges have been constructive and it has been clear throughout our debates that across the House we are united in our belief in the life-transforming power of education and in the desire to give every child the best start in life.

There have been very important contributions on this Bill from all sides. On the Cross Benches, I am grateful in particular to the noble Lord, Lord Sutherland, for bringing his extensive knowledge and experience of our education system to bear on this Bill and to the noble Earl, Lord Listowel, for his considered comments

[LORD NASH]

and amendments on children in care and mental health issues. I also thank the right reverend Prelate the Bishop of Ely for supporting the Government's ambitions with the important role that church schools play in our education system.

I also thank the organisations that have engaged with the Bill and contributed to ensuring that its content will benefit children waiting to be adopted and pupils in our schools. In particular, I wish to thank the individual head teachers and MAT CEOs who freely gave up their time to share with Peers their experience of school improvement at the outset of the Bill entering this House. They have improved our understanding of the very real issues that the Bill seeks to address.

Finally, I would like to put on record my thanks to the officials from the Department for Education, the Bill team, in particular Louise Evans and Kayleigh Walker, the lawyers, including Caroline Chalmers, the policy officials and others who have worked on this Bill and helped to ensure the good progress we have made in this House.

As noble Lords will have heard me say previously, the Bill has one essential principle at its heart: that every child deserves an excellent education and a secure and loving home. This Bill is about social justice and about building a fairer society in which every child has the same opportunities to reach their potential regardless of their background. To ensure that adoption is always pursued when it is in the child's best interests, we have recently announced increased funding totalling £200 million over the course of this Parliament to further develop regional adoption agencies, fund the interagency fee and extend the adoption support fund.

To achieve a world-class education system, we need a school system that consistently and universally delivers high academic standards. To help deliver that, this House has accepted an important amendment to the Bill to give more consistent and effective powers to regional schools commissioners when academies underperform. The amendments we have made, alongside the original Bill provisions to strengthen our ability to turn around failing and coasting maintained schools, mean that I am confident that the Bill leaves this House with the potential to ensure that many more children and young people will have the opportunity to make the best start and succeed in life. I commend it to the House.

Lord Watson of Invergowrie: My Lords, I did not expect the Minister to make those remarks at this stage—I thought he would do it at the Bill do now pass stage. I would like to say a little more about my amendment on the question of regional schools commissioners. The Minister was kind enough to facilitate a meeting with the regional schools commissioner who covers the area in which I live. In a sense, that encapsulated one of the anomalies of regional schools commissioners—the way that they are divided geographically. The Education Select Committee report highlighted the fact that London is covered by three regional schools commissioners. The committee suggested that there should be a ninth commissioner for London, to mirror Ofsted regions, which is a very

sensible suggestion. The fact that I live in a region that covers places as diverse as West Ham and Great Yarmouth suggests that there is room for improvement.

There is also room for improvement in the role of parents in education. That must be about the hundredth time I have mentioned it in our many hours of debate. I believe that the Government are plain wrong in trying to say that parents do not have a meaningful contribution to make—and not the token that the Minister recently mentioned of two parents on a board that covers 23 schools. Most parents care passionately about their child's education. The fact that they have effectively been brushed aside by much of the Bill is unfortunate, to put it mildly. It is also grossly unfair. Many people who want to have that input are now going to be unable to do so. So even a parents' guide to regional schools commissioners would be a step forward, to at least make sure that people know where to go and who to speak to when they have a complaint, and how to forward it. I regret that it has not been possible to get agreement. Perhaps we should await the Minister's response to the Education Committee report; I do so with some interest. In the mean time, I beg leave to withdraw my amendment.

Amendment 3 (to Amendment 2) withdrawn.

Lord Addington: If we may draw back from the amendments we are actually discussing, I thank the noble Lord for his work and the courtesy of his department. There have been a lot of emails going back and forth. There was also an entertaining point when the good old-fashioned steam telephone was not working in my office, so in the end a piece of paper was handed to me by one of the doorkeepers. That meant that I knew the noble Lord was getting back to me, for which I thank him.

If we address what the noble Lord said about this amendment, it is a triumph of the bleeding obvious, if I may put it like that. We should let people know what is changing. What he has done is not quite as much fun as getting an amendment accepted, but half a loaf is better than no bread—and this is a bit more like three-quarters, so I thank him for that.

Given that we seem to be going slightly off-piste, I shall also take the opportunity of thanking the noble Baroness, Lady Evans, for giving the assurance at an earlier stage that the KPIs for increasing the number of schools becoming academies were withdrawn. I should have mentioned that at the time, but it got rather swamped by other matters. Having heard that, and having those assurances on the record, I thank the noble Lord for his work on this and beg leave to withdraw the amendment.

Amendment 2 withdrawn.

Clause 14: Academies causing concern

Amendments 4 and 5

Moved by Lord Nash

4: Clause 14, page 9, line 41, leave out "1A" and insert "14"

5: Clause 14, page 10, line 22, leave out "1A" and insert "14"

Amendments 4 and 5 agreed.

Motion

Moved by Lord Nash

That the Bill do now pass.

Lord Nash: My Lords, I beg to move.

Lord Watson of Invergowrie: My Lords, we have now reached the point where this Bill must return to the other place. From these Benches we have to say that it is regrettable that it will take so little in terms of amendments with it. As has been outlined, it has many faults, and despite claims by both Ministers that it is all about rescuing children from underperforming schools, many noble Lords believe that there is rather more to it than that.

I should say that I do not doubt the bona fides of either Minister. The relish with which they have advanced their arguments during the Bill's time in your Lordships' House reflects their own backgrounds and motivation. I understand that the noble Baroness has a history in the free schools sector and that the noble Lord has a history in the academies sector, each with some success. If I may draw an analogy, to be handed this Bill is tantamount to a girl and boy being given the keys to the toy shop. It is clear that they are in their element, because it allows them to pursue their personal and particular priorities. But it has to be said that their priorities are not necessarily those of wider society, judging by the briefings we have had from a very wide range of organisations, all of whom I thank, and not to any significant extent those of the education professionals, all of whom also have as their *raison d'être* providing the best possible education for our children.

We have spent almost 24 hours in debate on this Bill—a full day. I wonder whether we might ask ourselves whether we might have put it to better use—some may say yes—and I am sure that we are now all ready to move on to other things. But before we do so, I want to thank the Bill team. We on these Benches have worked rather hard. On my behalf I pay tribute to my assistant, Molly Critchley, who did the heavy lifting when it came to negotiating over amendments. She did much more besides, and both I and my noble friend Lord Hunt of Kings Heath are indebted to her for her tireless efforts. This is the first piece of legislation for which I have had Front-Bench responsibility and I have leaned much and often on the experienced shoulders of my colleague Lord Hunt, for which I am most grateful. Having leaned much, I like to think that I have now learned much—but I suppose time will tell.

I think I am correct in asserting that this is also the first Bill as a Front-Bencher for the noble Baroness, Lady Evans of Bowes Park. She has perhaps had a slightly tougher baptism than she might have hoped for, but through it all she has retained an upbeat manner and an ability to assure—or at least attempt to assure—those on these Benches that the Bill was much more benign than we believed.

The noble Lord, Lord Nash, and I have had—what shall I say?—our moments throughout those 24 hours. It seems that neither of us is ever going to convince the other of the veracity of our respective arguments, but

at least we have given it our best shot. I have made a discovery about the noble Lord and, in spite of the fact that he has offered precious little in terms of concessions on the Bill, I am about to offer him one of my own. I think he and I have only two things in common. One is clearly membership of your Lordships' House. The other, I have learned, is that we were born in the same year. I am not about to divulge the year, but we were born just five weeks apart—and that provides me with both good news and bad. The good news is that the Minister was born first. The bad news is that it does not show.

Lord Storey (LD): My Lords, I take the opportunity once again to thank the Minister for being prepared to listen. There have been a number of changes—including changes of interpretation—to the Bill. I said to my colleagues at the beginning, “I am sure that Lord Nash will listen”, and he has done. This is a very small Bill, really. On the adoption side, I think real progress has been made.

On the school side, there are a few issues for me. The first is whether this is not just about the academisation programme and the slow strangulation of maintained schools and local education authorities. Maybe there is a much fairer way of achieving that. I recall the statement from the Chancellor that he wants all schools to become academies, and the same from the Prime Minister.

The second issue is that of parents. I have always believed that one of the hallmarks of a successful education system is that parents are at the heart of it. I think we said in Committee that if the school that your children go to is being closed, that is quite a traumatic occasion; you want to be involved in those discussions and to know the reasons and what is happening. To then be told that you are not even going to have a say on the new school or new academy sponsor is something that I am concerned about.

Another issue follows a couple of Questions that I tabled regarding the governing bodies of schools. Again, it seems bizarre that you can have academy trusts abolishing governing bodies. In maintained schools, of course, you have to have a governing body—quite rightly; parents are an important voice in a school—but in multi-academy trusts you can have one governing body for, say, 50-odd schools. In the Harris Academy chain there are now, I think, 52 schools. One governing body—which could be in another part of the country, for that matter—being the parental voice is really not good enough. It could be said—well-meaningly, I am sure—that parents' associations are quite important. But many schools do not have parent associations; they tend to be, I have to say, in middle-class areas.

The area of schools commissioners is one that has vexed us for some time. Light needs to be shone on the work and there needs to be transparency, and I am delighted with the comments the Minister has made on that. It is a very important step forward.

Some of us have always believed that driving up standards in our schools is not about waving the proverbial big cane but about professionalism and trusting in the leadership of schools. One of my regrets from the coalition period was that we abolished the leadership academy. That was a great mistake. You

[LORD STOREY]

need to make sure that the people you put as leaders of your school are of the highest calibre, quality and training. You have to have good leaders.

Secondly, it is all for naught if you do not have quality teachers. It is about ensuring that teachers are respected, highly trained and highly valued. It worries me that 40% of teachers leave in the first five years of their teaching. That is a very worrying trend. I hope that, now that the Bill is out of the way, we can do what the Minister is good at—listen and evolve policies or procedures that work for all our education services.

Bill passed and returned to the Commons with amendments.

Trade Union Bill

Committee (1st Day)

3.45 pm

Relevant documents: 15th and 20th Reports from the Delegated Powers Committee

Clause 1 agreed.

Clause 2: Ballots: 50% turnout requirement

Amendment 1

Moved by **Lord Kerslake**

1: Clause 2, page 1, line 14, at end insert—

“(3) Subsection (1) shall not come into force until—

- (a) an independent report is published, and laid before each House of Parliament, which has been prepared by the Central Arbitration Committee in consultation with qualified independent persons, on the delivery of secure methods of electronic, postal and workplace balloting for the purpose of ballots held under section 226 of the 1992 Act, and
 - (b) the Secretary of State has considered the report and published, and laid before each House of Parliament, a verification strategy for the rollout of secure electronic, workplace and postal balloting methods for the purpose of ballots held under section 226 of the 1992 Act.
- (4) The Secretary of State must publish and lay before each House of Parliament the strategy provided for by subsection (3)(b) no later than two months after the date on which this Act is passed.
- (5) The report provided for by subsection (3)(a) must include—
- (a) an analysis of different methods of authentication that can be used to enable voters to cast their electronic votes such as single use security codes, personal identification information or membership affiliation information;
 - (b) an assessment of the ability of electronic voting systems to identify that the information being provided to authenticate the voter is the information required to enable a vote to be cast and recorded in that particular ballot and that the information is unique to the voter;
 - (c) an assessment of the ability of trade unions appropriately to secure means of distribution required for the delivery of electronic voting information to maintain the security and integrity of any ballot;
 - (d) a cost benefit analysis of the risks involved in methods of distribution such as email, post, text messaging and face-to-face methods;
 - (e) an assessment of existing recognised industry standards for online voting systems; and

(f) analysis of the role of third party administrators and the benefits of using rigorous quality assurance procedures and processes for delivering electronic voting.

(6) The verification strategy provided for by subsection (3)(b) must include an assessment of how alternative, secure, methods of balloting will impact voter turnout.

(7) For the purpose of preparing the strategy, the Secretary of State must consult relevant organisations including professionals from expert associations to seek their advice and recommendations.”

Lord Kerslake (CB): My Lords, I rise to move Amendment 1 and indicate my support for the other amendments in this grouping. The central tenet of all the amendments, tabled and supported by Members of all parties and none, is the same: namely, that if we are to introduce thresholds on trade union ballots before industrial action is taken, we should seek to enable the widest range of methods for members to place their vote.

This seems such an obviously right thing to do that it is surprising to me that we have to debate it. If we believe that important decisions on whether to take industrial action should have the widest possible engagement and participation of those involved, we must surely all want to take whatever practical steps we can to encourage it.

Currently, ballots for industrial action can take place only through postal ballots. However, ballots for trade union recognition, which apply the same thresholds as proposed in the Bill for industrial action, can now take place through workplace ballots, so we already have a difference. At present, neither can be done through electronic balloting.

Digital technology has moved on fantastically since the Trade Union and Labour Relations (Consolidation) Act 1992 was passed. We now expect routinely to undertake activities such as banking and shopping in a way that would have been unimaginable then. Today, 82% of adults are online. The public in general and trade union members in particular now expect to have the digital choice—an important point. It is a choice that their trade unions ought to be able to give them. The Government’s own policy is to be digital by default in the delivery of their services.

There is absolutely no doubt that electronic balloting can be made to work. I used it myself in Sheffield for the local and general elections as far back as 2007. The use of electronic voting has come on in leaps and bounds since then. For example, in 2014, more than 400 organisations throughout the UK provided their stakeholders with the opportunity to cast votes electronically using the services of Electoral Reform Services Ltd, an independent supplier of ballot and election services. These involved a wide range of bodies from companies to community-based organisations, with more than a million votes cast.

ERS is confident that it can meet the required standards for ballots under the 1992 Act—namely, that those who are entitled to vote have the opportunity to do so; that votes are cast in secret; and that the risk of unfairness or malpractice is minimised. It believes that it can meet all those tests. Given the widespread use of electronic balloting, the only possible remaining issue is security.

As a former returning officer, I take the issue of voting security very seriously. We should take every

practical step to ensure that ballots of all types are as secure as they can possibly be. However, we should also be realistic and say that no system of voting can be made completely and utterly secure, just as no system of online banking can be completely protected from fraud. Therefore, the question is whether electronic balloting can be done in a way that is as secure, if not more so, as postal balloting. That is the key test. I am absolutely convinced that it can, and there is good evidence from Electoral Reform Services and others to back that up.

The response from Ministers so far to what I think is a perfectly reasonable request from the trade unions is to raise—rather vaguely, in my view—security concerns and then to seek to push the issue off for another day. I really do not think that this is an adequate or fair response when there is an opportunity to deal with the issue now. My amendments therefore propose that before the thresholds set out in the Bill come into force, two things should happen: first, an independent report should be undertaken by the Central Arbitration Committee on the delivery of secure methods of electronic, postal and workplace ballots; and, secondly, the Secretary of State should have considered this report and laid before each House of Parliament a verification strategy for the rollout of such balloting methods. I have set a timetable of two months after the Act has passed for the strategy to be done.

The amendment would allow the CAC, a well-established and respected arm's-length public body, to look at the issues objectively and to give us its views. It is well within the remit of the CAC to undertake this review. Indeed, there is provision within its regulatory framework to introduce electronic methods for recognition ballots now—a provision that has so far not been taken up. The CAC has considerable experience in organising secure ballots but would not claim to be expert in electronic balloting. I have therefore included in the amendment provision that it could draw on an independent qualified person who is such an expert.

I am absolutely persuaded that we could securely introduce electronic and workplace balloting now. However, I recognise that to date this has not been the Government's position. I have therefore, through this amendment, sought to meet the Government half way. Whether they are prepared to go the other half will be a test of their willingness to engage in open and constructive debate on the Bill. I beg to move.

Lord Monks (Lab): My Lords, I am pleased to support the amendment which has just been so ably moved by the noble Lord, Lord Kerslake, and I also support other amendments in this group.

As the Committee will see, Clauses 2 and 3 introduce arbitrary thresholds of turnout and majorities in relation to union strike ballots, particularly affecting certain sectors. Never mind, for the moment, that no other organisations are under the same statutory restrictions as far as their ballots are concerned. Never mind, for the moment, the glaring discrepancies between these requirements and the requirements that exist for ballots in political life; for example, we all know the embarrassment of the low turnout for police commissioner elections in particular, and there are one or two other examples. And perhaps never mind, for the moment, the

unprecedented nature of these requirements on trade unions, certainly in western Europe. The fact is that these thresholds must be seen alongside the existing requirement that a union must use postal ballots. As the noble Lord, Lord Kerslake, has just explained, this has been the case since 1992.

Looking at different countries, only in Australia are there similarly tough thresholds on unions as far as strikes and other industrial action ballots are concerned. But in Australia, it is normal to use workplace ballots, with the postal ballot as the default position, and unions there can use online balloting too. This amendment seeks to develop that case for the United Kingdom.

In the impact assessment, which I am pleased we have now had a chance to look at—better late than never—the Government claim that the proposals are not about banning strikes and, rather disingenuously, claim that the thresholds are in fact an attempt to make the balance better. Other countries in western Europe are mentioned in the impact assessment, including Denmark and Germany, which do use thresholds in strike ballots. However, in both cases, those are agreed arrangements with the unions concerned that go back a number of years and, in the main, were done just after the end of the Second World War. But, again, there is no requirement on the method of balloting to be used in those countries. So, nowhere else in the advanced world is the requirement on how to ballot linked to questions of threshold, and nowhere else is there a requirement to have a mandatory postal ballot.

Those familiar with parliamentary elections—and there are many in this House—will know that easier rules on postal balloting were introduced to increase turnout. People apply for a postal vote from the local returning officer. In the union world, the ballot form is different; it is not solicited in the same way. It drops through the post with all the other stuff that we get and, too often, gets put to one side, forgotten about and ends up in the recycling bin. It has depressed turnout figures in most unions; it has certainly not increased them. The Government clearly do not trust—at the moment, anyway—alternative methods. In their wish to curtail the relatively few strikes that do take place in the UK today, the Government are using the combination of high thresholds plus postal ballots as a way of stamping out dissent and protest.

What redress is left to employees in these circumstances? Just imagine, for a moment, a large retailer with many casual workers, often low paid, a very high labour turnover and some harsh management practices: Sports Direct just happens to spring to my mind immediately. Under the proposed provisions in the Bill, how could workers do much collectively about the conditions in which they work? It would be virtually impossible, for example, to take lawful industrial action. I have to say that in some of these companies, it would not be easy to do that at all, even without postal ballots or any thresholds. However, it seems to me that an important artery of democracy is being blocked by making things more difficult. Not everybody is in a school or works for Transport for London—a tight group of workers with a common identity who are therefore relatively easy to organise.

[LORD MONKS]

The amendment in the names of the noble Lords, Lord Kerslake and Lord Oates, and myself suggests that Clauses 2 and 3 should not come into effect until an independent review has been carried out by the CAC. The Central Arbitration Committee is probably not very well known to most of the British population. It is a relatively small organisation, but it conducts ballots under the law on trade union applications for recognition. The turnouts in the ballots that it conducts are always high, and no evidence of fraud has been found since it started doing this work. It can decide on the most appropriate means of holding a recognition ballot—for example, with a dispersed workforce it could well use postal balloting, whereas with a concentrated workforce it would make sense to have a properly supervised ballot box. The key is proper supervision, with an independent scrutineer and a properly secure balloting method. The CAC has not yet used e-balloting, although as the noble Lord, Lord Kerslake, said, it has the ability to use it.

4 pm

Our amendment asks that before the provisions of the Bill come into force, the CAC be asked to conduct a review of the delivery of the various means of voting on industrial action. It would be asked to prepare an independent report to be laid before both Houses of Parliament considering the different methods of authenticating voter identification and security systems for electronic voting, and providing a cost-benefit analysis for unions using those different methods of balloting. As has been explained, the Secretary of State would be required to lay before Parliament,

“a ... strategy for the rollout of secure electronic, workplace and postal balloting methods”,
on industrial action.

That seems to me, as I hope it seems to most noble Lords present, a very reasonable proposition, and I hope the Government will open their mind to it. It must be obvious to any fair-minded person that, provided that the balloting method is secure and can be trusted, unions should not be impeded from taking lawful steps in the interests of their members. The current proposals are draconian—unacceptably hard. The measures in the amendment and the other amendments in the group seek to make them more practical and fairer.

If e-balloting is good enough for the Conservative candidate in the London mayoral election, surely it is good enough for wider application—and it could ease the burdens that the Bill is putting on unions. I have a vision of a certain Minister acting like the sorcerer's apprentice in Whitehall, scurrying around collecting ideas for hobbling trade unions and slapping as much red tape as they can find on them. This is unfair and unjust: it is the opposite of one-nation Conservatism. There are huge problems in the British labour market—problems of inequality, casualisation and productivity—but what trade unions are up to at the moment is not one of those problems. Rather, it has been picked on by the Government to attack. I hope they will think a bit more maturely about what they are doing, and try to find a way of making some of these provisions more acceptable. I hope that by adopting the amendment,

or one very much like it, we will get a better, fairer and much more balanced Bill—one that the Government can be proud of, and the rest of us can live with.

Lord Oates (LD): My Lords, I am pleased to speak in support of the amendment moved by the noble Lord, Lord Kerslake, and of the other amendments in the group. I should first apologise to the Committee as I was not able to speak at Second Reading. That was an administrative mess-up on my part. I hope the Committee will forgive me, as a relative newcomer, for such a breach of protocol. I was, however, present throughout the debate, and listened carefully to the many significant points made by noble Lords, and to the Minister's response.

We shall have the chance to discuss the merits or otherwise of the introduction of thresholds later today, but without doubt, as the noble Lord, Lord Monks, made clear, this is a significant departure from the usual democratic practices of this country—indeed, from those of any comparable democracy in the world. Given that fact, I would expect the Government, in putting forward such radical proposals, to accompany them with a means to ensure maximum participation and to take the opportunity to modernise balloting procedures.

The Minister stated at Second Reading that the Government's purpose in bringing forward the Trade Union Bill was to modernise the relationship between trade unions and their members. One might debate whether that is not more properly an issue for trade unions and their members rather than for the Government but, be that as it may, if Ministers are sincere in their protestations about modernisation, it is unclear why they are resisting the one obvious modernisation measure—the proposal to allow electronic and other forms of balloting that could help increase participation.

The other amendments in the group, in slightly different ways, seek to achieve that purpose with the safeguard of independent scrutiny to ensure those ballots are conducted properly and without intimidation. I support those amendments because I am convinced that we could introduce electronic and workplace balloting now. However, we heard at Second Reading that the Government remain opposed. The Minister questioned whether electronic ballots would be secure or open to intimidation and vote-buying. The amendment in the names of the noble Lords, Lord Kerslake and Lord Monks, and myself, provide the Government with the opportunity to properly test this issue with the assistance of the Central Arbitration Committee, a respected body which has considerable experience on the issue of balloting, as well as with others with expertise in the specific field of electronic balloting. If security really is the issue, these amendments can help get to the bottom of whether it is possible to use alternative means of balloting in a manner as secure as, if not more secure than, the current postal ballot system.

The Government's approach to these amendments will be important because it will give an indication of whether they are sincere in the claim, repeated by the Minister at Second Reading, that the Government's objection to electronic voting is not a matter of principle but one of practicality. It will reveal whether the Government really want more people to participate in

trade union ballots but cannot see a practical way to make it happen, as they claim, or whether, as many of us believe, their sole objective is to make it as difficult as possible for trade unions to take industrial action. I hope I am wrong in that belief and that the Minister will expose it as entirely unwarranted cynicism by accepting these amendments. If she is unable to do so, we will know where the Government stand.

Lord Pannick (CB): My Lords, your Lordships will have seen the report published last Friday by the Joint Committee on Human Rights on the application of Article 11 of the European Convention on Human Rights, which guarantees freedom of association, including the right to form and join a trade union. This is of particular relevance to the issue we are debating—electronic balloting.

The Joint Committee's report mentions that in 2014 the European Court of Human Rights dismissed a complaint brought by the National Union of Rail, Maritime and Transport Workers about the ban on secondary action. I declare an interest: I was counsel for the United Kingdom Government in that case. The European court said that it will generally respect a legislature's policy choices in relation to social and economic issues, including its laws on industrial relations, which it accurately describes as a,

"legislative policy area of recognised sensitivity",

unless the choices the legislature makes are "manifestly without reasonable foundation".

The European court said that a democratically elected Parliament is "better placed" to identify,

"what is in the public interest on social and economic grounds".

The Joint Committee points out that the European court added that, the more far-reaching the interference with a core trade union activity—for example, requiring the dissolution of a trade union—the greater the justification required. I think, however, that the European court and courts in this country would almost certainly regard the basic provisions in Clauses 2 and 3 as not going to the core of trade union activity because the existence of trade unions and the rights to call a strike are unaffected, albeit that important limits and conditions are imposed. Parliament would, I think, be acting well within its broad scope of discretion if we decided that the disruption to the lives of others caused by strikes, particularly in the public sector, justified the general measures in Clauses 2 and 3.

I would be very surprised if the European court were to agree with the noble Lord, Lord Monks, that the threshold provisions are arbitrary. However, I agree with the Joint Committee that the Government may be vulnerable to a legal challenge under Article 11 because a court will consider the package of statutory provisions as a whole when it assesses whether those provisions are proportionate and whether they have an objective justification. If the Government do not compromise on some of the less attractive provisions of the Bill, to which we will come, such as check-off, they will be at much greater risk of a human rights complaint being taken seriously by the court.

Clauses 2 and 3 would be particularly vulnerable to legal challenge if the Government refuse to allow for electronic balloting. Allowing online balloting would

manifestly promote the professed objective of the Bill to enhance democratic decision-making on strikes. My advice to the Government is to consider carefully the amendments in this group and to seek an accommodation to allow electronic balloting to reduce what will otherwise be the legal vulnerability of Clauses 2 and 3, which could damage an important objective of the Bill.

Lord Balfé (Con): My Lords, I declare my interests as president of the British Dietetic Association, a TUC-affiliated union, and an unpaid adviser to BALPA, the pilots' union. I also remind the Committee, as I do virtually every time I speak on the trade unions, that 30% of trade unionists—in fact, slightly more, we estimate—vote for the Conservative Party in general elections. Sometimes we tend to forget that and to think that the trade union movement is a sort of Labour Party at play. It is not. It is as diverse, almost, as the rest of the country.

In speaking about electronic balloting, I point out that I am always pleased when Governments carry out what is in their manifestos. It is not something that I have been used to for the whole of my political life. However, I must say to the Minister that at no point in the Conservative Party manifesto is anything mentioned about electronic balloting not being allowed. Therefore, this clause in the Bill is in no way connected with the election manifesto, although quite a few other clauses are and I will not be opposing them.

4.15 pm

I think that the Government are under the illusion that a lower turnout would somehow help to prevent industrial action. There is not much evidence for that. If anything, the people who do not vote may be less likely to support industrial action, but I do not think that one really knows. However, I know that strikes are not undertaken lightly. I have never been on strike in my life, but that is not unusual. Most trade unionists have never been on strike. They join their trade union for a wide variety of reasons. For instance, lollipop ladies who join UNISON get £5,000-worth of life insurance—an extremely valuable benefit that comes with their subscription. Most other unions offer a package of services. My union, Unite, offers a free legal advice service to all its members. I must say, having used it on two occasions, that it is an excellent service staffed by good solicitors.

I digress slightly, but by tabling my amendment I am not saying that this is the only way to deal with electronic balloting. There are, after all, five separate amendments on it. We will not force them to a Division, but I hope that the Minister will take the opportunity after the debate to look carefully at what has been said and who is in favour. She will have had a paper from 16 of what I would call the most moderate unions in Britain, all affiliated to the TUC. It says:

"At a time when many government departments are adopting a 'digital first' approach it is perverse that the ... bill prevents unions",

from running online ballots. It continues:

"If the government wishes for unions to ballot ... members more often, and to shorten timeframes for industrial action",

[LORD BALFE]

then unions should be allowed to,
“operate in the most efficient way possible”.

The First Division Association, which is the union of the most senior civil servants and which would look at how to make this work, has stated:

“The continued prohibition of electronic balloting for statutory ballots supports the view that the purpose of these reforms is to impede trade unions rather than encourage democracy as claimed”.

Despite this opportunity to make a positive reform, the Government have chosen to retain the ban on electronic balloting. These are not wild people.

As the Minister will know, because she was good enough to meet BALPA with me last week, and in response to her request, the general secretary of BALPA, Jim McAuslan, sent her a two-page letter, three-quarters of which is a list of organisations that have allowed electronic balloting to take place without any problems coming up. I will quote one other group that is not normally found in the same box as the TUC. The Institute of Directors has stated:

“Provided that a fair and transparent system of electronic voting can be delivered, there is no reason why—in return for asking for a higher level of legitimacy—the union movement should not be allowed to embrace technological advances to increase participation”.

That is fairly clear.

My challenge to the Minister and to the Government is to take the words of Nick Boles in another place that the Government did not object in principle to the introduction of e-balloting, but they had reservations about security. My view is that those reservations can be addressed and that, in a fast-moving technological world, they are not significant enough to keep this out of the Bill. The technology moves extremely fast. My amendment, like the others, provides safeguards in the implementation of the proposed new clause. It does not say that unions can set up their own electronic balloting company and have a closed system. All the amendments, in some way or other, provide for checks and balances that would enable the reservations of the Minister to be met.

Recently, an organisation called WebRoots Democracy produced a rather thick report dealing with many of the objections to e-balloting and pointing out ways forward. What is certain is that we will not get those ways forward and we will not end up where we want to be unless this goes into the Bill. So I ask the Minister to go away, rethink, look at what can be done and take note of the very strong feeling in many parts of this House that the time has come for the legislation to be put in place. This is a reform that can be made to work and I urge the Minister to make it possible.

Lord Lea of Crondall (Lab): My Lords, I shall give two reasons as to why the Central Arbitration Committee is uniquely qualified to carry out the inquiry and report as stated in the lead amendment in this group. I declare an interest as an ex-member of the Central Arbitration Committee. It has the following qualities. Most inquiries are judge-led. There is typically a judge, someone with experience of employers’ organisations—that is, an employer—and someone with experience of an organisation of workers, normally a trade union person. So employers would be confident that their

experience was built in to the inquiry. I think the Minister could take that as an indication of the confidence that one should have in such an inquiry.

Secondly, the CAC has unique experience of what one might call access to the workplace. Of course, there are different models on show in this debate and no one is trying to say, as I understand it, that only one model can work. However, there are enormous issues around contact in the workplace and it is a fact, as far as I know, that over the 15 years or so of the operation of the CAC, no one has ever queried the standards. The noble Lord, Lord Kerslake, is nodding his head. I think it is a remarkable record that everybody has confidence in the *modus operandi* of the Central Arbitration Committee.

Lord Brown of Eaton-under-Heywood (CB): My Lords, I, too, support this group of amendments; indeed, the arguments in favour seem compelling. It is a modest enough proposal and its safeguards are implicit in the very nature of the report which is canvassed. Personally, I support the turnout requirement in Clauses 2 and 3, but I cannot resist pointing to the bizarre consequences that could, at least theoretically, result from the new provision.

To take the illustration used in the Explanatory Notes to the Bill of a bargaining unit of 1,000 union members, if 499 vote in favour of industrial action and none against, a strike would be unlawful. If, however, 499 vote in favour and one against, then, because at least 50% of those eligible will have voted, a strike is permitted. So, too, of course, if 499 vote in favour of industrial action and 498 against. Doubtless, such anomalous possibilities as these are inevitable in any scheme, which, as here, has a combination of a turnout requirement but then a decision on the basis of a simple majority. However, it surely underlines—and this is my point—the imperative of ensuring that the best possible way is sought of achieving a maximum turnout of those eligible to vote. These amendments surely allow for that better way.

Lord Morris of Handsworth (Lab): My Lords, I, too, support the amendment moved by the noble Lord, Lord Kerslake. I ask myself: why? I will make a plea for a travelling section of workers who are sometimes never seen because they are on unsocial hours and shifts—transport drivers, in particular. Not so long ago, a transport driver would work a five-day week. At the weekend, he—and it was more likely to be a he—would go along to the branch meeting in a local pub and cast a vote. Those arrangements no longer exist because of domestic and other demands on the time of the driver, who might be away throughout the week.

Very often the press, and indeed the general public and some politicians, cast real doubts on balloting arrangements. They reckon that they are unconstitutional, not fair and subject to a host of practices which are not democratic. I am pleased about this amendment because, at last, a methodology of engagement and participation can be found. It can be trusted and realised. Democracy at work in today’s world is important; Amendment 1 brings about its achievement.

The flexibility offered by the amendment will improve that democracy and public confidence in trade unionism. I am sure that it will find support among the large majority of employers, because when the press reports any malfunction of a process in a particular workplace, it is about not just the trade unions or the individual but the name and reputation of that enterprise. This amendment would therefore, in my judgment, bring about support and authority for all the parties concerned.

For those reasons, and because I believe that democracy can be found in and out of the workplace, I hope that Amendment 1 will carry support in this Chamber.

The Lord Bishop of Chester: My Lords, it was nearly 50 years ago that I enrolled as a member of the Transport and General Workers' Union. I say that I enrolled, but I was enrolled—I had no choice. I was working between school and university and I worked in the Land Rover factory in Solihull helping to make Land Rover Defenders, the last of which have recently rolled off the production line. Since then, because of my career in the church, my direct involvement in the trade union movement has obviously been less, but I endorse what has been said about the union Unite, which some clergy belong to. It provides good advice and I much encourage my clergy, if they want, to join that union.

The 50 years since I ceased to be a member of the Transport and General Workers' Union have been difficult for trade unions, one way or another. But they have a vital role going forward, not least in our globalised world which is driven by large economic forces. They have a place, but the key thing is to emphasise the process of modernisation, to which reference has been made. I, for one, fully accept that strike action should not result from a small and vocal minority dictating things to others, and I can broadly support the provisions in Clauses 2 and 3. It is a matter of judgment and it is in one sense arbitrary just where you draw that judgment. We will come on to that later. It seems to me that at the heart of the combination of Clauses 1, 2 and 3 is—to use a word which I think we have not used so far in the debate—a matter of fairness. That is what lies behind Article 11, to which the noble Lord, Lord Pannick, referred. It is fundamentally a question of what is a fair position, balancing all sorts of different considerations.

Having listened to the debate so far and some very interesting speeches—not least that by the noble Lord, Lord Balfe, behind me—issues of fairness indicate that a proper consideration of electronic voting should be part of the process of modernisation. I offer, in conclusion, a final encouragement. If the General Synod of the Church of England can embrace electronic voting, so can we.

4.30 pm

Lord Cormack (Con): My Lords, I was wholeheartedly with the right reverend Prelate until he called the General Synod in aid, but he was totally right about fairness. As someone who does nothing electronically and has no intention of doing anything online at all, I believe we have to accept that those who want to move with the times in that way should be able to do so. My

noble friend Lord Balfe made an impeccable case, as did the noble Lord, Lord Pannick. I find no particular affection for this Bill, but it is essential that when it goes on to the statute book—as it surely will—it must be seen to be fair. The right reverend Prelate is, of course, right. I pulled his leg, but if the Church of England can do it then we must allow the trade unions to do it. It must be fully supervised and properly secure. As the noble Lord, Lord Kerslake, said, nothing is ever 100% secure—which is why I would never do online banking—but we can do most things to ensure that the system is secure.

I want to do one thing and one thing only: to appeal to the fairness of the Minister who will come to reply. It is the function of this House, from time to time, to ask another place, and the Government, to think again. In no sense does this destroy or undermine the Bill, but it allows those who wish to vote to do so, in privacy, online. One could argue that they might be under less pressure than if they voted in my preferred way—in the workplace—or by post. We have seen so many abuses of the postal voting system in general elections that we cannot hold that up as a great example. I hope my noble friend will bear in mind the words of Mr Nick Boles in another place, which have already been quoted: if there is no objection in principle then let us make sure we enact in practice.

Lord Dykes (Non-Aff): My Lords, I added my name enthusiastically to that of the noble Lord, Lord Balfe, on Amendment 22 about electronic voting. I thank him for his wise words, spoken with authority and knowledge of trade union activities. That is not necessarily linked automatically to the Labour Party in any way. This is especially so in the modern world, compared to the past when it might have been more automatic with the big trade unions. We now see a much more open scenario and there are many who support or vote for the Conservative Party in general elections who are enthusiastic about their own membership of different kinds of trade unions. That should be the norm in any modern, balanced society. It should not be two competing elites with nothing moveable in between.

This amendment helps to widen the possibilities for voting for strike action in the future. This is so infrequent and rare in British society nowadays, compared to the past, that it is not a general problem at all. That adds to the need for this cluster of amendments. I am referring now to Amendment 22, but the rest all fit together. They ask the Government to think again carefully about the underlying reasons why the Bill was introduced. There is still an element of surprise in wider society among people who follow new Bills about why the Bill was engineered and created as it was. Any Government, as was said in the Second Reading debate, who have the authority of only 24% of the electorate, have to be careful to introduce legislation that is not only properly drafted and intelligent but creates consensus, fairness and balance to deal with areas of pressing need for public governance.

There is considerable dismay about the Bill among those who are not keen on any limits on trade union voting activity. In my view, it should be completely open, but the threshold idea has caught on with some people, so one has to accept that it will be supported in

[LORD DYKES]

the future, to whatever extent that is rational. The Government have to respond to that pressure and think again.

One of the ironies is that the Bill would be easier to get through if the Government responded to intelligent amendments that represent the views of Members from all parties in this House. I hope that the amendments will be received with some interest and enthusiasm in the other place if the Government do what we are requesting today.

On electronic voting, the noble Lord, Lord Kerslake, referred in his speech to what he did in Sheffield. Electronic voting is feasible and can be just as secure as any other method of voting if proper procedures are put in place. It can be secure, as provided for in the Central Arbitration Committee report system, which is an excellent part of the amendment drafted by colleagues including Lord Monks.

The noble Lord, Lord Pannick, expressed reservations about Article 11 of the European Convention on Human Rights, and the noble and learned Lord, Lord Brown referred to the potential mathematical absurdity of the Government's latest 50% proposal, which needs changing. All those problems were raised by Cross-Benchers, which is yet another illustration of the substantial changes that need to be made to the Bill.

I was in business for many years and we may compare the fairly easy-going procedures for corporate AGMs with what is being planned to bring the trade unions to heel. That might be an emotional phrase that is used fairly by some people and probably with enthusiasm by some of our right-wing newspapers. It would be a great tragedy if there were one standard for one set of people and another for another.

I thank the noble Lord, Lord Balfe, very much for his advice on the common-sense element of trade union behaviour. There is a real need to make progress on this cluster of amendments. This is a great opportunity for the Government to refer positively to them and accept the ideas behind them. Then the Bill would make progress in other important areas.

Lord Clinton-Davis (Lab): For 30 years, I was president of BALPA, and I notice that the union is very well represented in the Committee today. I beg the Minister to think again about the Bill. Every speech that has been made so far has indicated that the Government ought to think again. We do not know whether the Minister will think again. I plead with her to do so, because this is not an ordinary Bill. It goes to the very heart of what not only the trade union movement or the Labour movement but the whole country thinks about this issue. I hope that the Minister will be more placatory than the Government have indicated so far. I repeat that the Bill is misplaced, as it is written. Therefore, I hope that she will say later on that she is prepared to think again about what the Government are putting forward.

I am very glad that BALPA has set a good example. Although on the whole the executive has been Conservative—there are one or two people who are not, but not many—the important thing about the union is that it is prepared to put aside its political

views and think in a way that is representative of the country as a whole. BALPA has done a great deal for British aviation. It is not always right, but on the whole what it has advanced has been for the benefit not only of pilots but of those who use all the airlines in the world. Will the Minister say today that she will think again about the whole virtue and principle of this Bill, which is vitally important?

Lord King of Bridgwater (Con): My Lords, I rise to make clear right at the start that I strongly support Clauses 2 and 3 in this Bill, and I will describe the reasons why. The amendment proposed by the noble Lord, Lord Kerslake, obviously impinges on them, so I shall say a word about that.

The amendment refers to introduction of voting by, “electronic, postal and workplace balloting”.

I am struck by one thing; this was described as the e-voting debate, but I have not heard a single person yet say that they think that workplace ballots should be reintroduced. In my own judgment, that is the reason why in the 1984 Act, which I had the honour of taking through Parliament, we introduced compulsory postal voting. I am not at all persuaded of the idea that you can get safely back to workplace ballots without intimidation or corruption in certain areas.

There is a need for trade unions, government and the public estate to carry public confidence at all times. If their lives are to be significantly inconvenienced, and in some ways seriously inconvenienced, with great personal distress, there should be proper protection for those people. As has been said already, striking should be only the last resort. That is in the interests of the union members themselves, for whom it may be a very expensive operation that may involve significant loss. They should never be taken out on strike by union leaders except as a last resort. But at all times we have protected that last resort of the right to strike, as was rightly said by the noble Lord, Lord Pannick. It is the ultimate freedom—the right that people have under the law.

We talk about trade unions in general as if we were talking about—

Lord Morris of Handsworth: My Lords—

Lord King of Bridgwater: May I just finish this point and then I shall give way? We are talking also about the change in the number of strikes. What is very significant is—and the right reverend Prelate referred to 50 years ago being on the shop floor, or maybe in a more senior position at Land Rover—that it was a very different world indeed. The world was very conscious at that time of strikes in the car industry. The noble Lord, Lord Monks, paid an indirect tribute to the progress that had been made under Conservative legislation. He pointed to the much more constructive industrial relations that now exist between the workforce and the management, which has been a major factor and a key to the success of our car industry at the present time. I give way to the noble Lord.

4.45 pm

Lord Morris of Handsworth: I thank the noble Lord. I have great respect for his views but the debate that we are having is not about strikes; it is about a method of voting.

Lord King of Bridgwater: The point is: how do you maximise voting? It is very important that the public have confidence in the number of votes cast in these situations. The latest figure I saw, if it is correct, showed that there are now seven times as many strikes in the public sector as in the private sector. Public sector industries tend to be monopolies and you do not have to live long in London to see that a public sector or monopoly strike, such as happens, sadly, on the Underground and perhaps on the buses, can cause huge disruption and distress for millions of people. This is an issue for Parliament; it is not a party issue. We all have a duty to ensure that the public have the correct protection without preventing the right of a trade union in the final analysis to use its ultimate right to strike. I make that point very clearly. There must be a maximisation of that vote, without corruption and intimidation. It must be a full and correct vote.

The noble Lord, Lord Kerslake, piloted electronic voting in Sheffield in 2007 and that is very impressive. I wonder how many people in Sheffield at that time were really familiar with the internet and whether the electronic possibilities had spread to the extent that they obviously have now. What has come with that spread is a far greater threat from the corruption of the internet itself. Everybody knows the challenges of cyber. It is a major defence issue now. We now know that nothing is secure against a cyberattack and the problems associated with hacking are much more prevalent. That is not an argument against electronic voting—before everybody sucks their teeth and thinks I am about to oppose it. I actually think we should bring in electronic voting, but we must do it with our eyes open to the fact that there are now far more risks than existed in 2007.

I think the noble Lord, Lord Kerslake, will accept that there are now far more challenges and difficulties. I do not think many people outside realise just how insecure those systems are and just how professional different organisations and Governments are which do not bear us any good will and are interested in corrupting and damaging our systems. So if we are going to go ahead with electronic voting, we have to do it after the most careful examination of the challenges, because the worst thing to do would be to introduce electronic voting and then find that it does not work because it is corrupt. That would bring discredit on the whole system.

I do not claim to be an expert on the Central Arbitration Committee and whether that is the best body to do this, but one line in the amendment worries me. It states:

“Subsection (1) shall not come into force until—”.

I worry that this is trying to kick the whole thing out and that it might be used as a device to prevent Clauses 2 and 3 from coming into effect. The noble Lord, Lord Kerslake, gave a very helpful speech making it quite clear that it is not his intention to do that, but there is an alternative way to proceed. The Secretary of State has the power under existing legislation, if he

wishes to use it, to introduce electronic voting after a proper examination of these issues. That is the alternative way to go.

This is Committee. We shall no doubt return to these issues on Report, but I put that thought to the Minister as a possible way to proceed. I do not want to find that we have delays. If there could be proper consideration and the best possible examination of this by bodies really capable of really examining these very difficult issues that now surround the electronic world, I would support it in the interests of maximising the voting possibility because—my noble friend Lord Balfe made this point very well—the fullest turnout is the best safeguard against the wrong result. Active minorities working against idle majorities is the danger we have to guard against. We need the maximum commitment and the maximum vote in these situations. If electronic voting genuinely free from corruption and distortion can be made to work, I would support it.

Baroness Prosser (Lab): My Lords, I want to raise a couple of points that are rather different from those which we have heard thus far.

First, what is the purpose of this legislation? What is the purpose of the Government's proposal to increase the thresholds for turnout and participation, when we have not heard an inkling about their interest in enabling that increased participation to take place? Many noble Lords have already spoken about using electronic voting. It would be a real step forward and really interesting and heart-warming if the Government were prepared to say that they are prepared to trial it, look at it and to set up a group to study it, but thus far they have said nothing. That makes me very suspicious about the real intention behind the proposal. Could it be that the Government do not want an increase in thresholds to come about? Do they really want more participation, or is this a way of demonstrating that they do not want any strikes, particularly in the public sector, without actually saying that they do not want any strikes, particularly in the public sector?

The noble Lord, Lord King, said that nobody thus far has mentioned workplace voting. I know there is a range of issues and problems, but it might well be useful to take a look at whether, in certain circumstances and certain kinds of workplaces, workplace balloting would be appropriate. However, it seems to me that none of this is the object of the Bill. Increasingly, it looks as though it is an exercise in how to ban strikes without actually banning them. It is very clever. It saves all that performance of perhaps having to face legislation—all the global public opprobrium that would be likely to come from the ILO and others if strikes were banned. It makes it so difficult that most attempts at industrial action would fail. That is how it reads and that is how it is going to work out, it seems to me, if we do not have some measure of understanding from the Government about what is actually being suggested.

I am moved to comment in this way because this is not the only legislation or policy we have had in recent times which makes it appear that the Government are trying to close down voices of opposition. I mentioned at Second Reading the areas where this dismissal of opposition has become apparent. For example, there

[BARONESS PROSSER]

is English votes for English laws: of course, no pesky Scottish National Party is going to get in the way of things. There are the Boundary Commission's changes to the electoral register; proposals elsewhere in the Bill to make it more difficult for unions to return and retain their membership lists, thereby certainly reducing membership income; and changes to unions' ability to build up and retain funds for political and other forms of campaigning. Further, this weekend we heard that restrictions are to be placed on the charitable sector's ability to conduct public policy campaigns. All that adds up to a frightening and worrying scenario. It all adds up to political interference. As I said earlier, I believe that it will be seen by many people as a very poor show and by many more as a demonstration of very poor judgment.

Many speakers have spoken in detail about the problems associated with postal ballots and participation and I am not going to repeat what they said. However, if industrial action is being considered, the most important work to be done—by unions and employers—is to engage in debate and try to solve the differences that have led to the industrial relations breakdown. Unfortunately, with one or two very good exceptions, few of the people involved in drawing up this legislation seem to have had any experience of the world of work or, certainly, any knowledge of trade unions.

The noble Lord, Lord King, commented that industrial relations now are very different from those that pertained in the days of “the Rover”, as union members always referred to the factory. That is absolutely correct; but the reasons for those changes are many and various. Not least, the improvement in industrial relations has something to do with having a better-trained management than we ever had in the past.

Viscount Colville of Culross (CB): My Lords, I apologise for not being available to speak at Second Reading. I now rise in support of Amendment 20. Along with many other noble Lords, I feel that Clause 2 is an attempt by the Government to increase the participation in voting for industrial action. Surely the Minister will support any way of ensuring as large a turnout as possible.

I have taken part in postal votes on industrial action, and other trade union elections, as a member of my present union, BECTU, and as a former member of the NUJ. I have also taken part in elections electronically. I can tell noble Lords that it is much easier for me to take part in the latter ballots. When I talk to my younger colleagues in the media about whether e-voting should be allowed in trade union votes, frankly they are astonished, and in some cases appalled, that it does not happen already. Along with many of us, they already carry out incredibly secure transactions and make huge decisions electronically every day. For them, e-voting would dramatically increase their willingness to take part in any strike votes—which, after all, must be one of the aims of the Bill. Online transactions and decision-making are in every sphere of our lives; they are the reality of the 21st century and ought to be represented in this Bill.

I have read the objections of the Minister in the other place to allowing electronic voting to take place

in industrial ballots and other trade union elections. He quoted from the Speaker's Commission on Digital Democracy, which recommended not introducing e-voting yet on the grounds that e-voting equipment could not be trusted—that electronic voting software is not accountable and its complexity makes voting insecure. It strikes me that the Speaker's Commission was looking at UK national elections and European elections, so the issue of trade union elections was not actually relevant. Even so, its recommendation 26 says that secure systems for electronic voting should be an option for voters in the 2020 general election.

5 pm

Like my noble friend Lord Kerslake, I have spoken to Electronic Reform Services. As he said, it has supervised elections involving 400 organisations, and of course the Conservative Party used electronic voting in its own primaries for the London mayoral elections. If electronic voting is fine for these organisations, surely it should be considered for trade union elections as well. I also understand that, under the previous coalition Government, work was commissioned by the then BIS Secretary, Vince Cable, to investigate whether e-voting for trade unions was viable. I would be grateful if the Minister let the House know the findings of that work.

The noble Lord, Lord King, expressed his concern about how insecure electronic voting could be. Amendment 20 is a convincing response to any fears there might be about trade union e-voting being insecure, and whether the systems would be accountable. The Minister in the other place said he was willing to discuss practical objections with opposition parties, and anyone else in society, to overcome those objections. This amendment is a very good basis for such discussions.

Electronic Reform Services has indeed brought out a report, which seems to work very well with paragraphs (a) to (e) of new subsection 6 in the amendment. It has a voting system that could be made secure by separating the database used for the distribution of voter information from the database of the system used to store the votes that have been cast electronically. In that way, ERS can ensure that the voter's identity is separated from their preference, as currently happens with postal votes in public elections. It can also ensure that the identity of the voter is authenticated by issuing randomly generated single-use security codes to enable them to access the electronic voting system. Alternatively, voters could provide personal identifiers such as dates of birth and membership numbers, but the former has been recommended as less open to manipulation.

New subsection 6(c) would work very well with ERS's suggestion that security codes be sent only to the email address registered by the voter, a method that could be enhanced by delivering part of the authentication by a separate means—by email or by post. However, ERS points out that splitting information can be problematic. Through new subsection 6(e), we could ensure that the software system used for electronic voting was built independently using industrial standards, and regularly tested by an approved vendor.

These measures have been good enough for the millions of votes cast electronically over the past few years, and for the Government's own party's elections

in the London mayoral elections, so surely this method would be good enough to ensure a high turnout for trade union votes. I commend the amendment to your Lordships' House in the name of democracy.

Lord Dobbs (Con): My Lords, I must apologise to the House. My head is full of cold, and if I expire half way through my remarks I know that at least I shall have the support of a large number of your Lordships in that. I shall be mercifully short.

I have listened carefully to this interesting debate. I hope that the noble Lord, Lord Oates, was wrong when he said in promoting his amendment that the Government were opposed to electronic voting. I trust that they are certainly not opposed in principle; it is more that they have not yet been persuaded of its practicality. That is an important distinction.

The noble Lord, Lord Monks, said that surely any system should be right provided that the balloting method is secure and can be trusted. I think we can all agree with that; the question is what that method should be. Anyone who can remember the remarks I made at Second Reading will know that I am generally in favour of e-voting. Postal balloting itself has scarcely been known for its security in many areas. We simply need to get on with it and find the right practical decision.

The amendment in the name of the noble Lord, Lord Kerslake, has a fundamental flaw. It makes the threshold provisions of subsection (1), which I think are hugely important, consequential on the means of voting. The noble Lord, Lord King, has pointed out the flaw. It is as if the means of voting are more important than the principle of voting itself. I do not think that that is good enough.

The threshold provisions are a manifesto commitment of the Government. I am a little prejudiced—sceptical—about manifesto commitments. We all know how much work goes into manifestos and we all toil away as parties to get to the right sort of provisions. We then ask ourselves how on earth we get anybody to read it and take notice of it. This simple argument—that because a manifesto contains something, it inevitably must pass into law because it has the support of the people—can be stretched too far. When I was responsible for these things in Conservative Central Office back in the 1980s, faced with the problems of trying to get our manifesto publicised and read, we came to the conclusion that the only way to do so was to leak it to the *Guardian*, where it ended up on the front page. Nevertheless, we are talking about a clear public commitment of the Government, made in a manner that would satisfy the Government of any political persuasion.

I hope and expect the Government will take away the comments that have been made this afternoon in a very serious and sensible fashion, bang them about a bit, get it right and make it work, so that we have the safest possible mechanism to get the maximum turnout in any ballot. By putting the cart before the horse—the mechanism above the principle—the amendment is not helpful and is not the way to go. Although I support many of the details that have been expressed in support of the amendment, I myself cannot support it.

Lord Stoneham of Droxford (LD): My Lords, I support the amendments and in particular Amendment 21.

In my working career there has been a huge improvement in achieving a democratic mandate for strike action. The House has made the point that strikes are an action of last resort and it is important that whatever mandate is achieved for that strike should have the biggest and most representative turnouts.

If your Lordships look at the ballots and strikes that we have had in recent years—they have decreased in number, which is good—you will see that about 50% have already been achieving 50% turnouts. There has been a huge improvement in the way in which the ballots are conducted, certainly compared with the experience that the noble Lord, Lord King, talked about. We know that a very important social development took place at that time. There was a reaction against the intimidation of the factory gate meetings, but also in unions themselves a big change was going on because people were not attending branch meetings. As a result, those unions that depended on branch meetings to determine strike action were not fully representative.

I remember as a young graduate working for Sid Weighell in the National Union of Railwaymen going along to the No. 1 Euston branch of the NUR on the eve of a one-day strike, which was an action against the Conservative Government's plans for transport at the time. It was remarkable—there was a room for 50 people, but there were 200 people queuing outside to come in. The branch secretary who was presiding was in a fluster and very bad tempered as to why all these people were suddenly turning up for a branch meeting when they had never come before. The following day, there was an action and Sid Weighell sent me there to find out how representative the feeling was in the union. Clearly, the reason people were turning up was because they did not want the one-day strike to continue.

Anyway, we then introduced postal ballots. We have had long experience that they are secure. We have good experience of them. Fundamentally, they have independent scrutineers to ensure that they are fair and representative, and we have 25 or 30 years' experience of them. However, there is one problem—that the turnout in postal ballots is still not as high as we would like. If we have this threshold, trade unions will have to work harder to get the turnout up, and they will. They will be able to do second mailings and will use all sorts of means to encourage turnout and make sure that people vote in these important ballots. As we know is the case in general elections, people do not vote when they think that the outcome is predictable but they do vote when it is close, and the unions will be able to get this turnout. I am sure that they will use things such as second mailings and emails to get the turnout up.

The noble Lord, Lord Dobbs, was right to say that in the other place the Minister said that he was not convinced about the practicality—he used the Speaker's commission for that. However, that is unrealistic, because the numbers involved in national elections are vast compared with the numbers in ballots for this sort of strike. Therefore, we need to look at the idea of extending the different ways of voting and it is right that we should also now look at workplace balloting. If there are independent scrutineers, there is no reason why that should not be secure as well.

[LORD STONEHAM OF DROXFORD]

There has been quite a social change. People are willing to use emails and digitisation to vote, and organisations are already doing that. That will help the turnout.

I do not think that we should consider putting a burden on the unions to get turnout up if we do not help them to do it. That seems to be a fundamental principle, and it will have a benefit. My experience is limited but I am sure that unions already use email addresses. If they go in for electronic voting, they will have to extend email use, and that will improve communication and turnout.

The CAC is already using a variety of methods to test people's views on recognition, as has been mentioned in this debate. It deals with very sensitive issues. As those experienced in union processes will know, recognition is one of the most bitterly contested issues because employers are sometimes concerned to stop it and the unions are determined to get it. So these are very sensitive ballots and the CAC now has experience of using not just postal ballots but workplace ballots and electronic voting. Therefore, we support the changes proposed in the amendments.

In ending my remarks, I have three questions for the Minister. First, have the Government and Ministers had conversations with the Central Arbitration Committee about the processes used to improve turnout in ballots? Secondly, do the Government not think that the whole digitisation strategy means that, in all sorts of processes, electronic voting is the next stage in extending the voting process in all sorts of organisations? My final question, which is an abrupt one, is: is the Conservative Party satisfied that it had a fair election for its mayoral candidate in London when it used the sorts of processes advocated in these amendments?

Lord Collins of Highbury (Lab): My Lords, the first question for me is: will minimum thresholds for industrial action ballots improve democracy in the workplace? If postal voting remains the only option available to trade unions wishing to ballot their members, the answer must be no, and that is because, putting aside the question of whether the introduction of statutory thresholds is desirable, it is in the interests of trade unions and employers for a ballot properly to reflect the opinions of workers. I appreciate and thank—

A noble Lord: The right reverend Prelate?

Lord Collins of Highbury: No. I was thinking of the noble Lord, Lord Pannick, and trying to think of the correct term for the legal profession—but in fact I do not need to do that. I hate breaching protocol. The noble Lord, Lord Pannick, makes a very valid point in this debate: whatever our opinions of thresholds—and this is where the Government will, I hope, think hard about what the noble Lord said—it will undermine the Government's position, if there is a legal challenge, by denying the opportunity for unions to ensure that there is a full turnout in the vote. So it is incumbent on the Government, in my opinion, to think hard about whether they can push through thresholds without allowing unions to consider other secure methods of voting.

5.15 pm

I think that the Government's response surely must be to see that the best way of increasing participation in union democracy would be to bring ballots into the 21st century by permitting the use of electronic and workplace ballots. Unions are the only organisation in the UK that are legally required to hold postal-only ballots. Postal ballots tend to be more expensive and lead to lower turnout. Postal-only ballots can also unnecessarily extend the voting period. Again, this is an important issue in industrial democracy and industrial action. Faster and equally secure balloting methods could support the earlier resolution of disputes and would also increase participation in union democracy. In answer to the question from the noble Lord, Lord Dobbs, clearly the method of voting is a critical factor in participation. The evidence we have is that where unions have the ability to run secure workplace ballots, turnout increases.

What the noble Lord, Lord King, failed to mention in his contribution is that unions are now permitted to use workplace ballots for statutory recognition purposes. That is a very important and vital element to the success of an enterprise: whether a union is recognised. I would say that it would be for the benefit of an enterprise, but maybe the owners of the enterprise would have a different view. But workplace ballots are permitted in these circumstances. We are not talking about going back to the 1970s, with a show of hands and decisions being made at the gate. We are talking about new and modern methods of balloting.

In CAC recognition ballots, individuals vote using paper ballots and secure ballot boxes, and that is overseen by a qualified independent person. Average turnout is significantly higher in workplace ballots, at 88%, than all postal ballots, where the average is 71.6%. Also, there is no evidence that individuals feel pressurised to vote in support of union recognition where workplace ballots take place. Since 2004, the CAC has received a total of only seven complaints of unfair practices during statutory recognition ballots, none of which was upheld.

Can we be assured that secure workplace ballots will not be open to abuse? Electoral Reform Services, which is highly experienced in running industrial ballots, confirms that it is perfectly possible to run workplace ballots that are secret and secure against any possibility of fraud or intimidation. Amendments 19 and 21 in this group, which I have put my name to, would ensure that all ballot methods are confirmed by a scrutineer as safe and secure before they take place. All ballots would be monitored during the process and all outcomes declared safe by the scrutineer. The union would also be required to comply with any recommendations made by the scrutineer.

Amendment 19, in my name and that of my noble friend Lord Mendelsohn, keeps the responsibility for the conduct and integrity of the ballot with the existing statutory independent scrutineer, but we recognise that the CAC has experience of statutory workplace recognition ballots, and such expertise should be available to the scrutineer. Existing legislation already requires that scrutineers must be independent of unions. BIS maintains a statutory list of approved scrutineers, and

the vast majority of industrial action ballots are overseen by organisations on that list—primarily by Electoral Reform Services.

When a workplace ballot, or any other ballot, is conducted, it is important for employers to have a duty to co-operate with the ballot, as they have in relation to statutory recognition ballots. This could include a duty for employers to work closely with balloting agencies to ensure that company firewalls do not prevent union emails reaching members and that websites are not blocked. This co-operation is already common practice in workplaces holding elections for staff associations, and for information and consultation. Spaces should also be provided for voting free from surveillance by management, and employers should have a duty to ensure that union members can vote free from interference or constraint. Of course, this duty mirrors the existing duty on unions and is therefore even-handed.

As we have heard in the debate, we are not alone in supporting the use of electronic and workplace balloting methods. As the noble Lord, Lord Balfe, said, even the Institute of Directors has long held the view that unions should be permitted to use electronic voting. Its 2012 policy paper stated,

“Provided that a fair and transparent system of electronic voting can be delivered, there is no reason why—in return for asking for a higher level of legitimacy—the union movement should not be allowed to embrace technological advances”.

I stress the words,

“a higher level of legitimacy”.

Surely that is what the Government are after in imposing thresholds. If they want to ensure that the case for thresholds is sustainable, they should consider the reasonable requests made in the amendments.

The case for electronic ballots has been strongly put in the debate. According to the latest Ofcom figures, 83% of people now have access to broadband and 66% of households own a smartphone. These figures are much higher among those of working age. There is also a growing expectation that individuals should be able to vote electronically in elections. The 2014 Electoral Commission survey found that 42% of respondents felt online voting would increase confidence in the way that elections are run in the UK. These views are particularly prevalent among younger people.

A further indication of the appetite among the British public to digitise democracy is shown by the Government's own voter registration data. Between the launch of online registration in June 2014 and October 2015, 12 million people registered to vote online. Online balloting can be safe and secure, much like online banking. It is already used for a variety of purposes in both the public and the private sector.

As we have already heard, the Government are proactive in extending digitisation. The Minister has prime responsibility for that, so it is a pity she cannot turn that responsibility away from businesses alone and focus on the needs of workers, too. As the noble Viscount, Lord Colville, pointed out, political parties use electronic voting. Most recently, the Conservatives utilised online voting in the selection of their London mayoral candidate. More than 9,000 people recorded votes on line in that ballot.

As the noble Lord, Lord Kerslake, highlighted, the Government are increasingly committed to digitisation of government services. Citizens are required now to make changes to their driving licences, pay vehicle excise duty and renew their tax credits—and, in the future, apply for universal credit—online. According to the Government Digital Service, 85% of tax returns are now filed online. On concerns that people are not used to it or are not accepting it, the key point is that people are asking for it.

That is when we come to this debate. The ability of people to exercise their responsibility will be governed by the options of secure voting. While I am satisfied that there is sufficient evidence for the introduction of secure alternative methods of balloting, I accept that if this proposal for a range of secure balloting methods was reviewed and examined by a totally independent source, such as the CAC, others may be more readily convinced than me. This is one measure the Government must surely consider appropriate. They should not sit back and delay but instigate quickly proper measures to ensure a system of alternative secure methods of voting. That is why I, too, support the amendment of the noble Lord, Lord Kerslake.

I hear what noble Lords have said, particularly the noble Lord, Lord Dobbs, about whether the issue of security is acting as a barrier to the introduction of a commitment in the manifesto. I believe that if the commitment in the manifesto was to be made secure, then the Government would commit to do this first. It sustains the Government's argument. Of course, in another group I shall be arguing the complete opposite but, for the purpose of this issue, it is important that there is a reasoned and responsible response from the Government. I hope the Minister will engage in an open and constructive debate on this specific aspect of the Bill to ensure that we end up with a system that creates greater participation.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe) (Con):

My Lords, I thank the noble Lord, Lord Kerslake, for his amendments and for bringing his wide experience of the public sector to this matter. I welcome new voices and new participants to our debate. We have heard from the noble Lords, Lord Oates and Lord Pannick, the noble and learned Lord, Lord Brown of Eaton-under-Heywood, the right reverend Prelate the Bishop of Chester and the noble Viscount, Lord Colville of Culross. It is good to have lots of people involved in our debate.

The essence of the Bill is to improve fairness and to protect the public from disruptive and undemocratic strike action. As this is the first day in Committee, I want to say that we will be in listening mode.

Let me turn to the subject of these amendments—electronic balloting—which was not in our manifesto, as my noble friend Lord Balfe pointed out. However, let me be clear that the Government have no objection in principle to electronic voting; indeed, we are encouraging a huge programme of digitalisation of the economy as a government. We are moving with the times, in the

[BARONESS NEVILLE-ROLFE]

words of my noble friend Lord Cormack. It is an area of mutual interest to me and the noble Lord, Lord Collins of Highbury.

However, it is vital that union members, employees, and the public have utmost confidence in ballot processes. Without that, of course, the integrity of the whole system is called into question. Members will not use it, unions will not rely on it, and employers and the public will not trust it. That is not in anyone's interest.

5.30 pm

I should at this point reply to the noble Viscount, Lord Colville of Culross, and say that the former Secretary of State's group was looking into the very issues that we are concerned about today, on legitimacy, safety and security of voting. It is clear from this work and from the various reports published on this matter that some important issues still need to be explored further.

The noble Lord, Lord Kerslake, made this point neatly in the types of issue he outlined and wrote into his amendment. These are the matters that the Government have said need further consideration. Although there are more: I believe the amendment fails to address the security issues, such as hacking and malicious attacks, which my noble friend Lord King emphasised. I note that the noble Lord, Lord Kerslake, proposes the use of the Central Arbitration Committee, also mentioned by the noble Lords, Lord Lea of Crondall, and Lord Dykes, but it has no experience of industrial action or electronic balloting. The noble Lord acknowledged that today, but I am not sure that allowing it to bring in an expert quite does it for me.

Lord Collins of Highbury: I am not keen to stop the flow here, but does the noble Baroness not recognise that the CAC does have experience of workplace ballots, statutory recognition ballots? They are not a minor matter for those balloting or, for that matter, the companies subject to those ballots. Does she feel that those are somehow insecure or not valid because they are conducted in the workplace, overseen by the CAC?

Baroness Neville-Rolfe: That is a different matter. To respond to the question that was asked, we are in fact in contact with the CAC, but to bring in electronic balloting, as I have said, you need to be clear that the matter is extremely carefully addressed. A key area is to ensure that the electronic system correctly establishes an individual's eligibility to vote. It has to capture the vote accurately while at the same time protecting the individual from being identified. The system needs—and I think there will be a lot of agreement on these points—to be both anonymous, to preserve individual privacy and secrecy, and accountable, to guard against malpractice and fraud.

Baroness Armstrong of Hill Top (Lab): Is the noble Baroness therefore questioning ballots such as the one in Durham, which finished last weekend, on whether the population want to accept the Northern powerhouse? Is she saying that such ballots, because they include online voting, are not legitimate and should be rejected?

Baroness Neville-Rolfe: If the noble Baroness will let me make a bit of progress, I am going to address the difference in good order. Obviously, avoiding malpractice and fraud is absolutely critical. I will explain why. There are many respectable organisations that were mentioned this evening, such as the National Trust, that choose to use electronic means to capture votes. However, strikes have a huge effect on our public services and can cause enormous problems for hardworking people. We heard a number of examples at Second Reading.

The public sector strikes in 2011 closed 62% of the schools in England and led the NHS to cancel tens of thousands of operations. We therefore need people to have confidence both in the way the ballot is conducted and in the outcome obtained. Thresholds will provide the level of confidence we need in the outcome that is currently lacking, but the method of voting is a separate matter. Postal ballots already provide appropriate confidence in the way the ballot is conducted, though there have been comments today about them. I note what the noble Lord, Lord Collins, said about postal voting, but the Government recognise this, which is why we do not object in principle to electronic balloting.

John Cridland, the then director-general of the CBI, spoke to the Public Bill Committee, which discussed this matter at some length, as I am sure you know. On thresholds, he said:

"I think the provisions in the Bill that are of most concern to businesses are those that ensure that where there is strike action ... it reflects a significant voice from the workforce ... In principle, I think these are the right provisions".

On e-balloting, he said that,

"we do not think at the moment the evidence is there that e-balloting can be secure and effective. We do not have a problem in principle with e-balloting, but it is probably premature to have it available ... The need to protect the privacy of an individual trade-union member voting is important to their employer, and we would want more assurance that that could be effectively conducted".—[*Official Report, Commons, Trade Union Bill Committee*, 13/10/15; col. 6.]

Perhaps this is the point at which I should respond to the noble and learned Lord, Lord Brown of Eaton-under-Heywood—

Lord Mendelsohn (Lab): John Cridland did make the point that he was unclear that there was sufficient assurance that the personal details could be maintained, although all companies now put their individuals' records in electronic form. He never explained any of the duality of that particular point, nor did he go into detail as to why they were more at threat than any other form of individual record. By way of contrast, at the same committee, Dr Marshall from the British Chambers of Commerce said this matter could be dealt with, so I was very dubious as to the evidential basis of John Cridland's comments. Can the Minister shine any light on that, rather than just quoting his opinion?

Baroness Neville-Rolfe: I think different people have different opinions on this matter; as the amendment of the noble Lord, Lord Kerslake, recognises, there are issues that need to be looked at.

I think there is recognition on all sides of the House that checks and safeguards are essential to any electronic balloting process. The noble Lord, Lord Balfe, made

this point admirably in his amendment. It is clear from today's debate that noble Lords have given this issue very serious consideration. I have listened very carefully to the points that have been made, and in particular to all the ideas that noble Lords have put forward from all sides of the House. They have expressed their concerns on how to conduct safe and secure electronic ballots for trade unions. I will take a little time to reflect on these points.

In saying that, I want to be clear that it is modernisation of voting systems to which we have no objection in principle. As a Digital Minister, I can say with conviction that online is the way forward, but I agree with my noble friend Lord King of Bridgwater that workplace balloting would be a regressive step. We must not lose sight of the fact that, however well supervised the ballot, people still need to get to it. That, unfortunately, provides scope for them to be under pressure of influence or intimidation.

Therefore, while we are keen to explore how to make electronic balloting work, we are not convinced that we could provide, especially in high-profile ballots, sufficient protection for employees voting in the workplace—that is, the protection of privacy and from the risk of intimidation or other influence, be it from the employer or the union.

The noble Lord, Lord Monks, was concerned that the practical effect of the thresholds would stop strikes taking place, and that results of other ballots in different areas would not have been legitimate had these thresholds been required. He quoted elections from the other place and, of course, those of the police and crime commissioners. However, the important point relating to all the examples given by noble Lords is that this is not a fair comparison. Everyone could participate freely in these elections and have a democratic say on the outcome. By contrast, only union members are eligible to vote in ballots for strike action and large numbers of people who do not get a say are affected by the outcome. It seems right that stronger support is required for strike action.

The Lord Bishop of Chester: My Lords, I am reluctant to intervene and I do not normally, but I am genuinely puzzled by the arguments. Apply all this to the choice of the Conservative candidate for the Mayor of London, which was done electronically: was that not a significant choice? Could it not have a big impact on working people? There seems to be something not quite joined up in the thinking expressed.

Baroness Neville-Rolfe: I thank the right reverend Prelate, but I see it as different. The difference is that strikes have a huge effect on our public services and can cause significant disruption for hard-working people. We are legislating here not for the mayoralty of London, but for industrial relations. Statutory ballots require strong assurance on issues such as legitimacy, safety and security of voting.

The noble Lord, Lord Monks, mentioned that Germany and Denmark use thresholds and that these are not tied to particular ways of voting. However, I do not think that it is helpful to compare UK law and that of other countries when the context of each is so different. It is clear that all the relevant international treaties require national laws to be considered.

Finally in that connection, the noble Lord, Lord Pannick, suggested that the proportionality of the proposed thresholds might be vulnerable to challenge were the Government to refuse to allow e-balloting. I note that he acknowledges that thresholds are a proportionate response, given the widespread impact of strikes on the public. I repeat what I have said twice now: we have no objection in principle to electronic methods of balloting, but we need to be reassured on issues of legitimacy, safety and security of voting.

Lord Pannick: I am grateful to the noble Baroness. All noble Lords now live their lives electronically. I exempt the noble Lord, Lord Cormack, from that, but the rest of us shop, bank and conduct any number of transactions electronically. What is it about a trade union ballot that exempts it from principles that are commonplace in society nowadays?

Baroness Neville-Rolfe: My Lords, the simple point is that we need to be assured that the electronic ballot will give us a safe and secure outcome. I have heard from many noble Lords, including my noble friend Lord King, whose conclusion I agree with, that the fullest turnout is the best safeguard against a wrong result. Frankly, that has been the spirit of several comments this evening. I want to ensure that we take fully into account noble Lords' detailed knowledge of these matters and experience of how we can get round the difficulties on electronic balloting. I want to reflect further on the very excellent arguments we heard today. I ask noble Lords not to press their amendments.

Lord Stoneham of Droxford: Before the noble Baroness sits down, I am sorry, but I asked three questions, none of which has been answered. I will not go into all three, but first, have the Government talked about the CAC's experience of dealing with workplace ballots? Secondly, will she tell us whether the Conservative Party regards the ballot it recently had for its mayoral candidate as safe and secure?

Baroness Neville-Rolfe: My Lords, I did try to answer in passing the noble Lord's questions. I think that I answered all three of them. We are satisfied that the arrangements used in London were appropriate for the purpose, but as I have sought to explain, this is a little different. We need to reflect further on the best way to conduct electronic balloting, which we have agreed to in principle.

5.45 pm

Lord Kerslake: My Lords, I am grateful to the Minister for her response, in particular her undertaking to reflect further on these issues. There were a large number of contributions—I counted a total of 17; I may have missed some—for which I am very grateful to the House. Recognising the length of the debate, and the fact that there are urgent debates to follow, I will not go through every one of those contributions. I ask noble Lords to bear with me. I shall highlight some of the key points.

There is absolute common agreement in the House about the need to maximise engagement. Nobody is arguing about this. There is absolute agreement in the

[LORD KERSLAKE]

House, including from the Minister, who spoke just a minute ago, about the principle of using digital means to carry out activities. There is no doubt about that point either. We are left with one question: can it be established that you can do this in a secure way? As a large number of Members said, there is ample evidence of very important transactions that are done securely. They do not get more important than how you manage your banking; perhaps with the exception of the noble Lord, Lord Cormack, a lot of us use that method. The crucial point I make is that we do very important and serious things through electronic means. I cannot believe that it is beyond the wit of the House, and, indeed, of the Government, to find ways to ballot for industrial action in the same way.

Lord King of Bridgwater: Would the noble Lord not agree that anybody who has an understanding of the situation in the internet world and its security knows that every responsible bank is extremely worried about being able to maintain security? There are current stories of major companies that have had huge losses of information about their customers. I say to the noble Lord that the ballot on the Mayor of London was a little time back. We need to ensure that we have a fresh look at this in the current climate of risks to security.

Lord Kerslake: The noble Lord is absolutely right that cybersecurity is critical. Indeed, I was going to come on to that. It is critical across every aspect of digital technology and use of digital systems. In fact, many security systems in this country are highly dependent on tackling cybersecurity issues. There is no doubt that we need to deal with it. I venture to suggest that, in comparison with those risks and issues, the risks associated with electronic balloting for potential strike action may not be quite as big.

The noble Lord, Lord Pannick, made a powerful argument about how this issue sits in the wider context of balance and proportionality as the Bill is taken forward. We are applying quite significant thresholds. Have we done everything possible to enable unions to achieve that turnout? Are we acting in a proportionate and balanced way? That is critical. In many ways, the amendment may well save the Government from themselves and a potential successful legal challenge in the future.

I will finish with two points. First, the whole purpose of my amendment is to actively and independently look at issues of security. I am 100% persuaded that we can have sufficiently secure electronic balloting, and, indeed, workplace balloting, which, as has been said, happens now through the CAC. Secondly, the purpose of my amendment is to look at this issue through an independent process. Let us not put it above the principle of thresholds, as the noble Lord, Lord Dobbs, said, but if we put these thresholds in place, we should reasonably and independently explore the question and report back to the House.

This is most definitely not a manoeuvre to delay the Bill. In fact, I have put a time limit of two months in which to carry out the work, which should be more than ample to do work of this nature. Therefore, this is

not about saying that we have definitive answers—although I personally think we do—but that we should properly and independently test this issue.

My last point goes to the argument made by the right reverend Prelate the Bishop of Chester. Ultimately, this is about fairness. Are we acting in a fair way in the changes we are making, which affect a very important issue in this country: the right to strike? That should be our determination and, if we believe that that is the core of this issue, the amendment is entirely reasonable. I really hope the Minister will think about how we might do this. Given her very constructive commitment to think seriously about this issue, I will of course withdraw the amendment and hope to have further conversations on this issue.

Lord Balfe: Before the noble Lord sits down, we have of course discussed five different amendments. My amendment says that a trade union may only use electronic voting,

“subject to the agreement of the Certification Officer”,

which would obviously be if the system was secure. So I draw the noble Lord’s attention to the fact that the Minister has many different options to choose from, as well as his own very well-drafted, crafted and spoken to amendment. The principle of electronic balloting is at the heart of this debate.

Lord Kerslake: The noble Lord, Lord Balfe, makes a very powerful point. I entirely agree that the aim here is to be able to say, by the point at which we introduce these thresholds, that we have given the widest range of choices. That is where we are trying to get to. If there are alternative ways of doing it, I am very open to that conversation. That is why I am willing to withdraw the amendment at this point, and to continue that conversation. It will not be good enough simply to let the issue drift and return to it as and when appropriate. We need to sort it out now, as part of the Bill.

Amendment 1 withdrawn.

Clause 2 agreed.

House resumed.

Junior Doctors *Statement*

5.52 pm

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, with the leave of the House, I shall now repeat in the form of a Statement the Answer to an Urgent Question on junior doctor contracts given in the other place by my honourable friend the Minister for Care Quality. The Statement is as follows:

“Mr Speaker, I will be delighted to update the House on the junior doctors’ proposed industrial action.

This Government were elected on a mandate to provide for the NHS the resources it asked for and to make our NHS a truly seven-day service. The provision of consistent clinical standards on every day of the week demands better weekend support services, such as physiotherapy, pharmacy and diagnostic scans, better

seven-day social care services to facilitate weekend discharge, and better primary care access to help tackle avoidable weekend admissions.

However, consistent seven-day services also demand reform of staff contracts, including those of junior doctors, to help hospitals roster clinicians in a way that matches patient demand more evenly across every day of the week. In October 2014 the BMA withdrew from talks on reforming the junior doctors' contract and, despite the Government asking them to return, did not start talking again until the end of November last year, in talks facilitated by ACAS. Throughout December we made very good progress on a wide range of issues and reached agreement on the vast majority of the BMA's concerns.

Regrettably, we did not come to an agreement on two substantive issues, including weekend pay rates, so, following strike action last month, the Secretary of State appointed Sir David Dalton, one of our most respected NHS chief executives, to take negotiations forward on behalf of the NHS. Further progress has been made under Sir David's leadership, particularly in areas relating to safety and training. However, despite agreeing at ACAS to negotiate on the issue of weekend pay rates, Sir David Dalton has advised us that the BMA has refused to discuss a negotiated solution on Saturday pay.

In his letter to the Secretary of State last week Sir David stated:

'Given that we have made such good progress over the last 3 weeks—and are very nearly there on all but the pay points—it is very disappointing that the BMA continues to refuse to negotiate on the issue of unsocial hours payment. I note that in the ACAS agreement of 30 November, both parties agreed to negotiate on the number of hours designated as plain time and I hope that the BMA will still agree to do that'.

The Government are clear that our door remains open for further discussion and we continue to urge the BMA to return to the table. Regrettably, the BMA is instead proceeding with strike action over a 24-hour period from 8 am this Wednesday. Robust contingency planning has been taking place to try to minimise the risk of harm to the public, but I regret to inform the House that latest estimates suggest 2,884 operations have been cancelled. I hope honourable Members from all sides of the House will join me in urging the BMA to put patients first, call off its damaging strike action and work with us to ensure we can offer patients consistent standards of care every day of the week".

5.56 pm

Lord Hunt of Kings Heath (Lab): My Lords, I am grateful to the Minister for repeating the Answer given in the other place. Clearly, the current situation is very worrying and we all want a speedy resolution of it, but I have three quick points to put to the Minister. First, he will know that imposing a contract which the overwhelming majority of junior doctors oppose risks industrial action further than that to which he has referred tonight, and more anger among NHS staff at a time when morale is low. If a new contract cannot be agreed, will he now rule out imposing one?

Secondly, the Minister knows that much of the angst among junior doctors has been caused by the Health Secretary's repeated attempts to conflate reform

of the junior doctor contract with the issue of a seven-day NHS. Will the Minister tell the House, for the record, which hospital chief executives have told the Government that the junior doctor contract is a barrier to seven-day service working? Will he tell me why this Health Secretary has gone out of his way to pick a fight with the very people who are already working across seven days?

The Minister is very well acquainted with the NHS and, indeed, with the views of junior doctors, with whom I know he keeps in very close touch. Does he not consider it absolutely appalling that these hugely important people, on whom the health service is going to depend for the next 20 or 30 years, have been so upset by the Health Secretary's approach that they feel such estrangement from the NHS? Does he not think that the Government need to completely reset this process and what they have been saying about junior doctors and seven-day working, to get a proper resolution of this dispute?

Lord Prior of Brampton: My Lords, the noble Lord said he had three questions; I think there were only two questions there, which is unusual, if I may say so. We do not want to impose a contract. We want the BMA to come back and continue the talks and we still hope that that will happen. Clearly, imposing a contract is not what we ever wanted to do when this whole process started. As was said in the Statement, the Secretary of State's door is open and we hope that we can resolve these difficult issues in a negotiated, consensual way.

On the noble Lord's second question, he rightly said that this is an appalling situation, but actually I describe it more as a tragedy. Let me quote from a trainee doctor:

"I feel undermined and not valued at work and I have seen how this flagging morale among colleagues has caused more than ever to leave the profession. It is a hard job that takes dedication and stamina to continue. But as we are criticised and treated as 'cogs in a wheel' rather than as individual professionals, I think we will see ever increasing numbers of people leaving this profession".

That was in 2005, after the contract came in. The issues facing the junior doctors go back a long way. It is not just about plain time on Saturdays or this particular contract but about how we value, reward, train and trust junior doctors. That is the issue we must come to when the current dispute is resolved.

Baroness Walmsley (LD): My Lords, I think that the Minister did not answer the question from the noble Lord, Lord Hunt, about which hospital chief executives believe that the junior doctors' contract is what is getting in the way of seven-day services. Surely the state of primary care, which is stretched all over the country, and the lack of diagnostics, laboratory services, X-rays and so on in hospitals are much more significant.

My own question is about plain time, which I believe is the sticking point. It occurs to me that the best way of ensuring patient safety is to make sure that we do not have tired doctors. Can the Minister convince me about the fact that we are being told that junior doctors will not have to work any more hours than they do now? If you are extending plain time from

[BARONESS WALMSLEY]

8 am until 10 pm, instead of 7 pm, and into Saturdays, then it strikes me as quite possible that they will work much longer hours. I would be very interested to know what the average working week of a junior doctor is now compared to 20 years ago, because it strikes me that we are in danger of going backwards.

Lord Prior of Brampton: My Lords, I apologise for not replying to the question earlier about the number of chief execs. The point is that this is not just about junior doctors; I think we all understand that totally. We are hoping to have more primary care, more social care, more diagnostics and more senior consultant cover at weekends, which will support junior doctors and make their lives better at night time and over the weekend. As far as the hours are concerned, the new contract proposal puts far greater safeguards over the amount of time that junior doctors will be working. I think that is largely accepted by the junior doctors. Going forward, the maximum number of consecutive nights will be down from seven to four; the maximum number of long shifts—that is, over 10 hours—will be down from seven to five; the number of consecutive late shifts will be down from 12. We are putting in those safeguards to ensure that we do not go back to the bad old days of very long hours. They were the bad old days on one level but if you actually talk to most doctors, they did get tired and it affected safety but it built a sense of teamwork, camaraderie and purpose in hospitals. We need to be careful about rubbishing the old days when they built up a lot of really serious, good professional work.

Lord Warner (Non-Affl): My Lords, can the Minister clarify whether this dispute has to be settled within the Government's pay guidelines of a 1% annual increase for the rest of this Parliament?

Lord Prior of Brampton: It was always agreed that the package offered to junior doctors would be cost-neutral.

Lord Lansley (Con): My Lords, does my noble friend the Minister recall, as I do, that it was a Conservative Administration who introduced the new deal for junior doctors and established a process by which unsafe, excessive hours for doctors were not to be pursued? That started happening in the early 1990s and no one is thinking that we would go back to that. I was delighted that my noble friend was able to make it clear how the negotiations can introduce additional guarantees about not having unsafe hours for junior doctors. However, I put it to him that at this stage in the negotiations there may be an alternative approach—an objective of enabling seven-day rostering for junior doctors, in this instance but also more widely, and an overall financial envelope. It might be put to the BMA that rather than it standing aside from the negotiations, it should take responsibility and say how it proposed that junior doctors should be remunerated within that financial envelope to meet those objectives.

Lord Prior of Brampton: My Lords, we certainly do not want to go back to the days when junior doctors were working very long and unsafe hours but nor

should we ignore the fact that they do not, by and large, like being treated as shift workers. The continuity of care is very important to most professional doctors. As for the actual negotiations, I have not been directly involved with them so I do not know to what extent the junior doctors have been asked to consider what my noble friend Lord Lansley has suggested. However, what he says has much merit.

Baroness McIntosh of Hudnall (Lab): May I take the Minister back to an answer which I think he gave to the noble Baroness, Lady Walmsley? He referred to his hope that other medical professionals will in due course be included in seven-day working in order, as I think he put it, to support the junior doctors. Can he say whether those people who are involved in the lab work, the diagnostics and so forth will also be asked to work on contracts comparable to those which the junior doctors are currently being asked to accept?

Lord Prior of Brampton: My Lords, I think that they will be different for different people but we already have seven-day working in some of our hospitals. Salford Royal is a case in point where we have a lot of seven-day working. This is something which will evolve over the next three years.

Syria Statement

6.06 pm

The Parliamentary Under-Secretary of State, Department for International Development (Baroness Verma) (Con): My Lords, with the leave of the House, I will now repeat a Statement made in the other place earlier today by my right honourable friend the Secretary of State for International Development. The Statement is as follows.

“With permission, Mr Speaker, I shall make a Statement updating the House on the recent Syria conference, which the UK co-hosted with Kuwait, Norway, Germany and the United Nations last Thursday. For nearly five years, the Syrian people have suffered unimaginable horrors at the hands of the Assad regime and, more recently, Daesh. Inside Syria, there are 13.5 million people in desperate need and a further 4.6 million people have become refugees. As we have seen over the past 72 hours alone, the impact of this crisis on the people of the region is terrible and profound.

I was in Lebanon and Jordan last month and spoke to refugees, some of whom are now facing their fifth winter spent under a tent. Their stories are similar: when they left their homes, they thought that they would be back in weeks or perhaps months at most. It has turned out to be years, with no end in sight. Syria is now not only the world's biggest and most urgent humanitarian crisis; its far-reaching consequences are being felt across Europe and touching our lives in Britain. More than 1 million refugees and migrants risked their lives crossing the Mediterranean last year. Of these, around half were fleeing from the bloodbath in Syria.

Since the fighting began, Britain has been at the forefront of the humanitarian response to the Syrian conflict. Aid from the UK is helping to provide food for people inside Syria every month, as well as clean water and sanitation for hundreds of thousands of refugees across the region. Our work on the Syrian crisis gives people in the region hope for a better future and is also firmly in Britain's national interest. Without British aid, hundreds of thousands more refugees could feel that they have no alternative but to risk their lives by seeking to get to Europe.

But more was needed. The UN's Syria appeals for the whole of last year ended up only 54% funded. Other countries needed to follow the UK's lead and step up to the plate. That is why the UK announced that we would co-host an international conference in London on behalf of Syria and the region. This would build on three successful conferences held in Kuwait in previous years. On Thursday last week, we brought together over 60 countries and organisations including 33 Heads of State and Government.

The stage was set for the international community to deliver real and lasting change for all the people affected by this crisis, but in the end it will all come down to choices. Could we pledge the record-breaking billions needed—going much further than previous conferences? Could we commit to going beyond people's basic needs and deliver viable, long-term solutions on jobs and education for Syria's refugees and the countries supporting them?

At the London conference, the world made the right choices to do all of those things. Countries, donors and businesses all stepped up and raised new funds for this crisis to the amount of over \$11 billion. This included \$5.8 billion for 2016 and another \$5.4 billion for 2017 to 2020. This was the largest amount ever committed in response to a humanitarian crisis in a single day. It means more has been raised in the first five weeks of this year for the Syria crisis than in the whole of 2015. The UK, once again, played our part. We announced we would be doubling our commitment—increasing our total pledge to Syria and the region to over £2.3 billion.

Going beyond people's basic needs, at the London conference the world said there must be no lost generation of Syrian children, pledging to deliver education to children inside Syria and education to at least 1 million refugee and host community children, in the region outside Syria, who are out of school. This is an essential investment, not only in these children, but in Syria's future. It also gives those countries generously hosting refugees temporarily the investment in their education systems that will benefit them for the longer term.

The London conference also made a critical choice on supporting jobs for refugees and economic growth in the countries hosting them. We hope historic commitments with Turkey, Lebanon and Jordan will create at least 1 million jobs in countries neighbouring Syria, so that refugees will have a livelihood close to home. This will create jobs for local people and leave a legacy of economic growth. By making these choices, we are investing in what is, overwhelmingly, the first choice of Syrian refugees: to stay in the region and closer to their home country and their families still in

it. If we can give Syrians hope for a better future where they are, they are less likely to feel they have no other choice left but to make perilous journeys to Europe.

The world has offered an alternative vision of hope to all those affected by this crisis, but only peace will give Syrian people their future back. The establishment of the International Syria Support Group at the end of 2015 was an important step on the path to finding a political settlement to the conflict. The Syrian opposition has come together to form the Higher Negotiations Committee to engage in negotiations on political transition with the regime, and the UN launched proximity talks between the Syrian parties in January.

The UN Special Envoy for Syria took the decision to pause these talks following an increase in air strikes and violence by the Assad regime, backed by Russia. The UK continues to call on all sides to take steps to create the conditions for peace negotiations to continue. In particular, Russia must use its influence over the regime to put a stop to indiscriminate attacks and unacceptable violations of international law. Across Syria, Assad and other parties to the conflict are wilfully impeding humanitarian access on a day-by-day basis. It is brutal, unacceptable and illegal to use starvation as a weapon of war.

In London, world leaders demanded an end to these abuses, including the illegal use of siege and obstruction of humanitarian aid. Our London conference raised the resourcing for life-saving humanitarian support. It must be allowed to reach those in need as a result of the Syria conflict, irrespective of where they are.

I also want to take this opportunity to provide an update on the campaign against Daesh in Iraq and Syria. Since my right honourable friend the Foreign Secretary last updated the House on the campaign against Daesh in Syria and Iraq, the global coalition, working with partner forces, has put further pressure on Daesh. Iraqi forces, with coalition support, have taken large portions of Ramadi. In Syria, the coalition has supported the capture of the Tishrin dam and surrounding villages as well as areas south of al-Hawl.

The UK is playing our part. As of 5 February, RAF Typhoon, Tornado and Reaper aircraft have flown over 2,000 combat missions and carried out more than 585 successful strikes across Iraq and Syria. We are also leading efforts to sanction those trading with, or supporting, Daesh. My right honourable friend the Prime Minister gained agreement at the European Council in December on asset freezes and other restrictive measures.

Since day one of this crisis, the UK has led the way in funding and shaping the international response. We have evolved our response as this incredibly complex crisis itself has evolved. There will be no end to the suffering until a political solution can be found. The Syria conference, co-hosted by the UK and held here in London, was a pivotal moment to at least respond to help those people affected and those countries affected. We seized the chance to offer the Syrian people and their children hope for a better future. The UK will now be at the heart of making that ambition a reality and keeping the international community's

[BARONESS VERMA]

promise to the Syrian people. This is the right thing to do on behalf of those suffering and, fundamentally, it is the right thing to do for Britain, too”.

My Lords, that concludes the Statement.

6.17 pm

Lord Collins of Highbury (Lab): My Lords, I thank the Minister for repeating the Statement. I also congratulate the Government on bringing together last week more than 30 Heads of State, the UN Secretary-General, heads of international organisations and NGOs. I particularly welcomed the inclusive sessions on how we build support for Syria and address the growing needs of the Syrian people. There is no doubt that the conference has generated significant new help for the immediate and longer-term needs of those affected by the conflict, including increased funding.

I read a recent Save the Children report, which found that 47% of refugee households in Jordan rely, at least in part, on putting boys and girls to work to make ends meet. Even after up to five years of exile, the majority of refugee boys and girls are still out of school. All of this is amid the endemic hunger, biting poverty and untreated disease which affect the mass of the displaced persons. I also welcome the education policy changes announced by the Governments of refugee-hosting countries, including support for non-formal education which will need to happen hand in hand with increased funding to ensure children can access quality schooling.

However, any plan for the region must ensure that we in Europe do what our values command: treat humanely those refugees who are here now with a planned and orderly resettlement across the continent. While we seek the elusive peace, we must guarantee the regular flow of food, shelter and healthcare for those cut off at the centre of the conflict. Despite the panic we see in the media surrounding the levels of migration into Europe, 14 in every 15 of Syria's displaced persons are still in the region. If we want families to stay in the region, we have to give them a reason to hold on. We have to give them hope. We have to ensure that their families have more than just food and shelter. The children need education and the adults need jobs.

Will the Minister outline in more detail the plans to create jobs in the region? How is it going to be done? I am keen to understand better how we can boost the economies of the host regions, so that assistance is not simply seen as a scheme for the refugees but as a plan to promote sustainable development in the host regions.

Baroness Verma: My Lords, I thank the noble Lord for welcoming the work that was done at the Syria conference last week. I think he will agree that many of the NGOs and civil society organisations that were present demonstrated their gratitude for the opportunity to establish a response on the ground that suits the needs and challenges of the people in Syria and in the region.

I agree with the noble Lord when he says that we must go beyond providing basic aid. That is why I was so pleased that the UK stepped up to the mark and doubled its pledge to £2.3 billion and other countries

also demonstrated that they were keen to go beyond the basic needs and assist with livelihoods so that people could contribute to the economies of the host countries.

I agree with the noble Lord that we must not lose a generation of children who will not have the education and skills that will be really needed to rebuild Syria when peace comes—sooner rather than later, we all hope. Of course, these are complex and difficult crises, and we must respond to them.

I am pleased that the action that the UK Government have taken has encouraged others to raise their ambitions. But as the noble Lord rightly says, we can give hope only when genuine peace negotiations are going on. That is why we will push hard for those who are involved to press the Assad Government to deliver a successful peace negotiation as well as deliver support while the crisis continues.

Baroness Northover (LD): My Lords, I thank the Minister for repeating the Statement and for the Government's continuing and massive commitment to Syrians in the region.

How will the Government seek to ensure that others who have pledged at this conference will in fact deliver? For those who are now besieged in Syria, will there be systematic air drops? For those who are on the border with Turkey—they are, apparently, not being let through that border—how will we guarantee their security if they are not allowed to cross that border?

Baroness Verma: I thank the noble Baroness for welcoming the conference and the commitments made by all those present. She is absolutely right to say that we need to press hard for others to make sure that they fulfil their commitments. It is right that, once we have made commitments, we deliver on them. The people who expect us to support them depend on all our commitments.

The noble Baroness is also right to say that in some areas it will be incredibly difficult to deliver aid. She asked whether we would try to use air drops. We do not believe that is an effective way to get food and other essential aid to people. We believe that using UN agencies and others delivering aid by road, and others who are respected and understand the situation on the ground, is probably the best way to ensure that the aid gets through to the people who most require it. But we do not rule anything out. We have to keep everything under check, as the noble Baroness, Lady Northover, will be aware from when she did my job in government.

However, what is really important is to recognise that we cannot allow starvation to be used as a weapon. We must press hard those who have influence on the Assad regime to make them understand that it is criminal to use food starvation sieges as weapons of war.

6.25 pm

Lord Alton of Liverpool (CB): My Lords, within the past half hour a Yazidi woman gave evidence here in the House about the plight of the minorities in the region. The Minister will know that the European

Parliament passed a resolution last week declaring these events to be genocide. The Parliamentary Assembly of the Council of Europe has done the same. What effort was made at the conference to prioritise the needs of groups such as the Yazidis, the Christians, the Shabaks and others who have suffered this genocide? Although everyone has suffered in this conflict, these people are peculiarly and specifically targeted because of their ethnicity or religion. What is being done to assist them?

Will the Minister return to the question that the noble Baroness, Lady Northover, put to her about events in the province of Aleppo today? Around 100,000 people are amassed on the border with Turkey. Because of the aerial bombardment by the Russians, these people's lives are in the balance, but they are not being allowed over the border. What are we doing to persuade Turkey to open the border to give safe refuge to those people?

Baroness Verma: My Lords, on the question of the minority groups within Syria, there have been horrific attacks by violent extremists on Christians and other religious minorities within Syria. As the noble Lord is aware, all our UK-funded humanitarian assistance is distributed on the basis of need alone, to ensure that civilians are not discriminated against on the grounds of race, religion or ethnicity. We prioritise reaching the most vulnerable across Syria, and that includes all groups. Of course, it is a challenging environment; these are incredibly complex, difficult areas to navigate, but I take the noble Lord's point. Of course, where we can, we will work closely with the NGOs on the ground to get aid to as many people as possible.

The noble Lord mentioned the latest indications about the numbers of people being displaced from Aleppo. We know that many of them are sheltering in the border area, with more people on the move. We are exploring all options on how we can ensure that their humanitarian needs are met.

Lord Howell of Guildford (Con): My Lords, I agree with the noble Lord, Lord Alton, that with Daesh we are seeing genocide. I know that the word has to be clearly defined, but the sooner that is recognised and settled, the better. The Statement was mostly about the humanitarian side, and it is perfectly clear that very fine work indeed has been done. I am afraid that the challenges will get very much worse in the future.

Does my noble friend accept that we need to be kept well informed and up to date on the apparent breakdown in the talks in Geneva and whether the Russians have almost deliberately undermined the talks by bombing the free Syrians with renewed ferocity? Will she reassure us that she and her colleagues will keep us up to date on that?

Could she just comment on reports that the British Army is now sending 1,600 troops to Jordan as part of some exercise, while the Egyptian troops are moving to Saudi Arabia to ally with them in preparation for possible moves to Jordan? The Jordan authorities have been urging for a long time that this is where we should open a new front, develop a buffer zone in the north and strike into the heart of ISIL territory. Is the

war entering an entirely new phase? Could she just bear that in mind? She may not be able to answer that question at the moment, but we need to be kept up to date if things are changing as rapidly as it seems they really are.

Baroness Verma: My noble friend makes an important point about the talks and making sure that they do not stall. They have come to a pause. The UN special envoy decided to pause the talks until 25 February as it was apparent that there was little prospect of progress being made at this time. But my right honourable friend the Foreign Secretary will be in Munich on Thursday 11 February and will press the Russians, who I am sure will be attending, too, to ensure that they put pressure on the Assad regime, so that the conditions allow unfettered humanitarian access across Syria and that we have an end to the violations of international humanitarian law, as set out under the UN Security Council Resolution 2254.

My noble friend is absolutely right to ask that we keep the House updated and we absolutely commit to do so. He also mentioned Daesh—and of course our goal is to defeat Daesh so that it no longer presents a threat to the UK or to international stability. As he rightly says, we are dealing with very complex circumstances. He asked about the troops on the ground in the countries that he mentioned. I shall have to write to him, because I do not have that answer at hand—so if he will allow me to, I shall write to him and place a copy in the Library.

Lord Judd (Lab): My Lords, I am sure that many of us in all parts of the House will want to express our appreciation to the Government for the successful work last week. It was very important. Does it not illustrate beyond doubt that, with all the tragedies that confront us now and in future, international co-operation and effective international arrangements are absolutely indispensable, and that, unless we work on foreign policy as a priority and build these up all the time, we shall be sticking our fingers in the dyke?

The Minister talked about the importance of education, and that of course is right. But if we are going to talk about reconstruction and the long-term future of these young people, it is not just a matter of getting children into schools; it is also a matter of further and higher education. Can she reassure us that there are plans in hand for adequate access to higher and further education, as well as to schools?

Baroness Verma: The noble Lord is absolutely right—it will not be just about primary and secondary education; it will be about vocational skills and higher education. Often, the length of time a person is a refugee is around 17 years, so he is absolutely right that we need to make sure that we are addressing not just children's needs but wider needs, including making sure that people are being trained up with the right skills. That is why I am really pleased that we have doubled our efforts to give support in Jordan and Lebanon. We have put extra money there to ensure that people get that training and investment, and get the help that will help them to go on and rebuild Syria.

Lord Naseby (Con): My Lords, I, too, congratulate Her Majesty's Government on calling this conference and on the UK showing the lead that it has in money and resources to help the refugees. Nevertheless, I am reminded of what happened in the Second World War. Is my noble friend clear that the Americans and Churchill found themselves having to work with Stalin? I cannot understand why the West, and the UK Government in particular, cannot bring itself to do business with Assad. There is no way out for peace in that country—and certainly no way to deal with Daesh—unless there is some dialogue and connection with Assad.

Baroness Verma: My Lords, my noble friend absolutely puts the focus on Assad. Assad and his regime have got it in their hands to stop bombing their own people. If there is to be a political solution, it is incumbent on everyone to come around to the talks and ensure that we get a positive outcome that enables peace to take place.

Lord Soley (Lab): My Lords, I noted with great pleasure the Government's achievements the other day at the conference. However, I am deeply disturbed by the Russian bombing at the moment, which seems to have two clear aims—one to keep Assad in power and the other to drive thousands of new refugees towards Turkey, with all that that implies. Have there been any discussions with the Russians about that? Are the Russians giving any money to this fund?

Baroness Verma: My Lords, on the latter point, I shall have to write to the noble Lord; I cannot give him an answer right now. On his point around the Russians needing to do more, it is absolutely right that they need to do more to meet their obligations under international law. As a member of the UN Security Council and the International Syria Support Group, Russia needs to step up and put pressure on Assad. What I hope will happen when my right honourable friend the Foreign Secretary goes to Munich on Thursday is that those are the conversations that will take place.

Lord Higgins (Con): My Lords, would my noble friend agree that negotiations are not likely to be successful and may not take place so long as Assad—clearly, in the present circumstances, backed by the Russians—believes that he might achieve a military solution? In that context, are we really sensible to use our resources and air power in bombing ISIL in Syria as well as in Iraq? Should not we redeploy those forces to attack ISIL in Iraq and, once that task is done, turn to ISIL in Syria? At the moment, in Syria we are helping Assad to take the pressure off as far as ISIL is concerned. We really ought to shift the balance more towards our intervention from an air power point of view into Iraq, until such time as that is solved, when we can go on to Syria.

Baroness Verma: My noble friend highlights the complexity and difficulty of what we are having to deal with, and what the international community has to deal with. It is really important to understand that our goal has to be to defeat Daesh so that it no longer presents a threat to UK or international stability, which means focusing on Daesh's core in Syria and

Iraq and working with our allies to support those countries where Daesh is becoming a threat to help them prevent its spread.

Lord Hain (Lab): My Lords, in welcoming the Minister's insistence that only political negotiations will end this disaster of almost biblical proportions, I ask for some recognition that western foreign policy has in large part been responsible for this disaster. Why? Because we insisted at the very beginning on imposing a precondition that Assad must go when he was never going to; then we tried to arm the rebel groups, when parliamentary support was not present for that; then an ill-fated decision to try to bounce Parliament into military strikes was attempted by the Prime Minister; and now we are still setting preconditions by saying that Assad must go within six months. You cannot get negotiations off the ground or deal with Russian malevolence—a fact my noble friend has drawn the House's attention to—unless you learn the lessons from Northern Ireland, which are that you do not impose preconditions and you try to get a political settlement in the context of everybody co-operating and finding out where the different interests can be reconciled. I urge some sense of humility on the Government, who have acted with far too much bombast and blunder for years now and therefore bear a share of responsibility.

Baroness Verma: My Lords, it would be much more constructive for us to work with international partners to ensure that the voices coming from all of us are about supporting the people of Syria. While I understand the main thrust of the noble Lord's points, it needs to be very carefully worded so that we give a very clear message that what Assad is doing to the people in Syria is not acceptable. Across Syria, Assad and other parties to the conflict are wilfully preventing and impeding humanitarian access on a day-by-day basis. That is why we need to be incredibly careful with our words and to continue with our ongoing support to the UN and international NGOs which risk life and limb every single day to help the people of Syria.

Baroness Morris of Bolton (Con): My Lords, I declare an interest as the Prime Minister's trade envoy to Jordan and Kuwait. I congratulate everybody who took part in the donors conference. There was a great deal of generosity and warmth of spirit in London last Thursday. I also congratulate the Prime Minister, who for some time now has been determined to provide jobs not only for refugees in the region but also for locals within those countries. It is going to be very important, if those jobs are going to be meaningful, for the private sector to be involved. Can my noble friend confirm that the private sector, both here and in the host countries, is being consulted at an early stage?

Baroness Verma: My noble friend is absolutely right. Like her, I congratulate the vision of the Prime Minister and the Secretary of State for DfID, who have led the charge in encouraging others to look at the long-term planning for a lot of economic investment and jobs not just for refugees but for people in the host countries. It was very evident when we were talking to people from Syria that that is exactly what they were looking

for. I know that we will encourage that and work both across Whitehall and with other countries to ensure that investment does go in so that it gives confidence, hope and opportunity to not just the refugees but all of those very generous, very kind host countries which are taking so many of the people fleeing. The private sector is going to be key and it played a key role in the conference, particularly around the education agenda.

Local Government Finance *Statement*

6.43 pm

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford) (Con): My Lords, with the leave of the House I will now repeat the Statement made earlier this afternoon in the other place by my right honourable friend the Secretary of State for Communities and Local Government.

“Mr Speaker, I am pleased to report to the House my response to the consultation on the provisional local government financial settlement for the next financial year. I have considered all 278 responses to the consultation. My Ministers and I have met with local government leaders of all types of authority from all parts of the country. I have listened carefully to each of them. I am grateful to everyone who has taken the trouble to make suggestions. The provisional settlement contains a number of important innovations.

First, although the statutory settlement is for 2016-17, I set out indicative figures to allow councils to apply for a four-year budget, extending to the end of the Parliament. Such a change permits councils to plan with greater certainty. The offer was widely appreciated in the consultation. This is not surprising, since it has been a key local government request for years. I want to give councils the time to consider this offer and formulate ways to translate the greater certainty into efficiency savings. I will therefore give councils until Friday 14 October to respond to the offer, although many have done so positively already.

Secondly, in the provisional settlement I responded to the clear call from all tiers of local government to recognise the important priority and growing costs of caring for our elderly population. In advance of the spending review, the Local Government Association and the Association of Directors of Adult Social Services had written to me requesting that an additional £2.9 billion a year be made available by 2019-20. Through a dedicated social care precept of 2% a year, equivalent to £23 per year on an average band D home, and a better care fund of £1.5 billion a year by 2019-20 to address pressures on care, the provisional settlement will be made up to £3.5 billion, available by 2019-20.

Thirdly, recognising that council services in rural areas face extra costs, I proposed in the provisional settlement that the rural services delivery grant should be increased from £15.5 million this year to £20 million in 2016-17—the year of this settlement—and to £65 million in 2019-20. Councils and colleagues who represent rural areas welcomed this, but some asked

that the gap between rural and urban councils in central government grants should not widen, especially in the year ahead for which this statutory settlement is concerned.

Fourthly, this year’s provisional settlement marked the turning point from our over-centralised past. At the start of the 2010 Parliament, almost 80% of council expenditure was financed by central government grants. By next year, the revenue support grant will account for only 16% of spending power, and by 2019-20 only 5%. Ultimately, the revenue support grant will disappear altogether as we move to 100% business rates retention. Local financing through council tax and business rates rather than a central government grant has been a big objective of councils for decades. However, some authorities argued for transitional help in the first two years, when the central government grant declines most sharply. They argued that other local resources would not have time to build up fully. So, much in the provisional settlement was welcomed, but specific points were made about the sharpness of changes in the government grant in the early years of this Parliament and concerns about the costs of service delivery in rural areas.

Another very important point was made. Many councils felt that too much time has passed since the last substantial revision of the formula which assesses a council’s needs and the costs it can be expected to incur in delivering services. These responses to the consultation seem to me reasonable and ought to be accommodated if at all possible.

Everyone will appreciate that the need to reduce the budget deficit means that meeting these recommendations is extraordinarily difficult. I am pleased to be able to meet all of the most significant of them. I can confirm that every council will have, for the financial year ahead, at least the resources allocated by the provisional settlement. I have agreed to the responses to the consultation which recommended additional funding to ease the pace of reductions during the most difficult first two years of the settlement for councils with the sharpest reductions in revenue support grant. I will make additional resources available in the form of a transitional grant, as proposed in responses to the consultation by colleagues in local government. The grant will be worth £150 million a year, paid over the first two years.

On the needs formula itself, it is nearly 10 years since the current formula was last looked at thoroughly. There is therefore good reason to believe that the demographic pressures affecting particular areas—such as the growth in the elderly population—have affected different areas in different ways, as has the cost of providing services. So I can announce that we will conduct a review of what the needs assessment formula should be in a world in which all local government spending is funded by local resources, not central grant, and use it to determine the transition to 100% business rates retention.

Pending that review, I recognise the particular costs of providing services in sparse rural areas, so I propose to increase more than fivefold the rural services delivery grant from £15.5 million this year to £80.5 million in 2016-17. With an extra £32.7 million available to rural councils through the transitional grant I have described,

[BARONESS WILLIAMS OF TRAFFORD]

this is £93.2 million of increased funding compared to the provisional settlement available to rural areas. Significantly, this proposal ensures no deterioration in government funding of rural areas compared to urban areas for the year of this statutory settlement. I have also, at the request of rural councils, helped the most economical authorities by allowing them to charge a de minimis £5 more a year in council tax without triggering a referendum. I will also consult on allowing well-performing planning departments to increase their fees in line with inflation at the most, providing that the revenue reduces the cross-subsidy that the planning function currently gets from council tax payers.

A final point from the consultation is that although the figures for future years are indicative, a small number of councils were concerned that as their revenue support grant declined, they would have to make a contribution to other councils in 2017-18 or 2018-19. I can confirm that no council will have to make such a payment.

These are important times for local government. The devolution of power and resources from Whitehall is gathering momentum, yet I am aware that there is serious work for councils to do to provide excellent services to residents at the lowest cost possible over the years ahead. I acknowledge the important role of councils which deliver the services on which all our constituents depend. I am grateful for all their contributions. My response to the consultation has responded positively to sensible recommendations, in as fair a manner as possible, while holding firm to our commitment to free our constituents from the dangers inherent in the deficit. I commend this Statement to the House”.

6.52 pm

Lord Beecham (Lab): My Lords, I extend the customary thanks to the Minister for repeating the Statement, although what is being offered to local government could best be described as the equivalent of a cup of hemlock, slightly diluted. It is seven weeks since the provisional local government finance settlement was announced. Today, barely a month before councils are required to determine their budgets and set the council tax rate for next year, we have the final instalment.

The reaction to December’s announcement was interesting. The Conservative leader of Bracknell, Paul Bettison, an old sparring partner of mine in the Local Government Association, protested vigorously at the cuts that his and other Berkshire councils were facing. The leader of West Berkshire district council rejected the notion, consistently promoted by Ministers, that councils could easily deploy reserves to close the gap, and the leader of Lincolnshire was critical of the Conservative-led Local Government Association for what he described as its muted response to the Statement, saying that it did not put across the scale of the issue. These are councils whose problems of deprivation and need are significantly less than those of many cities and urban areas—and, indeed, of some rural areas—which have been especially hard hit over the past five years.

The LGA in its response, while welcoming the four-year period of the indicative settlement, raised a

number of issues. It asked that the rating appeals system be reformed and that the new system in which councils will retain business rates should be based on a fundamental review of the needs basis and include equalisation as well as incentivisation to promote business development. The Government have announced a long-overdue review of the needs assessment formula in the light of the abandonment of the revenue support grant, but what is the timescale? What is meant by the phrase that this will be used,

“to determine the transition to 100% business rates reduction”?

What action, if any, will be taken in relation to the rating appeals system?

The LGA pointed that while the better care fund is to enhance the amount spent on social care, there is no extra funding for next year and only £105 million for 2017-18, when not only is demand rising but councils will have to meet the cost of the national minimum wage rises, which will be £330 million next year and £834 million a year by 2020. Will the Government comply with the call for the better care fund increase to be implemented in 2016-17, as opposed to two years later, and how do they envisage councils meeting the longer-term costs, not least in relation to the minimum wage point?

Council tax freeze grant will no longer be paid as it has been for the past few years—although, of course, this was top-sliced from the settlement in the first place in a piece of political legerdemain. How do the Government respond to the complaint that £74 million included in the current year for local welfare schemes is not embodied in the settlement? What is the position in relation to the independent living fund, where the £191 million passing to councils last year should be updated to £255 million, the full-year cost? Is that provided for in the settlement? It is noticeable that there will also be a cut of £600 million in education services, notwithstanding the growing pressures reported in the press of rising school rolls and teacher shortages.

Today, it is fair to say that the Government have slightly softened the blow for rural authorities, which will be welcome so far as it goes, but severe problems remain for councils and their communities. The boasted 2% social care precept which councils can levy will help wealthier areas much more than those with high numbers in the lowest council tax bands. As I pointed out last week, Newcastle, with 70% of households in bands A and B, will gain only £1.7 million to reduce the severe impact on its social care provision within the £132 million cuts that the council faces next year. That sum, an annual sum for one council, is almost as much as the entire national transitional grant payable over two years and not far from 10% of the total national amount to be raised by the 2% precept and the better care fund contribution combined.

The Secretary of State claims:

“The devolution of power and resources from Whitehall is gathering momentum”,

and that he has,

“responded positively to sensible recommendations, in as fair a manner as possible, while holding firm to our commitment to free our constituents from the dangers inherent in the deficit”.

What is gathering momentum is the devolution of responsibility without power and the danger of the constant erosion of the services which a civilised nation

should be providing across a range of services from social care to education, policing to child protection, public health to libraries, museums and the arts and many others—the very essence of community life and of a healthy local democracy.

Baroness Williams of Trafford: My Lords, in terms of the final settlement and councils about to set their budgets—and I totally appreciate that point because, like the noble Lord, I would wait with bated breath until I knew exactly what I was dealing with in terms of final settlement—through the final settlement today, the Secretary of State has made it quite clear that no council will be worse off and no council will lose anything from the provisional settlement. In fact, Newcastle will benefit to the tune of about £6 million because of the new approach to the settlement. We recognise the difficulties of the first two years, which is why we are providing this transitional fund.

The noble Lord talked about the national minimum wage. It is definitely a significant cost, particularly in the area of social care. That is why the 2% precept, plus access to the better care fund, is being made available.

The noble Lord asked about the review of the needs-based formula. I cannot actually remember the point he made. Does he want to repeat it?

Lord Beecham: How long will that process take and how will it work through?

Baroness Williams of Trafford: I think that that will be in place for 2019 and it will be based on wide consultation with local authorities.

The noble Lord also asked why the council tax freeze grant was going. For many local authorities, the council tax freeze grant was a mixed blessing, because, while councils received it, it would also put their baseline down the following year. So many local authorities are pleased in many ways not to be dealing with the freeze grant but having far more control of their own destinies.

The noble Lord asked also about the Independent Living Fund. That will continue to be a separate grant made available to local authorities.

Lord Shipley (LD): My Lords, I am grateful to the Minister for repeating the Statement. I should declare that I am a vice-president of the Local Government Association. I welcome the four years of the settlement period. The decision by the Secretary of State to extend the consultation to October is the right one. Will the Minister confirm that underlying that four-year settlement is an expectation by the Government that council tax will rise by up to 4% a year, each year, for the period of this settlement? Secondly, in issuing a Statement of this kind, I wonder whether greater care might be taken with words. It says that a four-year settlement is better for generating efficiency savings, but it is not just about efficiency savings. There is rising demand and there are rising costs, of which the living wage is one.

On the extra £3.5 billion that is going to be available for social care by 2019-20, £1.5 billion of that will be from the better care fund. What more can be said

about how the better care fund is going to be distributed and, indeed, whether it could be distributed starting earlier? The point is that some councils are under exceedingly great pressure on the matter and need to have support earlier—and we need to ensure that the distribution reflects that need.

We welcome the extra help that is being given to rural areas. Will the Minister confirm that that is real, extra money for the whole of the settlement period and will not in the future be simply a transfer from other parts of local government, particularly the urban areas?

Finally, on the issue of business rates, as we move to 100% retention, there is an issue about those places less able to raise money from business rates because they grow more slowly than others. It is good that there is going to be a two-year transition period, but what is going to happen after that? I hope that the consultation that was announced in the other place a little while ago is going to be a genuine one that will end up with a revision of the formula for central government support. The Statement reminds us that all local government spending is going to be, “funded by local resources, not central grant”,

and says that there will be a consultation to determine the transition to 100% business rates retention. The noble Lord, Lord Beecham, talked about this. The implication is that the transition is going to be a great deal longer than two years. Will the Minister comment on that?

Baroness Williams of Trafford: I thank the noble Lord for raising some important points. His first question was about the four-year settlement and whether there was an assumption of council tax rises. We are not making any assumptions about what councils might want to do; in those figures we are making an assumption of CPI plus 2%.

The noble Lord asked about the better care fund and how it might be distributed. It is intended to benefit most those with the lowest tax bases, so that it is fairly distributed and helps the places most dependent on central government grant. The better care fund is distributed to take into account additional income that could be raised through council tax.

Did the noble Lord have another question?

Lord Shipley: It was about business rates and the two-year transition and how the consultation will be done to reflect needs.

Baroness Williams of Trafford: The Government are quite clear that the consultation will be done to reflect needs. The transitional fund is designed entirely to meet some of the pressures of getting through the period to 2018-19 that councils were talking to us about.

7.05 pm

Baroness Scott of Bybrook (Con): My Lords, I thank the Minister for all the work that has been done on behalf of local government. I have been in local government for 20 years and cannot remember a time when a Government have actually listened to local

[BARONESS SCOTT OF BYBROOK]

government, as far as the settlement goes, and changed their mind—so my thanks goes to the team for doing that.

The transitional grant was critical to councils, particularly those with social care responsibility. They needed that transitional fund to plan for the future. Together with the undertaking to review what the needs assessment formula will look like as we move from government grant to local resourcing of councils, this, too, is extremely welcome.

For me and for many others in rural authorities, we have won the argument over the costs of providing, in particular, social care services in large, sparse rural areas, and I thank the Minister for that. A lot of work has been done in both Houses to lobby the Government for this settlement and I thank them and the Local Government Association. I also assure the Minister that, as ever, local government will continue to be as efficient a part of government as it is now and will always be there to deliver those important services to the residents we represent.

What is meant by the “most economical” authorities? These are the authorities that will be allowed to make a de minimis charge of £5 on council tax without a referendum, but it is not made clear what the most economical authorities are.

Baroness Williams of Trafford: I thank my noble friend for making some very constructive points, particularly about the issues that rural authorities face with things such as the delivery of social care in sparsely populated areas. The rural services delivery grant will be £60.5 million this year and £30 million next year, compared to the provisional settlement. That will be for all councils where 2% is less than £5—whatever is the greater—and will apply to all shire districts.

Lord Liddle (Lab): My Lords, in declaring an interest as a member of Cumbria County Council, perhaps I may associate myself, first, with the remarks of my noble friend Lord Beecham about the very serious threat to the quality of life and basic decency of our society that the cuts in the local government grant represent. This is a horrific situation for all those who care about the public realm. Having said that, my own instinct as a localiser is to move to self-funding, but I have always thought that we needed new and reformed methods of finance and a proper assessment of needs, along with some sort of transfer mechanism to make it possible.

Of course I welcome the increase in the rural services grant, but I point out that the numbers in the Statement that has been circulated show that the big increases are £11.9 million for Surrey, £5.7 million for Kent, £7.7 million for Hertfordshire, £9.3 million for Hampshire and £6.9 million for Essex. This looks like a Home Counties settlement, not one for the whole of England.

My own authority of Cumbria is glad to see that some consideration has been given to the problems of a genuinely stretched local area. However, in a Question in the House a couple of weeks ago, I raised the problem of how funding for the costs of flood recovery

is going to be made available. Is what is in the local government settlement all there is going to be, or will some special announcement be made to reflect the hundreds of millions of pounds in costs facing councils in our area, and in the rest of the north, as a result of the floods? Is this it or is there more to come?

Baroness Williams of Trafford: My Lords, I wish that the noble Lord had been in the House either last week or the week before, when we were talking about the floods and some of the infrastructure replacement requirements. The noble Lord makes the point that some of the infrastructure repairs in Cumbria are going to be far greater than we had thought, and I said to noble Lords at the time that if there were infrastructure repairs that they thought had been either overlooked or not identified yet, they should get in touch with me and I would speak to my right honourable friend the Secretary of State for Transport. If the noble Lord thinks that the funding assumptions are out of kilter, I ask him to let me know. I look forward to having another conversation with him in due course about that and, perhaps, devolution.

The noble Lord also makes the point that Surrey and so on have had more. I have just been having a look at the figures for poor old Trafford, which has got minus 1.2%, while Manchester has had a £16.8 million increase. We always think we are worst off in our part of the world but Trafford, sitting beside Manchester, has actually done considerably less well. Still, this settlement recognises some of the challenges to those county areas. I hope that the noble Lord will get in touch with me over the flooding issue.

Lord Porter of Spalding (Con): My Lords, I point noble Lords to my registered interests but more particularly, for the purpose of this, to the fact that I am chairman of the cross-party Local Government Association, in which the Conservatives are only 40% of the total voting weight. I need to make it clear that I am a Conservative but am chairman of a cross-party organisation, and our organisation broadly welcomes today's announcement.

We all knew that the local government settlement was going to be tough, no matter which of the two main parties won the election. We knew before Christmas that it was going to be tougher than we had expected for some councils, and I am pleased that the Government have actually listened to the remarks that we made in the consultation period. The noble Lord, Lord Beecham, on the opposite side of the House, mentioned Lincolnshire and its complaints about the way that the LGA handled its negotiations. Does the Minister think that the way we handled it had something to do with the fact that the Government have listened and found over £400 million of new money to alleviate some of the pressures that we have highlighted?

Baroness Williams of Trafford: My noble friend is absolutely right. We have had an extremely constructive process, at the end of which £400 million more has been found to address some of the transitional pressures that local authorities say they have faced, and I pay particular tribute to my noble friend Lord Porter for the part that he has played in it.

Lord True (Con): My Lords, I declare an interest as leader of a London borough that in the provisional settlement faced a 48% grant loss, so of course I am delighted by the measures that have been taken, the finding of new resource and the provision of the transitional grant. I add to those who have paid tribute to my right honourable friend the Secretary of State and indeed my noble friend on the Front Bench; there has been an outstanding willingness to speak and to listen, which has not always been the case in the past. I, too, welcome the chance for a longer discussion in relation to longer-term arrangements. Giving councils until 14 October to respond is a great step forward. I hugely welcome the review of the needs approach, especially, as the Secretary of State said, given that demographic pressures are changing in different parts of the country. I also welcome some chink of opening on planning fees, although I hope that the Minister will be able to confirm that in the consultation it will be possible to look at the full recovery of costs locally as that dialogue goes forward. With many thanks to her and my right honourable friend, I welcome this adjustment.

Baroness Williams of Trafford: My Lords, the minute that I got the list of figures, I looked at those for Richmond because I know of the problems and some of the challenges that it faces. That £2.9 million adjustment must have been welcome relief indeed. On the planning fees, obviously the consultation is just beginning but my noble friend has mentioned this to me before and I am looking forward to having a discussion with him during the consultation process.

Lord Beecham: My Lords, I apologise to the House; I omitted to mention my local government interests, which are recorded in the register.

Baroness Williams of Trafford: I think we know that the noble Lord is interested in local government.

Opticians Act 1989 *Question for Short Debate*

7.17 pm

Asked by Lord Newby

To ask Her Majesty's Government whether they will amend the Opticians Act 1989 to allow certain adjustable-focus eyewear to be sold over the counter as is already the case with reading glasses.

Lord Newby (LD): My Lords, adjustable-focus eyewear are pairs of glasses that allow consumers to adjust the focus of each lens separately. They achieve the desired focus for each eye by turning a dial located at the side of each lens. The quality of definition achieved is extremely good, and to demonstrate this I am wearing a pair of these glasses this evening.

Noble Lords: Hear, hear!

Lord Newby: They are produced by Adlens, an Oxford-based company. They are sold in some 57 countries worldwide, but the largest markets are Japan, where some 650,000 units have been sold, and the US, where some 500,000 units have been sold, many without a

prescription. They are particularly valuable for people whose eyesight varies from day to day—for example, diabetics or those who have had cataract surgery—but they have many other uses, such as emergency substitutes for glasses that have been lost or damaged until permanent replacements are produced, or as a spare pair while travelling. They sell for approximately the same price as a pair of high-end ready-to-wear reading glasses—a few tens of pounds.

The concept of an individual adjusting the power of the lens in glasses until it reaches an optimal level is already the way in which we decide on the strength of the glasses that we get, the only difference being that, if I go to an optician, it is the optician who presents a series of lenses before my eyes and asks, “Which is better, lens one or lens two?”. With these glasses, I physically make the adjustment myself. So we are talking about a product that is quite cheap, of extremely high quality and for which there is an obvious demand. So far—but only so far—so good.

The logical next step for Adlens would be to sell its glasses in pharmacies and supermarkets in the UK in the same way in which reading glasses have now been sold for 27 years. In order for this to happen, an exemption needs to be specified under the Opticians Act 1989 to allow them to be sold without a prescription. Framing such an exemption is relatively straightforward and so, having seen a demonstration of the Adlens glasses, I suggested while in government that an amendment to that effect might be made to what is now the Deregulation Act 2015. I contacted the right honourable Oliver Letwin, the Minister in charge of the Bill. He, in turn, contacted the General Optical Council for its advice. The GOC is the standard setter for the optical sector. Its response was stark. The risks to the public of allowing adjustable eyewear to be sold without prescription was so grave, it believed, that it claimed:

“We do not believe that the proposed changes warrant further consideration”.

The council formed this view without seeking or obtaining any expert evidence whatever.

Undeterred, Adlens sought a meeting with the GOC staff, which took place in June last year. The GOC agreed at the meeting to commission an expert report on the Adlens glasses and Dr Charman of the University of Manchester was duly appointed and reported last October. His conclusions were broadly that the glasses worked well; that the risks were the same as for over-the-counter sales of fixed-focus spectacles with similar powers; and that there was no fundamental reason why Adlens glasses with the same characteristics as reading glasses should not be made available over the counter. However, he also made the point that Adlens needed to rebut the argument that such sales might result in fewer people having a full eye examination where they needed one on health grounds.

The GOC standards committee met on 8 October to consider Dr Charman's paper. It turned a very balanced and positive assessment into a litany of objections, some of which were, frankly, ludicrous. My favourite was the following:

[LORD NEWBY]

"It was noted that these products were originally developed for use in the developing world – it was felt that a solution for a developing world problem was not transferable for the UK".

This statement was made, despite the fact that more than 1 million pairs of the glasses have been sold in Japan and the USA. However, buried among the criticisms, the GOC agreed that,

"if the product were restricted to 0 to +4 D"—

the D is for dioptries—

"(as 'ready readers' currently are) the view of the Committee was that this might be acceptable, as it would reflect the parameters of the current legislation".

The GOC objections have subsequently been endorsed by the Optical Confederation, the trade body for the sector. Its concerns, when boiled down, essentially amount to two. First, if sold over the counter, the product would reduce the number of people who have eye tests and that therefore a number of eye diseases would go undiagnosed. Secondly, if used for driving, they would be unsafe.

On the first objection, the evidence shows that, since over-the-counter reading glasses became available in 1989, the number of eye tests has been on a steadily rising curve and has continued to rise steadily over the past 15 years, despite the growth of online contact lenses and online glasses. The GOC basically believes that restricting access to eyewear will force the public to have their eyes tested more regularly. However, this approach has failed in almost every public health initiative to which it has been applied, whether for the management of hypertension, obesity, diabetes or alcohol abuse. If we want people to have their eyes tested more often, the evidence suggests that the way to do so is by consumer education programmes such as the National Eye Health Education Programme, the Think About Your Eyes campaign and the EyeSmart campaign.

As for the second objection, there is no evidence that the product is unsafe to use while driving. There have been literally zero reported cases of driving accidents in Japan and the USA involving the million-plus consumers who wear variable focus eyewear. Indeed, when this issue was contested in court in Arizona in a case brought last year by the State Board of Dispensing Opticians, evidence submitted by Adlens persuaded the Assistant Attorney-General to support its arguments and the board of opticians to abandon their action. The case was lost simply because the evidence did not support it.

If I were a cynical type, I would think that some of the arguments put forward by the GOC and the Optical Confederation were designed to maintain the current rules in order to require people to go to an optician who did not need to do so. That may be harsh, but throughout my discussions with the industry there seems to be a distinct lack of interest in putting the interests of consumers first. There is certainly no appetite for reform and without a big push from the Government, reform simply will not happen.

The judgment which now needs to be taken boils down to what I think of as the paracetamol test. Paracetamol is a product which can be purchased cheaply over the counter to treat pain in a manner which is effective for the vast majority of its users. It can however, if abused, kill you and, as the instructions

helpfully point out, it can cause many other potentially harmful side effects. We tolerate this situation because we believe that, on balance, over-the-counter purchase of paracetamol is hugely beneficial to consumers. There is no evidence whatever that adjustable eyewear can have the same deleterious effects as paracetamol if abused. I therefore believe that they do pass the paracetamol test and that it is in the consumer interest for them to be sold in the same way as reading glasses.

Can the Minister confirm that a decision about the type of amendment to the Opticians Act which I am seeking is at the discretion of the Government and cannot in effect be vetoed by the General Optical Council? Secondly, will the Department of Health now review the matter? Thirdly, subject to their being satisfied that the risks of making the proposed change are greatly outweighed by the disadvantages, will the Government agree to bring forward at an early legislative opportunity the amendment to the Opticians Act which I seek?

7.25 pm

Lord Faulkner of Worcester (Lab): My Lords, I congratulate the noble Lord, Lord Newby, on securing this debate. He has raised a number of interesting and very important points, and I hope that the Minister—if this is how he responds to the debate—will be able to offer some convincing reasons for not acting in the way the noble Lord proposes.

The only interest I have to declare is that I am someone who is very short-sighted. I have worn glasses continuously since the age of seven, apart from a brief and unsatisfactory period in middle age when I tried contact lenses.

Like the noble Lord, Lord Newby, I have visited the Adlens operation in Oxford, and got to know a number of its senior people. He has described very well what the product is, how it works, and how an amendment to the Opticians Act 1984 allowing adjustable-focus glasses to be sold over the counter without a prescription would be of immense value to the millions of people who need to wear spectacles. It would give them the chance to buy a back-up pair and put them in the glove box of the car for emergency use—the noble Lord pointed out that they are safe when driving. People would also regard them as a reassuring presence about the house, perhaps offering different pairs for different tasks, such as reading in bed or working on the computer.

I found the account of the noble Lord, Lord Newby, of how he attempted as a Minister to get the law changed particularly interesting. It seems to me that the arguments used by the General Optical Council in blocking the change and repeated in the briefing it has sent us for this debate are examples of protectionism of the very worst kind. I understand that they are similar to the arguments it employed when it attempted to block the removal of restrictions on the sale of reading glasses in supermarkets and pharmacies nearly 30 years ago.

The GOC is right in stressing the importance of encouraging customers regularly to take eye tests. These tests not only identify the strength of glasses that may be needed to correct sight, but are also an

important way of spotting incipient eye diseases such as glaucoma and other life-threatening conditions such as brain tumours and high blood pressure.

The GOC's case against amending the Opticians Act to allow retail sales of adjustable-focus glasses could have some validity if the number of eye tests carried out following the deregulation of reading glasses in 1989 had fallen. However, as the noble Lord, Lord Newby, has correctly observed, they have been rising steadily. I have no doubt that this would continue to be the case following the change we are debating this evening. What matters is that eye tests are promoted as part of an essential health screening and education programme, not as the manifestation and continuation of a restricted practice which is no longer of much benefit to consumers.

Before I conclude—I am speaking very briefly tonight—I would like to say a word about one particular market in the world where Adlens glasses can be bought over the counter. The noble Lord, Lord Newby, referred to the huge sales in Japan and the United States, and there is also a strong market for them in Mexico and Norway. Its briefing says:

“Adlens has supplied over 1.5 million products to consumers in 57 countries around the world”.

There is a remarkable philanthropic side to the company as well. Alongside the commercial operation is a charity called Vision for a Nation, started in 2009 by one of Adlens's co-founders, James Chen, whom I met on my visit to the company in Oxford. This is a programme which aims to address the unmet need for affordable glasses in low-income countries.

The first pilot study was in Rwanda, a country where, Mr Chen estimated, up to 1 million of the 11 million population need glasses. Most of them will require standard reading glasses but between 5% and 10% will benefit from the Vision for a Nation adjustable lenses. Over 18,000 have been supplied free to the Rwandan health authorities and the charity is also funding a training programme for nurses to conduct eye tests. I gather that the plan now may be to expand the service to Bhutan. It will make a real difference if these services can become a central component of a nation's non-communicable disease strategy.

In echoing the call from the noble Lord, Lord Newby, for an amendment to the Opticians Act 1989, I make the additional point that if Adlens were able to develop a successful retail business in the UK, comparable to that in Japan or the United States, not only would British consumers benefit from increased customer choice but the profits generated would allow the company's marvellous work through its Vision for a Nation charity to be expanded into more third-world countries. I find that a pretty irresistible argument and I hope that the Minister will agree when he replies.

7.31 pm

Lord Stoneham of Droxford (LD): My Lords, I speak in this debate not as a health expert but in my capacity as business spokesman for these Benches and as somebody who is interested in encouraging innovation, improving the export potential of our country and encouraging science-based university innovation centres of excellence. I also spend quite a bit of time discouraging practices which suggest or encourage unfair competition.

To me, this is a restraint of trade issue. As the noble Lord, Lord Faulkner, said, exactly the same arguments were used against the sale of reading glasses in 1989 as are now being made against adjustable-focus glasses. The Minister would do well to read the report at that time as a way of convincing himself that the arguments in this debate should be answered.

Health and regular eye tests are things that I am not expert at discussing. As I said, I am more interested in the competition aspects, but I think that by freeing up the market a little, a bit more competition might increase the number of eye tests, as was shown in the case of the sale of reading glasses.

I am one of those who finds it convenient to go into an optician for regular eye tests, and I use one. I do not use it purely because it is the cheapest way of getting glasses but because there is the convenience of fitting and getting regular maintenance, for which it is good to have a relationship with a local optician. Glasses in this country are about variety, style and fashion, however we might think of them as items for improving our health and eyesight. Until recently I went to one optician for 20 years, mainly because the lady who used to serve me always used to tell me how good I looked in the pair of glasses she was trying to sell me.

It is a competitive market and cost is very important. I accept that opticians have to earn a profit. However, I recently changed my optician. The nice lady had gone. When I went to get my spectacles repaired, I was told that they could not be repaired because they had got bent and there was a danger that they would break. I was assured that I needed a new pair. I went to another optician and got the old pair repaired in five minutes. I subsequently bought a new pair when the lenses needed to be upgraded. We should not hide behind health issues in protecting opticians unless they are really warranted. We should encourage competition and choice.

This is a patented British product and I do not believe that it will be what I call a real blockbuster that puts all our opticians out of business. As I said, fashion, style and brands will still rule as the country becomes more affluent. Despite all the arguments, as we have already heard, the threat of selling reading glasses did not undermine the opticians' business. However, there will be a market from these glasses among people who want to buy a second or spare pair and among diabetics who need to adjust their lenses regularly. There will also be a demand for sunglasses and so on in the leisure market. I think that there will be a huge market in the third world, where there is no network of opticians and price can be critical. We have heard that 1 million pairs are being sold in the US and Japan. If this company wants to sell these glasses in other markets, how convincing will it be when it has to admit that it cannot sell them in its home market? It must go with its hands tied behind its back when it goes into those sales opportunities. Frankly, the Department for Business, Innovation and Skills and the Department for International Development should be jumping up and down encouraging this product and pioneering further development.

I have several questions for the Minister. First, will he reread the documentation of the 1989 review, when reading glasses was the issue under discussion, and

[LORD STONEHAM OF DROXFORD]

will he perhaps reflect on how similar the arguments are in relation to these glasses? Secondly, does he intend to have discussions with the Department for Business, Innovation and Skills on how we can encourage competition in this area? That would, I believe, lead to even more eye tests being carried out by opticians. Thirdly, will he also engage the Department for International Development to look at the great potential for this product in developing countries?

7.37 pm

Baroness Walmsley (LD): My Lords, first, I apologise to my noble friend Lord Newby for missing the first half-minute of his speech. I am afraid that I was not informed that this debate was to start 15 minutes early; I thought that I was 10 minutes early.

I thank my noble friend for explaining what this debate is all about and for putting the case for looking at this issue again so comprehensively that there is no need for me to repeat it. To me, there are three principles that should apply when considering this matter.

First, the best interests of the patient must come first, so we must ask ourselves whether changing the law would or could do any harm to patients. Secondly, we need to consider whether availability of this new eyewear would deter people from getting a full eye test from a qualified ophthalmologist. Thirdly, would the state of the current law prevent patients receiving any additional benefits that might be available to them through the over-the-counter availability of this new product? We should bear in mind that, when the law went through Parliament, there was no such thing as self-adjustable eyewear, so perhaps it is time to review it.

In considering this matter, we must be impartial to both those already in the optical services business and to those who want to get into it. Could the briefings we have received amount to vested interests? Some noble Lords think so. I am afraid that I think that those who have provided the briefings might have vested interests, although it is perfectly reasonable for them all to make their case and I am sure that they are all providing legitimate information. That is why I ask the Minister whether the Government will set up a completely independent impartial investigation to receive evidence from both sides of the argument and make a truly impartial recommendation, and then will they act on it at the earliest opportunity?

The evidence we have received from the manufacturer Adlens suggests several benefits and no harms. Like the noble Lord, Lord Faulkner of Worcester, I really must congratulate it on its charitable work in Rwanda and other places. It is doing some very important and worthwhile work, which will benefit the economy of that poor country enormously, as well as individual patients. However, it stands to make money in the UK if the law is changed, so we should be aware of that. Mind you, it would probably be a very small amount compared to what companies make in the USA and Japan where these glasses are already allowed to be sold off prescription.

On the other side of the argument is the General Optical Council, the Optical Confederation, the

professionals and the retailers who have a financial interest in selling the fixed-prescription spectacles which they prescribe. Of course, they also have a professional duty to put the patient's eye health first, and I am sure that is their priority.

There would be a very strong argument for refusing to change the law if clear evidence existed that the availability of these adjustable spectacles over the counter deterred people from having a proper eye test—but I have seen no such evidence. We must bear in mind that eye tests are not just done to diagnose and correct vision but also, as the noble Lord, Lord Faulkner of Worcester, pointed out, to screen for eye health and indicators of other types of ill-health. They are very important, which is why we give them free to children and older people.

The fact is that we have been choosing our own vision correction for years. When I go to the optician, I select "red" or "green" and lens 1 or lens 2 all the time. I am selecting my own correction. What, therefore, is the difference between doing that and twiddling a little screw on your own spectacles to get the correction that you need? I accept that these may not be suitable for people with serious astigmatism, but those people probably would not choose them anyway because the quality of vision would not be as good as that from their correct fixed-lens prescription.

Concerns have been expressed about the safety of driving in self-corrected glasses. I was impressed by the study done by the University of Michigan Transportation Research Institute, which showed that there is no statistically significant difference between US drivers wearing prescription glasses and those wearing self-adjusted glasses in their ability to see a hazard ahead. I have seen no evidence to the contrary but, of course, it would be the task of the independent committee that I am calling for to see whether there is any.

As I said earlier, I would be concerned if ownership of these glasses were to deter regular eye examinations, but, again, the evidence I have seen is to the contrary. When over-the-counter reading glasses became available, there was no evidence that this deterred people from getting their eyes tested. Indeed, they need to do so in order to determine what strength to buy from the local chemist. Rather, government agencies and professionals alike believe that the best way to persuade people to look after their eyes and get them tested regularly is by public information and education. A number of these programmes have been mentioned, and they have been around in the UK for years; I am sure Governments would not spend money on them if they did not work.

These new products would have considerable value as a temporary solution for three groups of people: older people may need three different pairs of glasses for different tasks—I know I do—and many find it difficult to afford three pairs; people who have had cataract operations have a period during which their eyesight is settling down and might find these useful then; and new diabetics, whose eyesight may vary while they are working out the right dose of medication to control their blood sugar, may also find these a useful temporary solution. In the last two cases, it is very unlikely that an optometrist would prescribe several pairs of glasses just for a few months. Of course, it is

vital that people get their eyes checked regularly, particularly diabetics as there are a number of risks to vision associated with diabetes. However, a pair of these new glasses could be part of their solution.

The fact is that we are already in charge of our own eye health. I recently had to apply for a new driving licence and, as part of the process, had to confirm that I have an appropriate level of vision to drive a car safely. Nobody asked me to get an optician to verify that, although I am in the habit of having regular eye tests and would recommend that everybody do so. In addition, correction prescriptions do not have a finishing date on them, so you can buy contact lenses on the internet using a prescription that is years old if you want to, even though that may no longer be the correct prescription for you. This solution would be a great deal better than that.

I am inclined to allow people to take responsibility for their own eye health, and I thought that a Conservative Government, being in favour of the free market, would be inclined to allow these glasses to be sold without prescription and to give people a choice. However, the cautious thing to do is to set up a truly independent inquiry. I hope the Government will do that, and then the evidence can speak for itself, as can the patients.

7.45 pm

Lord Hunt of Kings Heath (Lab): My Lords, it has been a riveting debate and noble Lords have expressed a very clear view, although the Minister will be aware that we have had written submissions that express very different views, which are potentially bound up with financial interests. So we are all looking forward to the adjudication that the Minister will, I hope, give us in a few minutes.

I start with a point about innovation and adoption, because I know that the Minister is concerned about this. On the face of it, here we have an innovative UK-based company doing very well abroad but not in this country because of this dreadful healthcare issue of slowness to adopt. I know that eyes are precious and, clearly, in the end, a precautionary principle must be applied. However, I worry that, one way or another, the healthcare establishment is putting barriers in the way of what appears to be a really innovative company. I hope the Minister will pick up that argument.

From the documentation, it is clear that the paper by Dr Charman is an important one. The question I put to the Minister is whether he is satisfied that the GOC and its standards committee actually discussed that paper appropriately. I have seen annexe 4 of the paper we have been sent: notes of the standards committee discussion. This does not seem to be a scientific examination of the report by Dr Charman. Rather, it looks like—how can I put it kindly?—a group of prejudices looking for an argument to put across. It comes across as a very paternalistic approach. First of all, it makes the statement that the market for this product in this country was,

“not thought to be significant”.

Of course it is not significant at the moment, because it is not allowed to develop. Having been sent these adjustable spectacles—although I was not brave enough,

as the noble Lord, Lord Newby, was, to wear them—I know that they are clearly very easy to use and to adjust.

The second argument, which was raised by the noble Lord, Lord Newby, is about the developing world issue. The third argument, which I find puzzling, is the statement that:

“It was not clear what benefit the product would bring”.

It is patently clear what benefit the product would bring to the public. The final point, and one that really interests me, is point 12:

“The Committee raised the fact that it has been documented in the academic literature that ‘self-adjustment’ by patients is very subjective”.

Well, “subjective” is a word I would use to kindly describe the paper by the standards committee.

The noble Lord knows that one has to be cautious here. The noble Baroness, Lady Walmsley, is right: perhaps a way through is to ask an independent adjudicator to look into this. The situation is clearly unsatisfactory and it does not look as though the GOC response has been rigorous enough.

I hesitate to move on to the issue of regulation, but we did debate the General Dental Council two weeks ago. I have been in correspondence with dentists and the GDC, and it seems to me that they are still in denial about the criticisms made of them by the PSA. On the one hand, we see huge improvement in regulators, and I pay tribute to the GMC and the work that has been done there. But on the other hand, there seem to be question marks about how some of these professional regulators operate. I suggest to the Minister that the PSA, which I have great confidence in, be asked to look at this matter, particularly the governance arrangements within the GOC. That might warrant careful examination.

Finally, is the Minister satisfied that the PSA has enough powers of intervention? From what I have seen in relation to the GDC, I am not entirely sure that it has. This is an important issue in itself, but it also raises questions about regulation and the way it is undertaken. Having read the GOC paper, I have doubts about how rigorously that body approaches its task.

7.50 pm

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, I thank the noble Lord, Lord Newby, for bringing this subject, which is a new one for me, to our attention. I tried on a pair of adjustable-focus glasses a few days ago, and they are easy to use. The noble Lord is wearing some this evening, and although they may not be as fashionable as some pairs of glasses, I can see that they are perfectly serviceable.

It is odd for us on this side of the House—it is certainly odd for me—to find ourselves painted into the position of being against choice, competition and deregulation, which are now being advocated from the Liberal Democrat Benches. I do not normally associate them with that particular role. Instinctively I am a deregulator, and to be honest, many of the arguments that noble Lords have made resonate strongly with me. Clearly there is a huge vested interest at stake. Whether

[LORD PRIOR OF BRAMPTON]

that is being improperly used in this case I do not know—but one can see that there will always be a strong voice for the status quo.

I should also pay tribute to the company for its work in Rwanda, which is clearly very important. Equally impressive, in many ways, is its breaking into the Japanese and American markets—no easy feat for a small private company. I take on board the words of the noble Lord, Lord Hunt, about how often we hear about companies finding it easier to break into overseas markets than into our own market. It is deeply frustrating, when we produce so many highly innovative products such as this one.

As for an independent review, perhaps we can come back to that question later. I rather like the thought, but although the role of the PSA was brought up in the context of the GDC, I am not sure what powers it has in such areas. That may be worth exploring. Unfortunately, however, I am going to disappoint the noble Lord, Lord Newby—but perhaps not wholly. We shall see when we get to the end. I shall put the other side of the argument, if I can—but in doing that I do not want to imply that the arguments we have heard are not powerful: they are. I know that my right honourable friend in the other House, Oliver Letwin, back when the Deregulation Bill was going through, would have instinctively been very positive towards the arguments that noble Lords are making.

As noble Lords are aware, in order to do what the noble Lord asks it would be necessary to amend the Opticians Act to remove requirements relating to the sale and supply of optical appliances. Clearly this is something we would do only after very careful consideration, and if we were confident that the proposal could stand parliamentary scrutiny. So if we were to take this forward at all, an independent review of some kind would be a requirement.

In the UK the sale of optical appliances is governed by the Opticians Act, which requires spectacles and contact lenses to be dispensed to a prescription issued by a registered optometrist or medical practitioner following a sight test. We are probably all aware of the exception that has been made. In response to the noble Lord, Lord Stoneham, I should say at this point that I will reread—or rather, read for the first time—the 1989 review, where similar arguments were put forward against the exception for reading glasses.

The Opticians Act does allow reading spectacles to be sold over the counter to adults with age-related sight loss. However, this exception has very limited criteria. The reading glasses must have the same power in both lenses, the power of the lenses must be in the range between 0 and 4 dioptres, and the glasses must be for reading purposes only. The General Optical Council is responsible for regulating the sale of glasses in the UK.

I am aware that Adlens has been in discussion with the GOC about its proposal that over the counter sale of its adjustable-focus glasses be allowed. As noble Lords know, in considering this issue the GOC sought the views of its standards committee, asking for its views on any benefits that adjustable-focus spectacles might bring, and any adverse effects that these products

might have on the public's health and safety. I am not aware of the extent to which it took into account the Charman report, which the noble Lord, Lord Hunt, mentioned. That is something that we should look into.

The standards committee raised a number of concerns, including concern about the safety of the product and the possibility that the product might not meet legal standards for driving.

Lord Hunt of Kings Heath: The point is that although the note we have says that the standards committee was provided with the independent report, it is not clear what it actually did with the report. It does not look as if the committee went through it in detail and considered the arguments—but that might just reflect the way in which the note was taken.

Lord Prior of Brampton: We have often been provided with reports, but that does not necessarily mean that we have read them and given them our full attention. I will ask that question.

I was going through the standards committee's concerns. Another was that individuals may incorrectly self-adjust, causing a danger to the public when driving. Another was that the sale of these products may distract the public from having regular eye examinations. That is an issue that needs consideration. I appreciate that the noble Lord may not be convinced by the arguments put forward by the GOC's standards committee, but we would be foolish not to take into consideration its professional view—the precautionary view that the noble Lord, Lord Hunt, mentioned. We have to give that due weight.

I understand that one of the original intentions behind the development of these glasses was to bring accessible vision correction to the developing world, particularly to areas where there was little or no affordable eye care. In the UK we are lucky enough to have no barriers to accessing sight tests and optical appliances which correct refractive errors. The NHS provides free sight tests to children, older people, those with or at risk of eye disease, and people on low incomes. In addition, help with the cost of glasses is available to children and people on low incomes.

It is already the case that self-adjustable glasses can be supplied by a registered medical practitioner or optometrist if they would benefit patients in particular circumstances. I do not think that we should downplay the important role of optometrists in carrying out sight tests. Optometrists are healthcare specialists trained to examine the eyes to detect defects of vision, signs of injury and ocular diseases, as well as problems with general health. Anyone who has had a sight test in recent years will know how much more is done these days than would have been done four or five years ago. Optometrists also offer valuable clinical advice, in addition to prescribing glasses and contact lenses.

One of the concerns raised by the standards committee was that members of the public might be discouraged from attending for regular sight tests. I appreciate that noble Lords do not agree with this argument, given that the availability of ready readers has not had such an impact. However, ready readers have a minimal prescription power and are for reading only.

Lord Stoneham of Droxford: I reiterate to the Minister why it is so important to read the report about reading glasses. Exactly the same arguments were used then—that they would undermine eye tests—yet exactly the opposite happened.

Lord Prior of Brampton: I have made a promise, and that will be among my other reading material. I do not know how long the review is; we shall see.

However, reading glasses are for a very specific, limited purpose, so might not lead people to think that a sight test is no longer necessary. Self-adjustable glasses, on the other hand, are for wider use, and could potentially lead people to think that their vision needs have been met. They may make do with those glasses for longer, and not consider the need for a sight test. In that way, the case might be slightly different from that of reading glasses.

I accept that there is reasonable concern about the potential impact on the take-up of sight tests if these glasses were to be made available over the counter. It is important to be clear that a sight test is not only about checking whether or not you need glasses. As I said earlier, it goes much further than that. A sight test can identify at an early stage diseases such as macular degeneration, glaucoma, diabetic retinopathy and cataracts. Good vision is also particularly important for safety on our roads, both for drivers and pedestrians. So I appreciate the concern raised by the GOC in respect of the safety of drivers using these self-adjustable glasses.

I draw a distinction between the current proposal—which, as I understand it, is for a range of magnification beyond that of ready readers—and magnification restricted to that of ready readers. I am not sure whether or not that makes sense. It makes sense if you read it slowly.

Even if the concerns I have outlined were overcome, it would be very difficult to justify a greater range for the adjustable, and arguably more risky, product than is allowed for ready readers. There is no appetite that I am aware of to extend the exemption applied to ready readers to stronger prescriptions, and similar objections would apply in that they would cease to be simply aids for the limited activity of reading.

However, I note that while the GOC standards committee did not endorse the idea of sale of adjustable glasses restricted to the ready readers range, it commented, as the noble Lord mentioned, that this might be acceptable. I do not know whether those proposing change have had further discussions with the GOC on this point but, if not, it would be sensible to do so before further consideration by the Government. I am not sure whether the noble Lord has had further discussions with the GOC. He might like to say so at the end. This does not mean that the GOC is convinced that this would be a sensible change or that the Government are minded to consult in the near future. I merely highlight that the GOC's response was nuanced.

Changes to primary legislation are for government, although noble Lords will obviously appreciate that changes will only be made in the light of professional advice, and one of the sources of that advice will be the GOC. The GOC's report was nuanced and is

probably worth following up. I have an instinctive gut feeling of sympathy for the arguments made by the noble Lord but there are genuine objections from the GOC.

8.02 pm

Sitting suspended.

Trade Union Bill

Committee (1st Day) (Continued)

8.15 pm

Clause 3: Ballots: 40% support requirement in important public services

Amendment 2

Moved by Lord Wallace of Saltaire

2: Clause 3, page 2, line 3, leave out “the majority voting” and insert “at least 35% of those voting”

Lord Wallace of Saltaire (LD): My Lords, Amendments 2 and 9, in my name, have a simple aim: to bring into alignment the standards for democratic legitimacy which the Government apply to themselves, and on which their claim to a democratic mandate rests, and those which they wish to apply to the trade unions.

The Government's electoral majority rests upon the support of 36.8% of those who voted in the general election last May on a 66% turnout, so representing some 24% of the total electorate, at least of those on the register. For neatness and convenience, I have rounded the figures to 35% and 25%, recognising that the Labour Government of 2005-10 were accepted as legitimate on 35% of the vote.

Amendment 8, in the names of the noble Lords, Lord Collins and Lord Mendelsohn, rounds the figure of the turnout down, to 20%, rather than up, to 25%. Here we have far higher standards set out for the legitimisation of ballots by trade unions than are set out by the current constitutional arrangements for legitimating government—50% of those voting and an even higher barrier, 40% of those eligible to vote. No British Government have passed this second hurdle in the past half-century. No Government for more than 60 years have represented more than 50% of the electorate, except of course the coalition Government of 2010-15, considered illegitimate throughout their life by a great many on both the Labour and Conservative Benches.

There is a very serious and constitutional point at stake here. The new Government claim they have a strong democratic mandate. The noble Lord, Lord Dobbs, underlined this in the first debate this evening. On that basis, they are now pressing through a substantial legislative programme, including a number of radical free-market proposals which were successfully resisted under the preceding coalition. This Bill is a mixture of free-market and authoritarian principles. Trade unions are an important part of civil society, balancing the power of employers and investors in the market. The battle to establish the rights of trade unions to combine was a significant part of the development of British

[LORD WALLACE OF SALTIRE]

democracy in the late 19th and early 20th centuries. I am happy to say the Liberal Government then did a great deal to support that.

Trade unions, like employers and investors, need to be regulated but—again like employers and investors—they are legitimate actors in a market that is rooted in an open and democratic society. Authoritarian free markets, of the sort favoured by some right-wing economists and briefly practised in some South American states, require civil society to be suppressed. But none of us, including those 24% of voters who supported the Conservatives in last year's election, wants to convert the UK into an authoritarian state.

I ask the Government to recognise the limited and conditional character of their mandate to govern. They require the consent and acceptance of the 75% of UK voters who did not give them their support in last May's election. The Government hope to govern for a full five years. If after two years they find themselves facing the usual mid-term disillusionment, made deeper by a likely economic recession, while they press ahead with an agenda about which significant parts of the electorate are unhappy, then the discontented will take to the streets and smash windows. We already face a public mood of deep disillusionment with conventional politics. The Government should be careful not to deepen that disillusionment further and provoke public anger.

Many of us will remember the confrontation between the Conservative Government and the trade unions in 1973-74, when the then Prime Minister attempted to assert his constitutional authority and union leaders replied that their total membership was larger than the number who had voted Conservative in the previous general election. The unions are much weaker now, of course, but then so is the Conservative Party—down from the 1 million members it had when Edward Heath was leader to, apparently, 150,000 now. It has far more money, of course, but far fewer members. The number of votes it won in last year's election, as well as the proportion of the votes cast, was also much lower. To quote the noble Lord, Lord King, we are governed by an active minority against an idle majority.

We all recognise that the Government are opposed to constitutional reform, in particular to electoral reform, which could raise the barrier before an incoming Government could claim a mandate to govern. But, by that token, and recognising the weakness of their mandate, the Government should be cautious about imposing new barriers on union decisions. We know that there is public anger out there about our failures as a political class to impose sufficiently strong regulation on the banking industry, and the absence of prosecutions and punishment for those in the banking industry whose actions triggered the crisis of 2008-09. I meet that anger on the doorstep every time I go out canvassing in Yorkshire. To impose a combination of tougher regulations and higher barriers to legitimate action on trade unions, in contrast to the light touch on bankers and others, will only feed that underlying popular hostility and disillusionment.

I move the amendment, and speak to Amendment 9, in this spirit. The Government should recognise their own position, treat trade union ballots by the same

standards as parliamentary ballots and recognise that a Government with a limited mandate must compromise with the institutions of civil society. Trade unions are an important element in our civil society. I beg to move.

Lord Dykes (Non-Affl): My Lords, I will be brief. I congratulate the noble Lord, Lord Wallace of Saltire, on his speech. I missed only about 20 seconds, when the television screen changed back to the Committee, so I was technically here. I agreed with what he said. I hope that he and others agree that the other disturbing factor in this is the context of a Government supported by a low percentage of voters, and only 24% of the electorate. I do not think that there was a lower figure in recent decades. I may be incorrect, but I am pretty sure that that is right. To invoke the regular incantation that something is a manifesto promise is also flawed if the support from the natural electorate is so puny and minor as to render this an illegitimate exercise for such a controversial piece of legislative text that deliberately makes life more difficult for normative trade union behaviour.

There is an idea that because the manifesto is mentioned in the press in the context of an election campaign, therefore the thinking electorate, or the whole electorate, should be well aware of the proposals in it; but, of course, that is not the reality. Most members of the public, first of all, regard politics as a rather distasteful activity and they leave it at the back of all the important activities they have with their families, their holidays, their education and their children, and they go to politics when they have to, when elections come. Therefore they would not be very conversant with the contents of manifestos anyway. So the manifesto-itis element of these very badly drafted Bills that are coming through—skeleton Bills, often, with too many SIs following them and the rest of the problems—also affects this piece of legislation.

I remember when I was the incumbent Conservative MP—proud to be the most left-wing one, of course—for Harrow, the total number of people who came into our campaign office during the election campaign to ask for a copy of the manifesto ranged, over the seven elections I fought, from 10 to six, with an average of about eight. People just did not pay any attention to the details of manifestos. Any newly elected Government, in this case with a 12-seat majority on the basis of 30%-plus support, are entitled to say, "Well, they should have, shouldn't they?", but it is not like that.

Therefore, we must produce intelligent legislation which is balanced and fair and consensually based—particularly, as in this case, with the sensitive subject of the trade unions, which have had a very difficult 15 years as a result of the way politics has moved—and we should be very concerned to make sure legislation does the right thing. Therefore, I hope the Government can respond to these realities by responding to intelligent amendments such as that just proposed by the noble Lord, Lord Wallace of Saltire.

Lord King of Bridgwater (Con): My Lords, I have great respect for the noble Lord, Lord Wallace, which is always a warning, in this House, that worse is to come. I simply say that I could not believe the speech he made. I would like to think and hope that he got

somebody to write it for him, because I thought that the intellectual content was as close to zero as one could get. Of course, I understand, sitting on the Bench he is sitting on, his acute dislike of our present parliamentary system and first past the post, but, of course, that is the situation in which we live.

That is the situation in which noble Lords on the Opposition Benches have stood for office, have won office and have run this country. At times, members of the noble Lord's party did the same; they formed a coalition because they had enough seats to count under the first past the post system. This, on the other hand, is as if we were to say that no Government were to do anything the least bit controversial because they did not have an overall majority all the time. I am trying to think how many times when I stood for election I ever got 50% of the vote. I think I did on one or two occasions. Against that background, it is as if we were to say to the people who if there is another tube strike will be walking 10 miles to the office, to the people who never make their operation because they cannot get there in time, to the people who never see their loved one who they hear is in a serious situation in hospital but who cannot get there in time, "Sorry, we really cannot do anything which might give more confidence to the Government and to Parliament and recognise your concerns."

Someone who was an observer from outer space, or in the Gallery here, and who heard the deeply moving speech by the noble Lord, Lord Wallace, brilliantly delivered, as it always is, might ask, "What is he actually talking about?". Oh, it was just to say that if you are going to have an important vote to bring people out on strike, it is unreasonable to say that at least one in two of the union members should actually vote. Some noble Lords may not have had a chance to look at this amendment. This amendment says that it is outrageous to say that one in two of the union members have to turn up for the vote, irrespective of what they decide to do. The amendment of the noble Lord, Lord Wallace, says that it should go down from 50% to 35%, so that it is one in three.

Lord McAvoy (Lab): Can the noble Lord give us the percentage of the people in the United Kingdom who voted Tory at the election?

Lord King of Bridgwater: That is the great fallacy. I have heard the argument about 50%, but that is the point I am addressing: how many people got elected with 50%? The question of a strike is a binary choice. It is not the same as having five or six candidates standing in a by-election or an election. I do not know how many noble Lords have actually stood as candidates for election but a number who are in this Chamber at present have. They will know that if you have a number of candidates, the chances of getting 50% of the vote are unlikely. Are we saying that is a good background against which you would have to go around and say, "Just a minute: we have cleverly worked out that 24% voted for us. Can we find another 3% from some other party and other 10% from somewhere, and then—my goodness—we could make some policy"? That is not the way this country has worked. The answer is that the system we have of first past the post is the basis on which government works.

8.30 pm

Listening to the noble Lord, Lord Wallace, perhaps it would have been more impressive if we were proposing some appalling invasion of people's privacy and rights—some outrageous intervention. We have already been through the fact that this provision does not infringe the European Convention on Human Rights in this respect. Perhaps I should say that the Government think that this is in the interests of all the people. I have mentioned this before and I apologise to the noble Lord for saying it, but what we are really talking about is public sector strikes. Those are the things that really hit people and in which the employer cannot go bust. A lot of the union material makes the point that the good thing about strikes is that strikers always have to recognise that they have some interest in the interests of their employer, because he might go bust. That is absolutely true in the private sector but it is not true in the public sector at all. This is one of the reasons why we have to address the problem. If noble Lords are saying, "Forget that. We will insist on a lower percentage voting. We will stand up"—

Lord Mendelsohn (Lab): My Lords—

Lord King of Bridgwater: Perhaps I could just finish the sentence. Are they saying, "We will ignore the interests of all the millions of people who may be badly affected"? The issue about the public sector is the amount of people in monopoly situations. That is why they are in a special position. We will come on to which industries and activities should be covered. This is a very important issue, and I agree that not everything should be covered. But in those areas where the nation and its citizens are most affected—the public sector—we have a duty as a Parliament to protect them.

Lord Mendelsohn: Does the noble Lord therefore favour the 50% threshold applying only to the public sector and not to the private sector as well, as it currently does in the legislation? Is he also suggesting that if the Government came forward with a ballot paper that consisted of not just a binary decision but a range of possibilities, whoever got the largest amount, he would accept that that was the judgment of the members of the trade union, so balloted?

Lord King of Bridgwater: The answer to the first question is no. The second I will need to think about, as it is far too complicated for me.

Lord Oates (LD): My Lords, I speak in support of my noble friend Lord Wallace of Saltaire. I must say that I followed his argument completely but I am not sure that I followed that of the noble Lord, Lord King of Bridgwater, at all. The noble Lord seemed to make the case that because strikes can be disruptive—we must acknowledge that they can be, particularly in the public sector areas of transport and education, as the Government have argued—and because of the impact on people, that justified the Government's proposed thresholds. But is the idea that the Government do not impact on people? The Government impact on the lives of millions of people in many areas, not just during the period when a strike may take place. Not long ago, we were discussing the changes to universal

[LORD OATES]

credit in the Welfare Reform and Work Bill, which will have a massive impact on some of the most vulnerable people in this country. That is on a mandate of, what, 24%? What we are asking for is a bit of consistency from the Government. Why do they believe that trade unions should be held to a completely different democratic standard than the rest of our democracy operates to?

We should consider carefully this idea of introducing thresholds. It is a major step in the way our democracy operates. In the first place, it second-guesses what the people who do not vote actually mean. It may be that the people who do not vote actually mean they do not want to vote; it does not mean that they wish to vote no. However, under this system, we have the perverse incentive whereby if you wish to oppose strike action you may well be better off not participating in a vote. If you do participate, you may help people over the threshold. As a noble Lord said previously, somebody voting against a strike who tips the vote over the threshold is actually facilitating it taking place. That makes no sense whatever. In a situation where there was a 50% turnout—which would meet the first threshold under the 40% requirement—even if 79% of those voting in that ballot voted in favour, the strike would be illegal. That would have a massive impact on industrial relations.

Thresholds like this are almost without precedent in this country. The only example I came across was the rather ill-fated 1979 Scottish devolution referendum, in which there was a 40% threshold. That was universally regarded as a not entirely successful way to go about things and has never been repeated. It was certainly not something the Government were keen to take on for the European Union referendum. As I have said before, strikes are undoubtedly disruptive, particularly in the public sector, and they should be a last resort. If we vote to leave the European Union, it could massively disrupt all of our lives for ever, but nobody is suggesting a 40% threshold there—for the good reason that inventing thresholds like this simply undermines people's faith in the system and can create extremely perverse outcomes.

Will the Minister tell the Committee why the Government believe it appropriate to impose such thresholds for a strike, which could cause disruption, but not appropriate in cases such as membership of the European Union? Why should this sort of threshold not be met when the Government are acting as a monopoly supplier of service? For instance, on the benefits system, with what mandate is a party with 24% of the vote savagely attacking the rights of vulnerable working people? There is very little consistency in what the Government are suggesting and I hope they will reconsider it.

Lord Monks (Lab): My Lords, the point I took from the speech made by the noble Lord, Lord Wallace, was less on the arithmetic and how it all added up and more on a warning to the Government not to overreach; not to be too arrogant. In a number of areas there is now a suspicion—I do not think that it is just on this side of the House—that the Government are being too arrogant with their opponents. Whether it is on Short money, voter registration or whatever, there is a sense that they are overreaching. It is not necessarily a

matter for the Minister tonight, but I hope that the Government will bear that in mind when they look at their agenda for the Bill as we go into it more. A little bit of humility would come in very handy when they are working out their next moves in a number of areas.

The noble Lord, Lord King, should not always assume that strikes are unpopular. A neighbour of mine, in King's College Hospital with a heart attack, was astonished when the junior hospital doctors got a round of applause from patients and staff when they walked in after their day off.

We talk a lot about history. In 1974 it was not the trade union members aggregated who made the difference; Edward Heath lost the election on the question, "Who governs the country?" So, funnily enough, strikes can catch a wind at certain times and if the Government really have their ear to the ground they will try to pick them out from the ones that are perhaps less popular. So do not always assume that strikes are turning off the population. Sometimes, they are not.

Lord King of Bridgwater: Perhaps the doctors got a round of applause because the patients were so pleased to see that they had come back.

Lord Balfe (Con): It is good occasionally to get up on this side of the House and remember why I am on the Conservative Benches and not on the opposition Benches. This is a clear manifesto commitment. You can throw statistics around for how many people voted for the Government and how many people did this or that. They are different systems. It is clearly written in the manifesto that:

"Industrial action in these essential services would require the support of at least 40 per cent of all those entitled to take part in strike ballots - as well as a majority of those who actually turn out to vote."

I am impressed with the arithmetic of the noble Lord, Lord Dykes. I am a little puzzled if the number of people coming into his office for a manifesto varied between eight and 10, giving an average of six—he obviously went to a different school to where I learnt my averages. These are different elections. I have no objection to proportional representation. I was a member of the Labour campaign for electoral reform for the better part of 20 years. I voted for the alternative vote system in the referendum because I believe that democracy is strengthened if it is more firmly based than it is at the moment. I am always impressed by the fact that, whenever the Labour Party is in opposition and look as if it is not going to win, it sets up commissions under the noble Lord, Lord Plant, or Robin Cook to look at electoral reform. Then somehow when it gets into government electoral reform gets lost.

This is a separate issue. What majority the Government have is irrelevant to the fact that the Government have a mandate under our constitutional system and a clear entitlement by virtue of the manifesto to introduce this legislation.

Lord Dykes: Does the noble Lord agree that the aspiration for sensible governance of any country is for the number of seats in Parliament to equate proportionally to the percentage of votes from the electorate? The closer we get to that, the more we get a natural balance of the genuine result. The only such

systems in Europe, of which the noble Lord has great knowledge, are the Irish with the single transferable vote system and Germany with the additional member system. Why does he not support that?

Lord Balfe: I think we are straying a little, but I am happy to talk to the noble Lord afterwards about different electoral systems.

Many strikes are unpopular, and sometimes the trade union movement does itself no good. I would imagine that everyone on the opposition Benches is uncomfortable at RMT chief Steve Hedley's comment:

"I think all the Tories are an absolute disgrace, they should be taken out and shot to be quite frank with you."

Obviously, no one is going to support statements like that, but they are made and reported with pictures of a union leader with a Kalashnikov in the *Evening Standard*, and this impacts on people.

I quoted earlier what I call the moderate unions—the 16 unions that issued the brief on the Bill. It does not mention strike ballots once. Over four pages it brings out a good number of other points, including on electronic balloting, check-off, agency workers and the Certification Officer. There is not a single word on ballot thresholds. I suggest that the Government have a clear mandate for this. According to the Mayor of London's brief, which may or may not be accurate, over half the strikes called by RMT would not be possible under this law. That could well be the makings of a rather popular law.

I counsel noble Lords opposite—including the noble Lord, Lord Wallace—to have a look at the sayings of Mr Mark Serwotka, the head of the Public and Commercial Services Union, who said that this Bill provides an organisational challenge. I draw his attention, too, to the words of a trade union general secretary, who is a friend of mine, who said to me, "Richard, I would never take them out on strike if I only had half the people behind me". If you are going to have a strike, you need to have a good, solid basis of representation and a good, solid majority behind you. I think that the Government in this instance have a very clear mandate for this change, and I doubt that Labour will repeal it when the party—as it inevitably will—comes into office.

8.45 pm

Lord Sawyer (Lab): As a Member who has led many strikes, I have some experience of what it takes to make one successful. Indeed, to persuade any group of trade union members to take strike action, a trade union leader has to have an outstandingly good case. Throughout my career, and many years as a trade union leader, there were no restrictions or numbers on ballots, but I always had to be clear that, although I might go to a work situation where a small number of members were expressing a point of view, which today might be taken as a ballot, the vast majority of trade union members were behind what the union wanted to do. Trade unions cannot call industrial action without the support of their members. We never needed ballots to tell us that we had support in the past, and we do not need them to tell us now. I understand that times have moved on, and political parties and the wider

electorate want some measure about the level of support, but I would not like anybody to be under the impression that trade union leaders can just call members out on strike willy-nilly. That is not the case; it needs a lot of thought and consideration and wide support.

Although this debate is only in its early stages, I am already starting to feel anxious that it is not a Trade Union Bill debate but a kind of RMT debate. It focuses on the actions of one particular union. I remember the late, great Mr Bob Crow was often vilified in the press for being an unpopular trade union leader, but that was not the case after he died, when the management of the business came out in numbers to say what a great trade union leader he had been.

Lord Balfe: Can I point out to the noble Lord that people always say nice things about you when you are dead? If they start saying them about you while you are still alive, that is the time to get really worried.

Lord Sawyer: That is not a matter that can be proved. Clearly, those of us who know about employer relations in the industry knew that Bob Crow was a widely respected, sensible and realistic trade union negotiator. The problem was that he was very tough—he drove a tough bargain on behalf of his members. Let us not forget, when we debate manifesto commitments and ballot thresholds, that the balance of power at the workplace, setting aside London and the RMT, is massively loaded in favour of the employer. Trade unions throughout their history have needed to work very hard and make big sacrifices to prosecute their case and get any benefits from taking industrial action. That is the kind of point that the noble Lord, Lord Monks, made—it is about getting some kind of balance. I understand the manifesto commitment and I understand where the Government are coming from, but it is balance that we are looking for in this debate. It is a question of what seems to be fair and reasonable, and the two clauses, both the 50% and 40%, seem a bridge too far.

Baroness Burt of Solihull (LD): My Lords, I shall not detain the Committee for too long, but I want to talk about Clause 3 standing part of the Bill. It illustrates the problem of combining a 50% turnout requirement with a 40% of eligible votes being in favour. Can the Minister confirm whether the figure of 40% was in the Conservative manifesto?

We have had all kinds of figures bandied around; we have had 35%, 20% and 25% as suggested rates, but none of these works. We have had the noble and learned Lord, Lord Brown, talking about 499 out of a workforce of 1,000 voting for action but unable to make it legitimate because one person did not vote in favour. And if you had just a 50% turnout, 80% would have to vote in favour for industrial action. It is important to have strong support for action if you are going to inconvenience the public, but I do not believe that this is the way, so my party does not believe that Clause 3 should stand part of the Bill.

Lord Collins of Highbury (Lab): My Lords, the fact that there is a manifesto commitment to both 50% and 40% does not release the Government from the

[LORD COLLINS OF HIGHBURY]

responsibility to explain why and to explain the consequences of their action. The manifesto also says:

“We will protect you from disruptive ... action”.

If the strikes do pass the test and there is disruptive action, what are the Government going to propose next? A lot of people in this Chamber believe that this is the first step and not the only step; there may be more to come in order to stop disruptive action.

The purpose of our amendments in this group is to highlight and probe the arbitrary nature of the proposed statutory thresholds for industrial action ballots. The potential impact of these will be to make it very difficult for working people to organise collectively in defence of their jobs, livelihoods and working conditions. As my noble friend Lord Sawyer says, the balance is not overwhelmingly weighted in favour of the workers in most parts of the country in most industries. Unions will find it increasingly difficult to organise lawful industrial action, especially in larger workplaces and those with more dispersed workforces.

The recently published impact assessment estimates that the 50% threshold will reduce the number of work stoppages due to industrial action by 37% each year. The Government have also published initial estimates suggesting that the 40% threshold in important public services—we will obviously come on to the debate in the next group about what those important public services are—would lead to an additional eight percentage points reduction in working days lost to industrial action.

It is also unclear why the Government have determined 40% as a threshold. I know it is in the manifesto; I am not querying that. But nowhere in the impact assessment do the Government look at other percentages as a possibility. They have instead stuck to this figure of 40% as the magic number that will mean that industrial powers are sufficiently curbed, meeting their manifesto commitment to,

“protect you from disruptive ... action”.

Can the Minister explain and give us the rational argument as to why the figure is 40%?

I want to spend a bit of time tonight talking about what, in the main, unionised workplaces are like. Unionised workplaces tend to be safer. They are more likely to have enhanced family-friendly policies and to invest in skills and training than non-unionised workplaces. And as the Minister knows extremely well, there are unionised places that are well positioned to innovate and respond to changing economic conditions—she has been part of one of the most successful partnership agreements in the country. They work and they deliver because they are focused on ensuring the success of the enterprise, as the noble Lord, Lord King, said. That is what good unions do.

These thresholds will not assist in that process. Modern trade union workplaces do not occur by magic. Ensuring an equal bargaining power between unions and employers is not easily achieved. The ability of unions to organise lawful industrial action provides essential support for effective negotiations. They are part of a rational process to ensure that both sides understand the consequences of their action. People do not go to strike to destroy the enterprise; it is often to protect it, their jobs and their futures.

The majority of ballots do not lead to action. Balloting members ensures that employers take the views of the workplace seriously and engage in genuine negotiations. It is part of the process of reaching agreement. That is what union organisation is about. This week is heartunions week, celebrating the valuable work unions do to improve pay and working conditions. It is in the interests of employers and employees for disputes to be resolved quickly and amicably.

I fear the Government’s proposals mean that disputes are more likely to become protracted. Unions will take more time in the run-up to ballots to ensure the necessary turnout, diverting time and effort away from finding an amicable settlement. Employers may decide to wait and see whether a union can make the strike threshold before making a revised offer. These thresholds are not working towards decent industrial relations. They also increase the potential for legal challenges, which will escalate tensions between employers and the workforce, again making it difficult to resolve a dispute amicably.

The Government’s case is that the 50% turnout threshold, along with the 40% threshold in important public services, are needed to protect the public from disruption. The noble Lord, Lord King, made that case. In order to be effective, industrial action must cause disruption. However, from the current evidence, it is clear that unions are treating industrial action as a matter of last resort.

The evidence is clear: the statistics published by the ONS confirm that the number of days lost to industrial action per year has fallen dramatically. Since 2010, on average 640,000 days have been lost to industrial action each year compared with 7,213,000 days lost per year in the 1980s. In 2014, there were only 155 stoppages as a result of industrial action, with 55% of the stoppages—85 of them—taking place in the private sector and 45% in the public sector. We hear talk of this being a problem for the public sector; the evidence does not back that up. In an economy with more than 30 million people in employment, that is an extremely low level of industrial action. Most industrial action is short lived. In 2014, 64% of all stoppages lasted only one or two days.

Why do people strike? In 2014, 89% of working days lost were due to disputes about pay and pensions. As I said, in the vast majority of cases where unions ballot for industrial action, disputes are settled without the need for strike. In 2014, there were 550 ballots supporting strike action but only 151 stoppages. I fear that this threshold and this intention to curb industrial action are going to exacerbate the situation and will lead to longer negotiations without the push towards a settlement.

9 pm

On the arbitrary threshold of 40%, in Clause 3, for those who have been balloted for strike action in important public sectors, let me be absolutely clear. Along with the noble Baroness from the Liberal Democrats, noble Lords on this side are absolutely opposed to this clause. There is no hiding the objective of it: the Government wish to make it harder for public servants—our healthcare workers, professionals, educators, fire and transport workers—to organise

collectively. It will not aid amicable settlements. It will not aid the process of good industrial relations: it will have the opposite effect.

The proposals would have the effect of counting abstentions as no votes, purely in the case of industrial disputes. That is something that the International Labour Organization has condemned as undemocratic. It has illustrated this by referring to a ballot of 1,000 people. At least 500 must have voted, with a majority in favour of least 400. If only 500 voted, the majority must be at least 80%. That is what this proposal will mean. The ILO has said that this obstacle to trade unions carrying out their rightful functions is wrong.

Placing significant restrictions on the ability of those working in key public services to strike removes the level playing field on which constructive negotiations can take place. It means that the ability of employees to use the last resort of strike is severely hampered—something that employers will fully understand—and therefore it severely undermines negotiating power and authority.

The Government's proposals seem to imply that strikes for public sector workers are somehow routine. That is the other case—that somehow this is happening every day. Strikes in the NHS and schools are indeed disruptive, but they are very rare and increasingly so. According to the ONS, the average number of working days lost to industrial action has fallen year on year; so, again, what is the purpose of this arbitrary figure? To place arbitrary and excessive restrictions on the negotiating position of workers in key public services is both unjustified and undemocratic.

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, the ability of union members to strike is an important part of our industrial relations system. As the noble Baroness, Lady Burt of Solihull, rightly reminded us, today we are also debating the clause stand part. Let me start by explaining that the objective of Clause 3 is to require strike action in important public services, if it has to take place, to secure a stronger democratic mandate. We must consider the interests of the wider public, as well as those of non-striking workers and employers, alongside the rights of union members. It is a sensible and proportionate reform and, as has been said, the thresholds we are talking about are in our manifesto. The impact of strike action is most severe when it takes place in the important public services that people and businesses rely upon every day, particularly services that are effectively monopolies, leaving people with no alternatives if strikes take place. This is particularly unfair when strike action goes ahead without strong support by a unionised workforce. This is a very different situation from my own positive experience—

Lord Collins of Highbury: The Minister used the term “monopolies”. Is that true of London bus drivers? Do they have a monopoly? There are alternatives in London. There are also alternatives between buses in London; there is not necessarily just one route. So why London bus drivers?

Baroness Neville-Rolfe: I think I used the phrase “effectively monopolies”. The point is that the degree of choice is very limited. Since the noble Lord has mentioned London buses, at the beginning of 2015 London bus drivers commanded the support of just 21% of members but Transport for London reported that 7.5 million journeys were affected by the strikes. People needed to make alternative arrangements for travel to work or to important appointments on those days. To return to another point, I am sure that the drivers did not get a round of applause from the frustrated passengers on those occasions either. I agree that the situation might be different outside London, where the bus routes are more disaggregated.

It cannot be right that strike action that causes such widespread disruption can take place on the basis of the support of a small proportion of union members. I know myself just how difficult it can be to make arrangements when tube staff and school teachers go on strike. That is why we have introduced an additional threshold to apply to important public services. I just do not accept the argument—

Lord Mendelsohn: There is a difference between “any” disruption and the situation the Minister talked about earlier, where there is a monopoly, so there is complete disruption. Is she making the case for “any” disruption? Is this lowering the threshold?

Baroness Neville-Rolfe: I do not entirely understand the question. I think the thresholds are clear. We are proposing the thresholds and debating them.

Lord Mendelsohn: I am happy to clarify. The Minister made the point that where a particular service is a monopoly—that is, where the impact of having a monopoly means the withdrawal of such a service—you are forced into not having a reasonable range of alternatives. “Any” disruption is where there are alternatives, so you can choose other things, but you will be disrupted. She has made the argument for any disruption being a reason to have these thresholds, rather than her original test, which was about monopolies. That distinction between those two levels of disruption is quite significant. Is her case about absolute disruption, where your options are narrowly limited and likely to be restricted, or is it about any disruption?

Baroness Neville-Rolfe: I still do not really understand the point. I shall come on to give some examples that may be helpful in explaining the thinking. This part of the Bill is quite straightforward because, as several people have told us, it implements a particular wording in the manifesto. I am trying to explain the background to that.

I cannot accept the argument of the noble Lord, Lord Wallace of Saltaire, although it is very good to have him involved in this debate since we worked together in the coalition. There is no parallel between our recent parliamentary elections or the matters mentioned by the noble Lord, Lord Oates, such as the EU referendum, and the proposed thresholds. In addition to the excellent points made by my noble friends Lord King and Lord Balfe, it is just not a fair comparison. It is right that strong support be required for strike action ballots, because strikes can affect large numbers

[BARONESS NEVILLE-ROLFE]

of the public who do not get a say in the ballot and are dissociated from the relevant trade dispute. In contrast, the public are able to participate in elections and have a democratic say in the outcome. As my noble friend Lord King said, they do not face a binary choice and are choosing between a range of candidates. It follows that the successful candidate may have a smaller share of the overall vote.

I also realise that noble Lords are concerned that the treatment of abstentions, which I think is what the noble Lord, Lord Oates, was getting at, would make the thresholds harder to meet. Our objective is to ensure that strikes can only ever be the result of a clear, positive decision by union members, because the action can go on to cause widespread disruption for the public. Union members are free to abstain from voting, but this is not a positive vote. It is only fair that it does not count towards the threshold.

Recent events show that the threshold can be achieved when union members feel strongly about the issues that are relevant. For example, last year, RMT members were balloted on the night tube, resulting in a turnout of 53% and support of 48%. That means that 91% of voting members supported industrial action, surpassing the thresholds and putting beyond doubt the legitimacy of the ballot mandate.

Lord Oates: Can the Minister address a bit further the issue of the perverse impacts of an abstention being stronger than a no vote? In 2014, I think, the Royal College of Midwives balloted for action for the first time in its history. I believe that 82% voted in favour of action and 8% against. However, the turnout was only 49%. Under this Bill, any industrial action taken by the RCM would therefore be illegal. Conversely, if thousands of people had voted against the strike, it would have been legal because they would have met the turnout threshold. That does not make any sense at all. Can the Minister please address that perverse and absurd impact?

Baroness Neville-Rolfe: The noble Lord has answered his own question. Our reforms ensure that strike action does not take place on low or unrepresentative turnouts. That is why we have two different thresholds.

Lord Oates: Does the Minister seriously think that it would be a sensible situation for the Government to get into if, on a ballot of 82% of people voting in favour, that industrial action became unlawful? Does she think that would be good for industrial relations in this country? Would it help overall relations in this country?

Baroness Neville-Rolfe: My Lords, it is always possible to talk about individual examples. In a minute, I will explain some other examples in relation to the amendments that have been tabled. Asking that 50% of eligible members take part in a ballot regarding action which is going to be hugely disruptive to people in all walks of life seems to me to be fair and democratic.

The threshold does not ban strike action. I think that that is accepted. It may stop some strikes—I think I have to accept that—but only those which have

not been able to secure a sufficiently strong mandate. It is about restoring a level of democratic accountability to industrial action and it will rebalance the interests of all working people, both union members exercising their right to strike and non-striking members who want to go to work and carry on their normal lives.

We have before us a number of amendments to lower the 40% threshold, and to reduce the requirement for a simple majority of yes votes. Reducing the thresholds would fail to achieve our objective. It would mean that the thresholds have no practical effect, and would not ensure that strike action could only go ahead as the result of a clear, positive decision by union members.

Let me illustrate the point. If the alternative threshold of 25% proposed in Amendment 9 were applied, then only 250 in a ballot of 1,000 need to vote yes in ballots for important public services. This adds nothing to Clause 2, which requires a minimum turnout of 50%, and a simple majority of those who vote to support strike action.

Lowering the threshold even further to 20%, as suggested by Amendment 8, would again make the important public services threshold meaningless. Finally, Amendment 2 would replace the requirement to achieve a simple majority in all ballots with a requirement that only 35% of those voting need to support strike action. If this applies to a ballot of 1,000 where 600 have cast a vote, then only 210 union members would need to vote yes.

I do not believe that members of the public would feel that this restores a level of democratic legitimacy to industrial action ballots. They would gain no comfort in knowing that they cannot get to work or get their children to school because less than a quarter of union members have supported this outcome.

9.15 pm

In response to the question from the noble Lord, Lord Collins of Highbury, about the 40% threshold, in addition to its being in the manifesto, the Government set the threshold at 40% on the recommendation of the CBI, made in 2010, on the basis that this mirrors the rules for statutory union recognition. The CBI continues to support this. Over the summer, we consulted on which services within the named sectors should be subject to the threshold and on how the threshold should operate in practice. We analysed over 200 responses and considered in detail the available evidence of the impact of strike action across all sectors.

We published the Government's response to the consultation on 21 January and specified precisely those services where we felt there was compelling evidence of the potential impact of strike action on the public. The skeleton regulations included in the Government's response focus on and limit the application of the threshold to those services where strike action could have the most adverse and significant consequences. To give a few examples, these include firefighters; doctors providing emergency, urgent and critical healthcare; schoolteachers in state-funded institutions; tube and bus drivers; and border officers operating security checks for the exit and entry of people and goods.

To conclude, the 40% threshold will mean that strikes can take place only if they have a strong mandate. It is about ensuring that industrial action has democratic accountability, and it will take proper account of all working people—both union members exercising their right to strike and non-striking workers who want to go to work and carry on with their daily lives. I hope that noble Lords will accept that Clause 3 should stand part of the Bill and I ask the noble Lord to withdraw his amendment.

Lord Wallace of Saltaire: My Lords, this has been a very disappointing debate. First, I am struck that all references to strikes have been about London strikes. For the vast majority who live in the rest of the country, life looks a little different. I am very sorry if the people of London are disrupted by Tube strikes, but that does not apply necessarily to the entire country. Secondly, when I go to Yorkshire I come across a profound disillusion with conventional politics among the different sorts of people whom I meet. Incidentally, that disillusion is deepened by the fiasco of the northern powerhouse, which even the *Yorkshire Post* occasionally now refers to as the “northern poorhouse”. What is now happening with museums rubs in the sense that the Government care about London and the south and not the north. The other day someone remarked to me that as we have a Government with six senior Cabinet Ministers representing Surrey constituencies and none representing any constituencies in Lancashire, Yorkshire, Durham, Northumberland or Cumbria, it is not surprising that they neglect the north altogether.

The noble Lord, Lord King, talked about disruption. Strikes disrupt people’s lives for a few days. What I hear from people in Bradford is that bankers have disrupted the economy for several years and we have all paid for it, yet the Government have no proposals to strengthen controls on the banking industry. Indeed, from what I understand from the *Financial Times*, they have just refused to renew the post of the current head of the Financial Conduct Authority because he was felt to be a little too tough on the banking industry.

Lord King of Bridgwater: My Lords—

Lord Wallace of Saltaire: I will listen to the noble Lord in a minute. My message is simply this. This is intended to make life more difficult for unions. It will be read by the large majority of the public who either did not vote or did not vote for the Conservatives as yet again tipping the balance in favour of the well-to-do, the comfortable and the south-east against the majority of people in this country.

I say to the noble Lord, Lord King, and others that I hope that in two years’ time we shall not meet with politics which goes outside Westminster and on to the streets, but I fear that if a Government wish to push through a radical, free-market, right-wing agenda with some clear underlying prejudices against the public sector, for which a great many people—more in the north than in the south—work, we will run into very serious trouble.

Lord King of Bridgwater: I did not realise that these were alternatives. When the noble Lord asks what we should do about bankers and some of their activities, it is to suggest that either something is done about the unions or something is done about the bankers. I have some sympathy with his point about the bankers, but I do not regard that as an alternative approach to doing something about the unions.

Let me say this also: there is dissatisfaction with politics. There has been a lot of talk about manifestos. Is not the reality of our democracy that members of parties have a manifesto on which they stand, and they then enact it and act as they feel will carry the maximum public support to give them the best chance of being elected again? I think I am right—the Minister may be able to confirm it—that a wide poll was taken about the proposals on thresholds for unions. I understand that there is wide public support for that proposal. That is sensible governance, and I hope that the noble Lord will agree.

Lord Wallace of Saltaire: My Lords, I have not seen the poll so I shall go and discover what the situation is. We have given this a fair wind and I think it is time that I withdraw my amendment. However, I wish to mark that this raises some very large problems about government to do with fairness, how government tries to represent all the citizens of this country, as it does, and the balance of legislation. I think that the Government would be extremely unwise not to bear that in mind in the happy first six months after their victory.

Lord Balfe: The noble Lord is a very good example of a sinner who repents. I have happy memories of him standing at the Dispatch Box defending our Government for many years.

Lord Wallace of Saltaire: My Lords, I beg leave to withdraw the amendment.

Amendment 2 withdrawn.

Amendment 3

Moved by Lord Collins of Highbury

3: Clause 3, page 2, line 5, after “engaged” insert “solely”

Lord Collins of Highbury: My Lords, this debate is on what certain “important public services” mean in terms of not just the 50% turnout but the 40% of those entitled to vote. Important public services are defined as the fire service, transport services, education for children under the age of 17, border security, and the decommissioning and management of radioactive waste. The Bill does not specify within these services who will be covered by the 40% threshold. But as the Minister has just said in response to the other grouping, the Government recently responded to their consultation on balloting thresholds and important public services.

In that response, and the accompanying skeleton regulations, more details are provided on the types of jobs and functions that the Government propose should be covered by this 40% threshold. In the fire service it includes firefighters, firefighter managers, control centre staff and managers who co-ordinate the response; and in health it includes doctors, nurses and staff employed

[LORD COLLINS OF HIGHBURY]

in ambulance services, A&E, intensive care and high-dependency units. The threshold will also apply to publicly funded services provided by private hospitals. In education it includes teachers in publicly funded schools that teach pupils between the ages of five and 16, and head teachers and academy principals in state-funded education teaching children between the ages of five and 16. In transport it includes, as I mentioned before, staff employed in bus services in London, including drivers and emergency and control staff, and staff employed in passenger rail services, the metro, the Underground and trams, including train drivers, conductors and guards, safety staff, maintenance staff, and signal and engineering staff. In civil air transport it includes those who work in civil air traffic control, including licensed civil air traffic controllers, airport security, port security and border security, including staff employed to implement entry and exit checks. The Government have said that they are still reviewing which functions within the nuclear decommissioning sector should be covered by the 40% threshold. It is unclear when this decision will be made and I hope that the Minister can inform the House exactly when that will be.

I am, of course, pleased that the Minister has put her name to Amendment 6, which removes from the scope of the 40% threshold individuals employed in ancillary activities that support important public services. This means that hundreds of thousands of private sector service workers will no longer be covered by the threshold. Of course we welcome that. However, it does not address the imprecise nature of the proposals. Before they go to a ballot, unions will not know whether the 40% threshold will apply. That will create uncertainty in industrial relations.

Amendment 3 is a probing amendment, intended to seek clarity from the Government about the broad category of “important public services”. We suggest inserting “solely” into new subsection (2B), so that the 40% threshold would apply only to those who are,

“normally engaged solely in ... the provision of important public services, or”,

ancillary services. As the provision stands, it is unclear whether individuals who spend only part of their time providing so-called “important public services” are covered by the 40% vote requirement.

Take education, for example. Education unions planning to ballot staff in a school with a sixth form will find it difficult to assess whether staff who teach both pupils under 17 and those in years 12 and 13 are normally engaged in providing important public services. This will be particularly problematic where teachers’ work schedules vary during the academic year. They might do one thing in one term and something else in another. How will unions be able to work out how the 40% will apply? Similarly, it is not clear whether the 40% threshold will apply to a ballot involving lecturers in further education colleges who teach classes in which some of the pupils may be 16.

The skeleton regulations say that the threshold will apply to,

“care services provided by a hospital for illnesses, conditions or injuries which require immediate attention in order to prevent serious injury, serious illness or loss of life”.

It is far from clear whether this will cover, for example, medical staff working in orthopaedic wards, radiographers, anaesthetists or surgeons. It is clear that the Government have not thought this measure through closely. It demonstrates a poor understanding not just of the way trade unions operate but of public sector working patterns.

The proposals are inconsistent and incoherent, and vary considerably across sectors. For example, virtually all staff working in the transport sector will be covered by the 40% threshold, whereas in other sectors its scope will be far narrower. I find it difficult to see how the Government can justify restricting the right to strike for staff working in ticket offices at railway stations and on the Underground, for example, when TfL has just decided to close ticket offices because they are not considered to be essential services. That creates incoherent policy application.

The threshold will apply to bus drivers—but only in London. On the previous group of amendments the Minister suggested that that was because, outside London—well, actually I did not quite get her argument. Were there more buses there? From what I hear on the radio, rural areas will be depleted of any bus service. The “strike” affecting bus services in rural areas is being conducted not by the workers, who would love to keep their jobs in those services, but as a consequence of government cuts, which will deny communities the right to a bus service. An essential bus service is being denied by the actions of this Government, elected on 36% of the poll. It is that incoherent, inconsistent policy objective that we object to most.

9.30 pm

Amendments 5 and 10 are probing amendments designed to provide clarification of the Government’s definition of the category of important public services. In Amendment 5 we have used not “important public services” but the ILO definition that should apply to those involved in the provision of “essential public services”. The ILO and human rights advocates, including Amnesty and Liberty, use a definition of essential services which is highly restrictive in cases where some restrictions on the right to freely associate are deemed justified.

With this Bill the Government have taken a decision to deliberately move away from this definition and therefore to deviate from an established consensus on when it is justified to restrict industrial action. I make this point because of the standards set by the ILO. We argue about fair and reasonable societies in the world and make judgments about democratic societies. We do not make judgments about plebiscites and elections being the only means of determining whether a society is fair and reasonable. Civil society and the role of trade unions is vital in making that judgment. Many government leaders claim that their mandate can last for 10 years and they ban strikes and trade unions.

The Government claim that the proposed thresholds are justifiable because they do not introduce a complete ban on the right to strike in important public services. They argue, therefore, that the ILO standards do not apply. The example given by the noble Lord in relation to midwives is a good one: 80% voted in favour of a particular action but, because they fell just short of the 50% threshold, that strike would be deemed illegal.

The Employment Lawyers Association has warned the Government against introducing thresholds for services not covered by the ILO definition of essential services. In response to the BIS consultation on balancing thresholds the ELA warns that, if the provisions in this Bill and any accompanying regulations are not drawn as narrowly as possible, the Government run the risk of a challenge on the basis that the imposition of the raised thresholds infringe Article 11 of the European Convention on Human Rights. Any restrictions on the right to strike must not be greater than necessary to pursue a legitimate aim in a democratic society.

The ILO Committee on the Freedom of Association has also been heavily critical of the Government's decision to impose an arbitrary definition on the freedom of association. It should not be a source of pride for the Government that, with the imposition of these thresholds, we are bracketed with countries such as Bulgaria, Honduras and Nigeria, all of which have been criticised by the ILO for implementing similar thresholds.

Amendment 10 would clarify that the term applies only to those services the interruption of which would endanger the life, personal safety and health of the population. Again, this is in line with the official International Labour Organization definition of essential services.

We dispute the necessity of the additional requirement of 40% for this category in principle but, if the clause remains in the Bill, there is at least a requirement on the Government to provide Parliament with some clarity over which groups of people this category will apply to and what is the level of importance for which the 40% requirement is deemed necessary.

I fear that, once again, we have a piece of bad legislation—badly written and not thought through—that will be subject to a series of statutory instruments that will seek to clarify matters but will just be an open cheque for the lawyers, who will be fighting over this. It removes the spirit of good industrial relations and puts things firmly in the hands of lawyers. I beg to move.

Lord Stoneham of Droxford (LD): My Lords, it is a very serious issue when you diminish somebody's right to withdraw their labour. Therefore, it must be very exceptional. Normally it would be good industrial-relations practice, when you are doing this, to offer those employees some protection in return. There is nothing on the agenda today that suggests that, or even that the Government are thinking about it.

There are a number of unintended consequences to all these measures as well. I shall mention two. I always think of the syndrome of the winding-engine men in the coal industry—a key group who used to control who went down and came up in the mine. If you start having thresholds, you will encourage small, strategic groups who will organise to go on strike and can cause massive disruption. I always think that the winding-engine men could be the signal. It could be other groups. That is an unintended consequence.

There is another consequence of this sort of thing, which I thought about in the last debate. Do you remember what the New York governor said about politicians?

“You campaign in poetry. You govern in prose”.

This is what we are doing with industrial relations. We are actually encouraging trade unionists to spend all their time getting the votes over the thresholds so that they can put pressure on their employers. It underestimates the difficulty and the time that trade unionists actually give to trying to minimise disruption. That is what trade union leaders do—they know these disputes are unpopular. That is why there is a trend for one-day disputes rather than longer ones. They are trying to manage this in very difficult circumstances. If you encourage them to have to spend their time campaigning to get the votes over the threshold, they will not be able to control those emotions or get the people back to work.

This is precisely what has happened in the junior hospital doctors dispute. How do you get people back when 76% of them have voted, and 99% are in favour? I said this several weeks ago, and we are no nearer a settlement. This is the sort of unintended consequence that we have.

That is why in Amendment 18 we are saying that the Ministers' powers must be very restricted here. They cannot just come along as soon as there is a dispute in some area and add that to a list. This will form the worst sort of legislation, and it will have the worst consequences. I do not know where the noble Lord, Lord Leigh, is tonight, but I thought we were going to have amendments in the next group telling us how we are going to widen these groups, so virtually any group in the public sector can be included. I imagine he has been told to go home, unless he is going to come back from the dead and propose these motions tonight. That is precisely the sort of thing we are worried about in this legislation.

This is just the first step. This is the agenda. This is the agenda of this Government: a partisan agenda which will be disruptive of industrial relations in this country and will have completely the opposite consequences to those they are trying to reassure the public they are going to provide for them.

Lord Balfre: My Lords, I will ask the Minister a question. I believe we are going to have tremendous difficulties defining,

“education of those aged under 17”.

Not only do you have differences in who the teachers are teaching, but also head teachers can preside over schools of different age spans. Will the Minister give some careful thought, between now and our next looking at the Bill, to how the clause can be better defined? I do not think that it works as it is.

Baroness Neville-Rolfe: My Lords, as I have already explained, strike action in services that people rely on every day can trigger a significant amount of disruption. It is particularly unfair when strike action goes ahead without strong support from union members. For example, in 2011 NHS workers were balloted by UNISON for strike action—the noble Lord, Lord Wallace, is not in his place, but this was not a London-focused matter—and, according to reports, only 11% of 250,000 members supported strike action. This is disproportionate to the 1 million patients that the wonderful NHS assists in England every 24 hours, who would have been affected by the action taken.

[BARONESS NEVILLE-ROLFE]

That is why we introduced a further threshold in Clause 3 to apply to important public services in, as I have said, the fire, health, education, transport, border security and nuclear decommissioning sectors. The Bill limits the threshold in this way because we recognise the particularly serious impact that strike action can have in these areas. The objective of the threshold is not to ban strikes altogether, but to ensure that strike action in important public services can take place only if it obtains a strong democratic mandate.

On Amendment 3 and the questions from the noble Lord, Lord Collins, the Bill has been drafted to take account of the fact that most workers will have a range of roles and responsibilities, which may vary across the year or sometimes even in a single day. For example, London Underground control room staff may spend only part of their time monitoring the network and co-ordinating the response to critical incidents, and the remainder on other responsibilities. They may not engage solely in “important public services”. However, their absence in the event of strike action could severely disrupt the service, as they are critical to ensuring that it runs safely and securely. The existence of the threshold would be ineffective if they were excluded on the basis that they do not spend 100% of their time in the control room, as there are few roles in the modern workplace that engage in only a single activity. To my mind, that would make no sense.

On Amendments 5, 10, 12 and 13, we have used the term “important public services” to describe the services that will be subject to the 40% threshold. The term is intended to capture those services where strike action could have the most significant impact on the wider public. That is why the Bill limits the application of the threshold to six sectors. We consulted over the summer, as was said. In the analysis of the 200 responses, we reviewed the available evidence on the impact of strike action across different public services. We listened to people’s concerns. We were troubled by concerns that the threshold could be applied broadly, despite the Government’s clear intention that it should be limited to those services where the impact of strike action is most significant on the public. We listened and responded. We set out our findings in the skeleton regulations, which were referred to. I shall explain this with one or two examples.

The pressing social need that we are addressing in the health sector is the risk to life, or of injury to the public, in the event of industrial action. We have therefore focused the threshold on only publicly funded emergency, urgent and critical care. This is where reduced service levels can have the most immediate impact on the lives and safety of patients and the public. The noble Lord, Lord Collins, asked about orthopaedics and midwives. If they are normally engaged in the provision of emergency, urgent or critical healthcare services—which sounds like midwives in hospitals—then they will be included in the threshold.

In the fire sector, our aim was, again, to protect the public against the risk to life or of injury. In the light of this, we have focused on firefighting services, including co-ordination of the emergency response, because these are all critical to ensuring that fires are dealt with promptly and effectively in order to protect the public.

9.45 pm

In the education sector, the Government aim to ensure that all children have the right to an education, so we have focused on teachers who teach pupils aged five to 16 in state-funded institutions. That reflects the importance of these years for children’s education and the disproportionate impact on learning that strike action can have. I heard, however, the point made by the noble Lord, Lord Balfe, and I will certainly think about that point before we come back on Report. We have not sought to apply the 40% threshold to private schools or nurseries, because there is no evidence of strike action in these institutions having a major impact on children or their parents.

In the transport sector, our priority is to ensure that large numbers of people can rely on the services they need every day to make important journeys. We have therefore focused on passenger services, because strike action is more likely to have an adverse and immediate impact on people’s ability to go to work, to school, to college and to important appointments. I had the same question about ticket offices, but when I inquired it was explained that employees in ticket offices are disproportionately relied upon by the disabled and elderly, who need help in using public transport.

Lord Collins of Highbury: Yet the argument is made that ticket offices are not needed any more; they are closing them and Transport for London is going to propose that a number of stations will not be staffed. I hope that the Government will tell Transport for London that it is damaging people’s confidence in a public service and therefore it must keep the ticket offices there.

Baroness Neville-Rolfe: I think we all feel that the plight and the needs of the disabled and elderly are important, but I was trying to explain the logic on this occasion. The fact that people in ticket offices are helping disabled and vulnerable people is actually a big positive.

There was some discussion about why London buses but not rural buses are included. During the recent strike of 2015, TfL achieved a partial service, but this resulted in 7.5 million fewer journeys. Workers on low incomes rely disproportionately on the bus service in London; around 40% of people using buses are on concessionary fares and some 50% of bus passengers have an annual household income below £20,000. In contrast, there is limited evidence of the impact of strike action on local bus services outside London and on the sorts of users who rely on these services.

Finally, in the Border Force we are addressing the significant risks to public safety in the event of disruption to border controls. We have focused on services in respect of the entry and exit of people and goods, as these are central to the carrying out of checks and to preventing illicit commodities, such as unlicensed drugs and munitions, entering the country.

The noble Lord, Lord Collins, asked about progress on nuclear decommissioning and when our findings will be announced. The sector, as he knows, is a complex, heavy-industry sector with interdependencies between the workforces within and between sites. The

Government are working to better understand these interdependencies and the implications of forthcoming business changes, and to support workforce reform plans, before bringing forward regulations to apply the threshold in this sector. Any regulations will be subject to the affirmative procedure.

Lord Oates: The Minister said that the reason the rules were not being applied to private schools was because there was no evidence of widespread disruption in such schools. Is there evidence of such disruption in the nuclear decommissioning industry? If not, why is it being included?

Baroness Neville-Rolfe: I think the arrangements on nuclear decommissioning are still under consideration. I can certainly come back to the noble Lord on the question of past disruption. It is clearly an area where it does seem important that strikes should not be entered into lightly. As I have said, there will be regulations, they will be subject to the affirmative procedure and this is on the list with good reason. The noble Lord will understand that we are looking very carefully at the arrangements and we have not come to a final view. I am sorry that on the question of timing I cannot give a firm answer, but I can say that we will be bringing an affirmative resolution forward.

Lord Foulkes of Cumnock (Lab): But surely all the private schools—or as you call them in England, public schools—are even more important. If the teachers go on strike in them, where are we going to get our Prime Ministers or our Chancellors of the Exchequer from? It would be an absolute disaster for this country if the teachers in those schools, a lot of whom are untrained, did so. The Minister has misrepresented and misunderstood the dangers that we would face.

Baroness Neville-Rolfe: I am very sorry to disappoint the noble Lord but there is no evidence of strike action in those institutions having a major impact or, I think, of strike action at all. I am seeking to explain the difficult decisions that we have taken and set out in our consultation paper for the benefit of the House this evening. Perhaps I may continue, as it is getting late.

I believe members of the public would agree that strikes in the crucial services that I have outlined should take place only when there is a reasonable level of support. Restrictions on Article 11 of the European Convention on Human Rights are permitted where they are justified by a legitimate aim and are proportionate. The courts have made it clear that they will respect the margin of appreciation accorded to each national Government to decide on industrial relations policy. I hope I have assured noble Lords that we have thought carefully about where the threshold should apply, and that the specified services are justified.

“Essential services” of course means something very different. They are referred to by some of the reports of the ILO supervisory bodies in respect of services where it may be legitimate in certain situations to limit or prohibit strike action. Amendments 5, 10, 12 and 13 would wrongly align the 40% threshold with

the ILO’s interpretation of “essential services”. The threshold is about ensuring that strikes can go ahead if they have a strong democratic mandate; it does not prohibit strikes. The Government have therefore deliberately chosen the term “important public services” to describe the services covered by the 40% threshold.

Lord Oates: I am sorry to intervene again but the Minister is simply wrong in this matter. As she mentioned, the ILO labour guidelines as set out in Chapter V define essential services. They talk about not just the prohibition on strikes but the limiting of strikes. It is simply not possible to argue that a 40% threshold is not a limit on the right to strike. The Minister may say that it is a legitimate limit but it is definitely a limit on the right to strike.

Baroness Neville-Rolfe: I am afraid that we will have to disagree on that point.

Lord King of Bridgwater: The noble Lord, Lord Oates, ought to have listened more carefully to the noble Lord, Lord Pannick, who put this point clearly. It is a question of disproportion and whether it is unreasonable. I am very touched by this debate because the Minister is trying to limit the number of occupations that should be subject to this requirement and the noble Lords, Lord Foulkes and Lord Collins, are pleading for certain other categories to be included as well, which is an extraordinary event.

Baroness Neville-Rolfe: My noble friend has kindly made the point that I was about to make about the noble Lord, Lord Pannick. Perhaps I should say finally that we do not want confusion and conflation of the two terms. In any event, the supervisory bodies of the ILO fulfil an informal advisory role and their decisions are not legally binding on the UK.

I turn to Amendment 18, which proposes that the Government will have only one chance to make subordinate legislation on the services to be covered by the 40% threshold, which I think is what the noble Lord, Lord Stoneham, explained. In our skeleton regulations we specified important public services, as I have said, according to the available evidence but we acknowledged that the significance of public services could change in the future. Today’s important services are not the same as those of 50 years ago and they will again be different in 50 years’ time, when the next transformational change—the successor to the internet—has arrived. Moreover, it would not be right for services to remain specified in secondary legislation if reduced service levels and staff absence become less disruptive to the public. Equally, it would not be right if the Government could not capture further public services within the limits set by the Bill, if further evidence was obtained on the impact of strike action in those areas.

My noble friend Lord Leigh does not seem to be here but, to give a curtain raiser, I was not intending to accept the amendment that we were about to discuss next. I hope that is not unparliamentary, but we did discuss this at Second Reading and that amendment, Amendment 4, expands things in a way that is not the Government’s intention.

[BARONESS NEVILLE-ROLFE]

Finally, Amendment 6 is a good example of the kind of agreement between the Opposition and the Government—in fact, all sides—which is often possible in this House. We initially included ancillary workers because staff who are not on the front line but play a supportive role could be critical to the delivery of important public services. There is a case here, but we have accepted, on reflection, that it would add unwelcome complexity for unions and others involved. We can all agree that the word “ancillary” is open to a number of different interpretations. Having agreed this amendment, the Committee can be assured that only workers who deliver an important public service would be included within the threshold. The regulations would specify, as now proposed, exactly who will be covered. Unions would not have to consider whether there were any additional ancillary workers on top of this. I commend Amendment 6 and hope that the Committee will be able to agree it.

Lord Collins of Highbury: I thank the Minister for her response. For the avoidance of doubt, I reassure the noble Lord, Lord King, that I was not, for one moment, suggesting additional categories, but the debate, and the Minister’s response, have illustrated that this legislation is incoherent and inconsistent. Our purpose in Committee today was to highlight that and we will return to these issues later on. In the mean time, I beg to withdraw Amendment 3.

Amendment 3 withdrawn.

Amendments 4 and 5 not moved.

Amendment 6

Moved by Lord Mendelsohn

6: Clause 3, page 2, line 6, leave out from “services” to end of line 8

Amendment 6 agreed.

Amendments 7 to 15 not moved.

Amendment 16

Moved by Baroness Morgan of Ely

16: Clause 3, page 2, line 21, at end insert—

“(2EA) Regulations under subsection (2D) may not specify services that fall within any of the following categories—

- (a) health services provided in Wales;
- (b) education provided in Wales for those aged under 17;
- (c) fire services in Wales; and
- (d) transport services in Wales falling within paragraph 10 of Schedule 7 to the Government of Wales Act 2006 (highways and transport).”

Baroness Morgan of Ely (Lab): I thank noble Lords for that lovely welcome. The amendments in this group explore the impacts of the Bill on the devolved Administrations of the United Kingdom. Noble Lords will know that we live in a country which has four distinct legislatures: bodies that are responsible for legislating and administering in distinct parts of the United Kingdom. The devolved structures and powers of the Administrations in Scotland, England, Wales

and Northern Ireland are very different. The one thing common to them is that many public services, including health, education, local government and fire services, are devolved. Many of the services referred to in the Bill relate to public services. Should the Government of the UK be able to legislate in this area, despite the fact that public services are devolved? It is unclear. I warn the Minister that there is a real danger that if the Bill goes through in its current form, it will release a constitutional firestorm which will be much more powerful than anything we have seen today from Storm Imogen.

I am going to concentrate my comments on the issues affecting Wales and I will allow colleagues to pick up on issues relating to the other devolved nations.

10 pm

To understand this, we need to look at different models of governance in the United Kingdom. Scotland has a reserved powers model of governance. That means that the Scottish Government are responsible for all issues apart from those reserved for the UK Government such as defence and foreign affairs. In Wales we have a different model called a conferred model of governance. It is more sophisticated and more complicated, and the lines of responsibility are not as clearly demarcated as those of Scotland.

The assumption in the Bill is that employment and employment law are reserved matters across the whole of the United Kingdom. It is right that employment law should continue to rest with the UK Government. If we start to unravel that, we will have a race to the bottom in terms of the minimum wage and health and safety, and that would not be of benefit to the workers of the UK.

In the case of Wales, it is unclear whether measures on public services should be legislated for by Wales or the UK. It follows, therefore, that the Bill and the measures in it should not be unilaterally imposed on public services in Wales. Conventions developed since 1999 in Wales have made it clear that Westminster should not intervene in matters that have been devolved. The Government at this very moment are discussing and developing a new Bill for Wales. The draft Bill, penned by this Conservative Government, states categorically in part 1, article 2 that the Parliament of the United Kingdom will not normally legislate on devolved matters without the consent of the Assembly. The Conservative Government of the United Kingdom are saying that they will not impose issues on Wales.

The UK Government would be acting with high-handed arrogance if they continued to pursue this path of imposing the Trade Union Bill on public service provision in Wales. It is highly likely that they would be acting unconstitutionally. So let us be clear that the Welsh Government and the Assembly will not give the Bill consent. There was a vote on 26 January in which Members from across the political spectrum—apart from the Conservatives, obviously—sent a clear message to the UK Government that the Welsh Government would not give legislative consent to the Bill being imposed on Wales. So in practice the UK Government are on a collision course with the Welsh Government regarding whether they have competence to legislate in this area.

If the Government go ahead and introduce the Bill, the Welsh Government will introduce their own legislation to overturn the measures relating to public services in Wales, especially on the 40% threshold, facility time and banning check-off arrangements. If the UK Government object to the Assembly's laws, they will have to take the Welsh Government to the Supreme Court to ask for a judgment as to which Government should have power to legislate in this area. So let us be clear: if the Government come forward with this Bill and the Welsh Assembly says, "No, we don't want this to happen. We will bring in our own law, which overturns this", the UK Government would have to take the Welsh Government to court. What would happen next? They would go to the Supreme Court. It is not right for us to be writing laws in this place that we know will end up in the Supreme Court. It is for legislatures to decide where power should lie, not courts. I kindly ask the Minister to consider removing the parts of the Bill that relate to public services in the devolved Administration, because that would avoid an expensive and time-consuming constitutional clash.

The Government should note that there is precedence for such a situation—a clash between the UK and Welsh Governments. In the agricultural wages Bill judgment, it was absolutely clear that the Supreme Court came down in favour of the Welsh Government. In that instance, the Welsh Government were keen to introduce a law which would protect the wages of agricultural workers. That was challenged by the UK Government, who claimed that Wales had gone beyond its constitutional brief by acting in an area of employment law, which is not devolved. The Welsh Government argued that this issue related not to employment but to agriculture, which is a devolved area, and the court came down firmly on their side.

The Wales TUC has sought legal guidance on this matter, and its advice suggests that the provisions of this Bill relate to subject matters that are devolved—public services—as well as those that are not: industrial relations and employment. By ignoring the possibility that under the devolution arrangements for Wales, a legislative provision may relate to both devolved and non-devolved subject matter, the UK Government—we should remember that this is legal guidance—have mistakenly concluded that the Bill's provisions are not within the legislative competence of the Assembly. That is the legal advice they have been given.

Let me be clear that, if the Government continue to impose this measure on public services in Wales, they will get caught up in a constitutional wrangle and spend thousands of pounds of taxpayers' money pushing something which is not wanted or accepted by politicians and people in Wales, and they are likely to lose in the Supreme Court, if it follows the precedent set by the agricultural wages Bill judgment.

I want to ask the Minister one question tonight. Have the Government received any legal advice on the Bill's impact on Wales? If so, would she be kind enough to share it with the House tonight? I am hoping that legal advice may give us some hope that the Government might be prepared to listen.

In May this year there will be elections for the devolved legislatures. The Conservative Government have now accepted the reality of the devolution settlement in this country; it should now be respected. It is no secret that the political complexion of the Government of Wales is different from that of the Government of the United Kingdom. The Labour Government in Wales work extremely well with trade unions; they have avoided the strikes that are happening under the UK Government at this moment. We do not have a junior doctors' strike in Wales; we have made sure that every person in the health service in Wales is paid the living wage—that is a good thing. The Public Service Minister Mr Leighton Andrews has concerns that these proposals will ultimately undermine rather than support the delivery of public services and the economy in Wales. The bodies that run public services in Wales object to this Bill; the chief executive of the Cardiff and Vale University Health Board trust has said that this could lead to unnecessarily challenging industrial relations in future. But, in principle, if the people of Wales want to support measures such as those proposed by the UK Government, and if they want them to affect public services in Wales, they should be allowed to have a vote on that. We have an election in May where that can be put to the people of Wales—if they want that to happen, put it in the Conservative manifesto in Wales, and let us see what happens.

It does not make practical sense to impose this Bill on Wales. Does it make sense for one legislature to impose detailed rules and conditions on another, when it has no idea of the models and the conditions of the existing services? We have been pulling in different directions since 1999. It is time to respect devolution and to understand that it is happening.

Let me give you an example. It is true that for a time, the Government gave additional money to social services in Wales to relieve bed blocking in hospitals. That gave the impression to some that Wales was taking its foot off the pedal in relation to health. Nothing could be further from the truth. Bed blocking is now a much lesser problem in Wales than it is in England, where they are desperately trying to emulate the Welsh approach. But the fact that the Tory Government are constantly attacking the Welsh Government on this issue demonstrates that they have no interest in or understanding of that different approach. Does it make sense for England to be telling Wales how to run its public services when it has no idea about those different structures of delivery?

There will be ample time over the next few days in Committee to discuss the substance of the Bill, and I have tried to avoid that temptation tonight. This debate is about underlining the need to respect the devolution settlement of this country. It is about respecting the democratic institutions of our country and the democratic mandate given by the people at a devolved level who are responsible for the delivery of public services. I hope the Minister will listen to our case and consider carefully whether she is ready and willing to start along a path which will inevitably lead to a constitutional stand-off and the sad and expensive situation in which the courts determine our fate, rather than the elected representatives of the people.

Baroness Randerson (LD): My Lords, I rise to speak to all the amendments in this group, both those in my name and those in the name of my noble friend Lord Purvis.

I was a Minister in the Wales Office when the Assembly's Agricultural Sector (Wales) Bill started its passage. The purpose of that Bill was the regulation of agricultural wages. At that time, in the Wales Office our advice was simple: this Bill related to employment and industrial relations and was therefore outside the Assembly's competence. The Welsh Government's Counsel General argued, however, that it was within competence because it related to the agricultural sector and agriculture is a devolved issue.

In due course, that Bill was referred to the Supreme Court, which decided that it was within the Assembly's competence because the term "agriculture" meant all aspects and constituent elements of the industry. It accepted that it could also be classified as dealing with employment issues which were non-devolved but the fact that it also related to agriculture brought it within the scope of the Assembly's power. That is, the Supreme Court took a broad view of devolved competences. In short, given the frequent vagueness of the 2006 Act, the ruling was that, if in doubt, it is to be considered devolved. In that way, the settlement for devolution in Wales turned out to be much broader than the UK Government had assumed it to be and even broader than the Welsh Government had assumed it to be.

I tell this story because it is a very important background to the current situation we have here. It seems to me that the Government have not been listening—either that or they have failed to learn their lesson. Although I might put it rather less emotionally than the noble Baroness, Lady Morgan, I say to the Government that they are getting into very deep water on this one because it is bound to be tested legally. I do not know how much the Government have talked to the Welsh Government, but I cannot find any reference to those conversations. I cannot find any reference to discussions. Certainly, the very bulky impact assessment does not seem to refer to anything connected with the impact on the devolved Governments and on the devolved services in Scotland, Wales or Northern Ireland.

10.15 pm

The Welsh Government believe that the Bill touches on devolved issues. On 26 January, my Liberal Democrat Assembly colleagues and Plaid Cymru Assembly Members voted cross-party against allowing the UK Government to legislate for Wales on the issues in Clauses 3, 12, 13 and 14. Will the Minister say how many discussions have taken place with the Welsh Government and what happened as a result of those discussions? Have amendments of any sort been made to the Bill in order to take into account the concerns of the Welsh Government? That deals with the legal side of this.

I now turn briefly to the practicalities. It is well known that the public sectors in England and Wales have diverged. I might not share the rosy view of the health service in Wales expressed by the noble Baroness, Lady Morgan, but there is no doubt that there has been, and will continue to be, a considerable difference of policy. It is also well known that there is an increasingly

strong Welsh identity as well as an increasingly strong Scottish one, for example. We have Welsh trade unions that do not exist in England, and we have Welsh branches of other trade unions that operate more or less on an independent basis. The BMA is a good example. It operates independently with its own policy and in Wales is not in dispute over the health service, unlike the BMA in England. Therefore, if there are separate trade unions and a separate public sector policy, it is logical to have separate arrangements on relations between employers and trade unions, whether it is the Welsh Government or a body within the devolved competence of the Assembly, such as local government in Wales.

I acknowledge that there will be some complexity. People have put to me the practical issues. What about a member of the PCS who first works in the benefits office in Cardiff and then transfers to work for the Welsh Government on Welsh Government devolved issues? That person would quite possibly be working to one set of trade union ballot rules in the first job and another set in the second job. That is the result of devolution. It is a great deal less complex than trying to impose on an unwilling employer and the unwilling employees a set of rules that have been devised for the situation in England, for services provided overwhelmingly in England or on a UK basis and not for the way in which services have been and are increasingly provided in Wales. This is what devolution gives you, and you sometimes have to work with the rough edges.

I say to the Government that, in the view of Liberal Democrats, this Bill is an assault on civil liberties. It is yet another attempt by this Government to create effectively a one-party state in terms of weakening the opposition parties and the opportunities for the opposition to speak its case. What is even more important—to the Government, at the very least—is the fact that the Bill is unconstitutional. They will find that they have set themselves a set of obstacles and a barrier that is very difficult to cross, if they do not listen to the concerns expressed here this evening.

Lord Hain (Lab): My Lords, I refer to the register of interests. The amendments tabled by my noble friend Lady Morgan of Ely, the noble Lord, Lord Wigley, the noble Baroness, Lady Randerson, and me reflect the cross-party support in your Lordships' House that is also evident in the Motion overwhelmingly carried by the Welsh Assembly on 26 January with the backing of 43 out of 60 Assembly Members against 13 Conservatives. The Assembly's vote was on a legislative consent Motion, a convention of this Parliament that enables devolved Governments to give consent to Westminster to amend legislation relating to areas normally within the devolved Government's responsibility. After this overwhelming vote, the convention would normally require that the UK Government now amend this Bill to remove legislation that pertains to devolved powers, such as the rules governing public servants in Wales, whether payroll deductions of trade union subscriptions should be made, and so on. Moving the Motion, Public Services Minister Leighton Andrews said:

"The Bill is damaging, divisive and risks undermining public services and the economy. The Welsh Government believes it will lead to a confrontational relationship between employers and

workforce. It contrasts sharply with the constructive social partnership approach in Wales, valuing our workforce, supporting public services and encouraging”, enterprise.

“Overall, we believe the Bill is flawed and should not be pursued”.

He pointed out that:

“In Wales, we have a good record of resolving disputes. There was no junior doctors’ strike in Wales; there was in England. Firefighters took industrial action in England over pensions; they were not doing so in Wales”.

He added that, if the UK Government ignored the Assembly’s wishes, the Welsh Government would seek to overturn the impact in Wales, as they have successfully done on two occasions in the Supreme Court, as we heard from the noble Baroness and my noble friend.

Indeed, Wales’s First Minister, Carwyn Jones, told the Assembly that his Government will fight clauses in this Bill pertaining to Welsh public services if they become law. He said that,

“if it comes to the point where that Bill is passed and its provisions are applied to devolved public services, then we will seek to introduce a Bill in this Chamber to overturn the sections of the Bill that impact in devolved areas. It’s a matter for the UK Government as to whether they then wish to go to the Supreme Court in order to frustrate the will of this democratically elected Assembly”.

Therefore I ask your Lordships to respect the democratic wishes of the Welsh Assembly in backing that same policy by granting Wales’s legislature the right to determine how or if some of the key provisions in this Bill should be applied to public services in Wales. As the First Minister made explicit, if the Bill is enacted without the amendments we have tabled, the Welsh Government will introduce their own legislation to overturn the changes as they affect Wales as soon as possible. This is therefore less an argument about the substance of the relevant clauses in the Bill and more one about the nature of the devolution settlement the UK Parliament has agreed for Wales in the Government of Wales Acts 1998 and 2006, endorsed by subsequent Welsh legislation passed by Parliament, including the Wales Act 2014 proposed and enacted by the last Conservative-led Government.

As my noble friend has done, I draw your Lordships’ attention to the draft Wales Bill now before both Houses of Parliament. Its Clause 2 would place on a statutory footing the constitutional convention that Westminster would not normally legislate,

“with regard to devolved matters”,

without the consent of that devolved legislature. So on the one hand, in the draft Wales Bill, the Government are, commendably, making statutory a convention that has applied since 1999, and on the other hand they are completely undermining it in this Bill. In other words, the Government’s own draft Wales Bill reinforces the point that I am arguing; indeed, it makes that stronger by proposing a statutory requirement as opposed to the current convention that Westminster legislation affecting Wales in matters already devolved to Wales would require a legislative consent Motion from the Welsh Assembly—precisely what we are seeking your Lordships to endorse in respect of this Bill.

My case is not so much about the merits of the issues in the Bill as about the constitutional issues of foisting it upon a Welsh Assembly that has voted

exclusively on a legislative consent Motion insisting that it, not our Parliament, should determine the minutiae of public service delivery provisions within Wales. These amendments would apply solely to those public services that are devolved to Wales—education, health, housing and so on. Consequently, should the Government accept these amendments, which I strongly urge, in line with the request by the Welsh Government and adopted by the Assembly a few weeks ago, the Bill would still apply in the private sector in Wales.

We explained all this in person to the Minister, and I thank her for her courtesy and time in permitting us to do so. Regrettably, though, I gather that the lady is not for turning—unless she says otherwise this evening. If I am right, she appears to insist that the 40% threshold for strikes in the Bill was a matter of principle flowing from a manifesto commitment. I leave aside whether the fact that a party commanding just 37% of the vote and a miserly 24% of the registered electorate constitutes a mandate that your Lordships must respect, but I cannot believe that subsidiary details in the Bill concerning payroll deductions, check-off and opt-ins to the political levy are really of the same order as strikes. If the Minister is still uncompromising on the 40% issue, might she consider making all the other relevant provisions of the Bill covered by our amendments subject to consent by the Welsh legislature? I ask her seriously to reflect on that point.

Having served as Secretary of State for Wales for seven years, during which I was responsible for the Government of Wales Act 2006—the basis for the settlement that has operated since—I am extremely concerned at the damaging precedent that the Bill is establishing. The Minister for Public Services, Leighton Andrews, argued in the Welsh Assembly on 14 October on behalf of the Welsh Government:

“The Bill is driven by a flawed view of trade unions as a problem. We see trade unions as a partner. So, this Bill contrasts sharply with our constructive social partnership approach in Wales of valuing the workforce, supporting public services and encouraging enterprise ... The benefits of a constructive approach to social partnership can be seen in our good record of resolving disputes ... more quickly than in England”.

The Welsh Government’s position on the Bill was set out in a Written Statement to the Assembly on 9 September 2015, which insisted that the Bill relates to devolved responsibilities. In carrying out this House’s long-established duties of scrutiny and revision, your Lordships have consistently and rightly taken a forensic interest in constitutional matters. I submit that key proposals in the Bill encroach upon the responsibilities of the Welsh Government in respect of the administration and delivery of public services in Wales. Provisions in the Bill should therefore not be applied to Wales without the consent of the National Assembly for Wales, and that is the purpose of these amendments.

I want to be clear: adopting these amendments would not necessarily mean passing judgment on the Bill’s provisions as they apply to public services in Wales. If after the coming election, for example, a Conservative-led coalition were to emerge as the new Welsh Government—perhaps unlikely but certainly not impossible, given recent opinion polls—they could choose to accept all the Bill’s provisions as they apply to Welsh public services through a legislative consent Motion. Significant parts of the Bill relate specifically

[LORD HAIN]

to important public services, which are clearly devolved. The legislative consent memorandum laid in the Assembly by Leighton Andrews prior to the recent vote set out the Welsh Government's view that the Assembly's consent would be required for Clauses 3, 12, 13 and 14 of the Bill as they relate to devolved matters. The memorandum explained why the legislative consent Motion was tabled under the Assembly's Standing Order 29.6 seeking Welsh Assembly Members' consent to the inclusion of Clauses 3, 12, 13 and 14 in the Bill, and explained that the Welsh Government's view is that consent should not be given. On 26 January, as I have mentioned, the Assembly overwhelmingly endorsed the Government's position.

10.30 pm

This is therefore a dispute between two Governments and also now between two legislatures, unless your Lordships endorse the amendments and the UK Government accept our verdict and the dispute ends.

I drew your Lordships' attention on Second Reading to the Supreme Court's judgment in 2015 and will not repeat it. However, it is crucial and I submit that much of the same argument applies to the Bill in so far as it covers areas devolved to Wales. It is therefore not acceptable for the UK Government to impose it on Wales without the agreement of its Assembly.

Policy on how best to support and protect the effective delivery of public services such as health, education, fire and housing is for the Welsh Government and the National Assembly for Wales, including the way public sector bodies in such devolved services work with trade unions to ensure the effective delivery of services to the public.

Since 1997, there has been increasing divergence in the approach to the delivery of public services between England and Wales. In Wales, for example, cancer treatment and social care is much better than in England, although waiting times for urgent operations such as hip replacements are worse. The terms of the devolution settlement preclude the UK Government from imposing English structures and approaches to different public service delivery models in Wales, especially when its Assembly has expressly opposed that in a cross-party Motion.

Surely it cannot be acceptable for the UK Government, who have no responsibility for and no direct knowledge of policy priorities and devolved service delivery models in Wales, to specify how much union facility time devolved public sector employers should allow; or whether ending the check-off system in the Welsh public sector will be disruptive, harming the viability of trade unions, which under devolution have been constructive partners in delivering public services of all kinds in Wales, where they are viewed as stabilising good industrial relations.

The Sewel convention provides that the UK Government may not legislate for devolved matters without the consent of the devolved legislature affected. I therefore ask your Lordships to accept in Committee and later on Report, if necessary in a vote, that the Government's current intention to impose the Bill on Wales's devolved public services is seriously mistaken and unacceptable. It is also damaging to harmonious

intergovernmental and interlegislature relationships in the United Kingdom, at a time when the Scottish Government's separatist stance endangers our union.

The Minister can avoid such an unnecessary conflict and inevitable reference to the Supreme Court by showing some empathy for and understanding of the views of Wales in adopting the amendments, or at least coming back with her own on Report which would achieve the same objective.

Finally, I underline this point so that your Lordships are crystal clear about the impact of the amendments. They do not go to the case for or against the Government's proposals in the Bill. They go to the right of Wales through its elected Assembly and accountable Government to run and organise the minute detail of the public services for which this Parliament has, under devolution, granted them exclusive responsibility.

On 18 January 2016, the Welsh Public Services Minister, Leighton Andrews, wrote to Nick Boles, Minister of State for Skills, noting that the Lords Committee stage:

"provides you with the ideal opportunity to reconsider your position, acknowledge the relevance of the Supreme Court's judgment and act to exclude the devolved Welsh public services from the provisions of the Bill by accepting these amendments".

Mr Andrews argued:

"It is clear to us that the Bill is not 'concerned exclusively with non-devolved matters' but intrudes on the delivery of the devolved public services for which Wales has the right to develop its own approach".

Can the Minister also comment on the leaked letter from Nick Boles, the Minister of State, which has come into the public realm today? It admits that legal advice sought from First Treasury Counsel:

"has confirmed that we have ... a very weak case in relation to Wales".

If, as I pointed out earlier, the people of Wales elect a Conservative-led Assembly and Welsh Government, they would doubtless endorse all the provisions of the Bill. After all, Welsh Conservative Assembly Members voted to endorse it just a few weeks ago.

These amendments would enable choices to be made within and by Wales for matters long devolved by Westminster. I trust and hope that this important constitutional principle will be upheld by your Lordships in revising the Bill through these amendments.

Lord Foulkes of Cumnock: My Lords—

Lord Wigley (PC): My Lords, I have put my name to this amendment.

Lord Foulkes of Cumnock: I have put my name to four amendments.

Lord Balfe: We have not had a speaker from this side yet.

The Earl of Courtown (Con): My Lords, shall we hear from my noble friend Lord Balfe?

Lord Balfe: I shall be brief. I begin where the noble Lord, Lord Hain, ended, which is with the leaked letter. The points put by the noble Baroness, Lady Morgan, were extremely well made. There are clearly a whole number of issues within the Bill. If we are to believe the leaked letter, which I probably do, and as

we are not going to vote tonight, I hope that the Minister will look very carefully at all these amendments with a view to coming back and assuring the House that, if we asked to sustain our opposition to them, she has firm advice from the Attorney-General that that will stand up in court. I am not afraid of our occasionally going to the Supreme Court to clarify matters—I think it is probably necessary in a devolution settlement—but we should be on firm ground. If we do go to the Supreme Court, we should have a recommendation from the Attorney-General that he is quite satisfied that legally we are in the right in what we do.

When it comes to things such as deductions of contributions at source, about which at another opportunity I shall make some very clear points, if devolution means anything, surely it does not mean that we are going to ask Cardiff hospital, for example, to stop deducting the subscriptions of their union members if that is done at no cost to public funds and is seen as beneficial to industrial relations in Wales. What does devolution mean if simple things like that cannot happen? Maybe they cannot happen but, if that is the case, I hope that the Minister will be prepared to publish and share with us the views of our Attorney-General as to why this is a sound clause.

Lord Foulkes of Cumnock: My Lords—

The Earl of Courtown: My Lords, I think that it is the turn of the noble Lord, Lord Wigley, whose name is added to the amendment.

Lord Foulkes of Cumnock: What about Scotland?

Lord Wigley: What about Scotland, indeed? I will not trouble the Committee by going down that avenue. First, I apologise for the fact that, although I was in the House at the time of the Second Reading, I was unable to take part in the debate. However, I read the report of the bits that I was not in the Chamber for. I was particularly impressed by the contributions of the noble Baroness, Lady Morgan of Ely, and the noble Lord, Lord Hain, which are relevant to our debate tonight.

I have always been a strong advocate of free, unfettered trade unions having an essential role in the checks and balances within any free economy. From my previous life in industry—particularly my time as financial controller at Hoover in Merthyr Tydfil—I know the importance of having strong, well-led trade unions. It is in the interests of the owners, the management and the workforce alike that trade unions are facilitated and not undermined in undertaking that essential role.

I support Amendment 16 standing in my name and those of the noble Baronesses, Lady Morgan of Ely and Lady Randerson, and the noble Lord, Lord Hain. It excludes important services in Wales from the provisions of the 1992 Act—specifically health and school-age education, which are entirely devolved functions. Other amendments, which no doubt the noble Lord, Lord Foulkes, will speak to in a few moments, address a wider sphere, but they are all relevant to the central proposition that it is totally unacceptable for the UK

Government to create a legislative framework for devolved services which will lead to a totally unnecessary poisoning of industrial relations in Wales.

We have a long and honourable tradition of trade unions in Wales. We recognise the essential need for trade unions to stand up for the rights of their members, and in recent years the workforce of the public services in Wales has not been involved in any spurious or politically motivated strike action. Because of our tradition of partnership working, we have avoided strikes. And, as so many contributors tonight have mentioned, it is not in Wales that the junior doctors have been on strike.

So if it is not broken, why on earth are the Government imposing this legislation on Wales without any discussion whatsoever? Not only is the legislation being imposed on Wales, it is being done in a manner that totally ignores the agreed framework set up as part of the devolution settlement to deal with such issues. As was emphasised by the former Presiding Officer of the National Assembly, the noble Lord, Lord Elis-Thomas, the UK Government are riding roughshod over established agreements. As he said in the debate in the Assembly a couple of weeks ago on this very issue,

“the terms set out in devolution guidance note 9, paragraph 11, have not been adhered to by the UK Government in this case ... there has not been proper consultation, either through the Wales Office or directly with Welsh Government”.

This amounts not only to a cavalier disregard of the right of the Welsh Government to be involved in discussions on policy that impacts on their ability to deliver devolved services for which they are held responsible, but also ignores the working practices that have been set up by Westminster, as has been emphasised tonight.

A similar lack of consultation has been witnessed in Scotland. The Minister replying to that allegation in the House of Commons on 14 September merely assessed that consultation was,

“open to every stakeholder in the United Kingdom, including those in Scotland”.—[*Official Report*, Commons, 14/9/15; col. 771.]

What an appallingly arrogant attitude towards an elected Government and what a glaring example of the lack of respect towards other elected public representatives.

The Government would have been very well advised if they had consulted the Welsh Government before going down this path. Had they done so, they would have realised that, because this Bill, if enacted, will have a direct impact on the way the Welsh Government undertake their statutory responsibility for devolved services, a legislative consent order will need to be passed by the National Assembly for Clauses 3, 12, 13 and 14 to be applicable in Wales. Two weeks ago, as has been mentioned, such an order was in fact tabled in the National Assembly and voted down by 43 votes to 13.

If the Government are so arrogant or, if I may say so, so stupid as to take this Bill forward in its present form, unamended, clearly, the issue will again end up in the courts, which is not where these things should be resolved. To avoid such an outcome, the Welsh Government have asked the UK Government to amend

[LORD WIGLEY]

this Bill to exclude Wales and Welsh public services from its provisions. The Labour Government in Cardiff are fully supported by Plaid Cymru and the Liberal Democrats in the Assembly in this matter. Indeed, it has been reported in the press that Conservative AMs are extremely unhappy at having been put in this position. The words quoted in the press were that they are “in despair”. One can well understand that; although out of misplaced loyalty, I suggest, they supported their Westminster counterparts when it came to a vote.

I appeal to the Minister to undertake, between now and Report, to meet representatives of the political parties in Wales, particularly Welsh Ministers, and to bring forward reasonable amendments to avoid the consequences of these disastrous provisions.

10.45 pm

Lord Foulkes of Cumnock: My Lords, we have heard four powerful and eloquent pleas from Wales. I hope it is now possible just to say a few words on behalf of the quiet, unassuming people of Scotland. To be serious, this is a matter that people in Scotland, and particularly the Parliament and Government of Scotland, feel equally as strongly about—if not more strongly—as the Parliament and Government of Wales. I am therefore concerned that the House of Lords—and I say this knowing that the Government Chief Whip is here—is dealing with this at 10.45 pm. This is a matter of great importance. It is a very serious matter. It is a matter which more Members of the House should be participating in. It is a pity that it was not dealt with at a more suitable time.

The Minister said early on—I have sat through an awful lot of her speeches—that she was in listening mode. I have yet to see evidence of that, but let us give her the benefit of the doubt and assume that she is. There could not be an issue on which it is more important for her to be in listening mode than this one. The fact that neither she nor her colleagues have had discussions with the Governments and Parliaments of Wales, Scotland and Northern Ireland on these issues is lamentable. It does not indicate that the Government are willing to listen.

As far back as November 2015 in Holyrood, they voted by 104 votes to 14 to oppose this Bill. All the parties except the Conservative Party—every one of them, and the independents too—opposed it. They discussed it again in Holyrood on 26 January, the same day that the Welsh Assembly discussed it. Again, the opinion was overwhelming: only one spokesperson, the Conservative spokesperson, defended the Bill—rather inadequately, but we are used to that. Powerful arguments were made against it.

I do not often do this, but I shall now quote Roseanna Cunningham, the Cabinet Secretary for Fair Work, Skills and Training—a member of the SNP. On this occasion she made an excellent, powerful speech against the Bill, and in favour of the Holyrood motion. Unusually, she also paid tribute to the House of Lords—we do not often hear that from the SNP—because we had been able to ask the Government to think again. Other tributes to the House of Lords were also made in that debate. That is something that we should acknowledge.

Roseanna Cunningham is not a Labour person; she is an SNP member, but she said that she had explained,

“the Scottish Government’s view that trade unions are a force for good in modern society; that unionised workplaces have more engaged staff, a higher level of staff training and a progressive approach to staff wellbeing; that unions help employers to create the safe, humane and productive working conditions that head off industrial disputes and build better businesses; that any legislation that undermines the value and contribution that trade unions can make is a ‘thoroughly bad idea’; and that the bill is nothing more than an ideological attack on unions, with no evidence to underpin it”.

That is a powerful argument, which we on the Labour, Liberal Democrat and Plaid Cymru Benches here have been putting here, and our arguments are echoed by the SNP in Scotland.

The Devolution (Further Powers) Committee took evidence on the Bill from STUC, from employers and from a whole range of local government people. It said that there was no support for ballot thresholds, or for a cap on facility time or check-off provisions—there was no evidence to support the Bill. The committee went through the kind of exercise that we have not gone through here: it looked at the Bill in detail, and expressed concern at the lack of consultation with public sector employees in Scotland. It also pointed out that—as was also mentioned in the Holyrood debate—the Scottish Government as an employer has had check-off for years, and the costs are so minimal that the unions have not needed to be charged. Yet the Scottish Government are now being forced to act against their own will and experience. It is outrageous that this Government are forcing the Scottish Government to act in that way.

Roseanna Cunningham and the Scottish Parliament went on to say that they wanted Scotland removed from the Bill. That is their main aim, and that is what the Welsh Assembly said as well. But at the very minimum—I put this forward as a hint or suggestion for the Minister—they wanted regulation-making powers relating to facility time and check-off to be conferred on Scottish Ministers. That, at least, would be a compromise. It would not be the ideal situation, but if such regulation-making powers were conferred on Scottish and Welsh Ministers, that would be a move in the right direction.

Incidentally, during the debate, Bruce Crawford, who chaired the committee that looked at this issue, pointed out that even Tories in local government—the noble Lord, Lord Balfe, is here to show this—do not like aspects of the Bill. He pointed out that a Tory councillor in East Dumbartonshire, Billy Hendry, was concerned about the provisions of the Bill, saying that there was no evidence to support it and that it was an “unnecessary and unjustified imposition”.

Bruce Crawford went on to say that the Bill should be amended in the House of Lords—again an acknowledgement of the role of the House of Lords from an SNP member which I was encouraged to hear. We are making progress on this. It is wonderful. We will have them in here soon, so that Dafydd will have friends—he has friends now but he will also have associates. Bruce Crawford said that,

“the bill should be amended in ... the House of Lords so that it does not apply to Scotland”;

and that such amendments should be, “by any means available to it”, encouraging us to press and push as hard as possible.

In one of the most powerful speeches in the debate in Holyrood on 26 January, Patricia Ferguson—a good friend of mine, a Labour Member of the Scottish Parliament and a former Minister in the Scottish Government—referred to the amendments to which I and my noble friends Lady Morgan and Lord Hain and the noble Lord, Lord Purvis—who is not in his place—have put our names. She asked for the support of the House of Lords. She said—this is good—that if we do not see any movement from the Government then the Scottish Parliament, the Welsh Assembly and the Northern Irish Assembly should get together on an all-party basis and come down in a protest to No. 10 Downing Street and put strong, powerful pressure on this Conservative Government. If we do not get some movement then the constitutional firestorm to which my noble friend Lady Morgan of Ely predicted will come about.

I hope the Minister will pass these message back to her colleagues, to Mr Boles, to the Secretary of State and to the Prime Minister that this provision must be amended, otherwise there will be an outrage the like of which she has never seen before.

Lord McAvoy: My Lords, I have some class acts to follow from this side of the Committee on the case that has been put for the amendments, which I support, but I want to touch on the fact that we are debating the future of Scotland and Wales at eight minutes to 11 at night. We agreed extra time for this debate because we are responsible and co-operative—I am one of the most co-operative Front Benchers here—but half of the contributions of the noble Lords, Lord King and Lord Balfe, out of the time that we were good enough to give the Government, were spent attacking the Labour Party, the trade unions and our role and place in society. Again, that is testament to the vindictive nature of the Government’s legislation. I think it was Winston Churchill who said that no temporary political alliance in government should disadvantage its political opponents. That is what is happening in this Government, both in the Short money and through other legislation against the trade unions. We are here discussing the future of Scotland and Wales at seven minutes to 11. That message will not be lost in Scotland and Wales. It is further evidence that this Government are badly damaging the unionist cause.

This legislation is politically pernicious: it flies in the face of what we know about effective industrial relations policies and undermines the devolution settlement. It is the latter that I want to focus on today. In my brief contribution, I want to concentrate my attention on the constitutional implications that this Bill will have in Scotland. The amendments would exclude the Scottish Government and, indeed, the other devolved Administrations across the UK from certain elements of the Bill, ensuring that the Government’s commitment to the devolved Administrations is kept and upholding the settlement which they claim to support.

We suggest that the devolved Administrations should not be subject to specific clauses in the Bill: Clause 3, which introduces the 40% support requirement for industrial action in certain public services; Clause 10, which provides requirements for opting-in to trade union political funds by public sector employees who work in sectors or provide services that are devolved; the requirements on publication and the provision for facility time in Clauses 12 and 13; and Clause 14, which introduces the ban on check-off arrangements.

Check-off arrangements have worked successfully throughout this country for many, many years. The noble Lord, Lord Wigley, mentioned working in the Hoover factory in Merthyr Tydfil. I worked in the Hoover factory in Cambuslang. In both factories, there were quite satisfactory check-off arrangements, and they worked for years. The employer, for the most part, was an enlightened employer and co-operated fully.

Taken together, our proposals would have the effect of mitigating the elements of the Bill which placed obstructions on the Scottish Parliament’s ability to decide how best to engage with staff and trade unions when delivering devolved services. One of the most blatant ways the Government are doing this is by limiting the amount of facility time trade union workplace representatives can spend representing members of the public sector—the result being that trade unions would be prevented from representing their members’ interests by negotiating improvements on pay and conditions, raising safety standards, promoting access to skills and training and accompanying individuals to grievance and disciplinary hearings. All these and a good employer-employee relationship benefit everyone.

Moreover, in Scotland it will also impact health bodies, as union representatives sit on health boards. Not only would this cut across the face of the devolution settlement, it would also hinder constructive employment relations which contribute to the level of the delivery of quality public services.

Furthermore, as drafted, this legislation enables the Secretary of State to make regulations to redefine “important public services”. Leaving aside for a moment the fact that broadening the definition of essential services, recognised in international law, raises the serious prospect of legal challenge—as has been mentioned by many noble Lords—I point out that many public services are devolved issues. This is, therefore, a clear example of the UK Government overstepping the mark.

The amendments would also protect against the democratic deficit that would be created by the enactment of this Bill. At present, secondary legislation to restrict or repeal trade unionists’ rights could be used, thereby preventing an opportunity to amend or even debate the legislation. While this Government seem to hold the process of consultation and engagement in contempt, we have a firm belief that this is an essential way of getting not only the best legislation but also the highest standards in our public services.

These amendments are just one mechanism we are using to make our defence against this Bill. From the outset, we have been clear that we will leave no stone unturned, and that includes support for lodging a

[LORD McAVOY]

legislative consent Motion in the Scottish Parliament. Your Lordships will know that such a Motion was filed with the Presiding Officer of the Scottish Parliament by James Kelly, a Member of the Scottish Parliament for my own constituency of Rutherglen. He tried tenaciously and courageously to get the legislation consent Motion. He is a doughty fighter for trade union rights and representing the people, and he was ejected from the Chamber. There is a lot of feeling over this.

Given the very clear and legitimate grounds for proceeding in this manner, we are bitterly disappointed that this application was denied. We believe that, due to the detriment that this Bill will have on the Scottish Government's ability to carry out its devolved responsibilities, we are legally justified in pursuing this course of action. My colleagues in the Scottish Parliament have written to Stewart Stevenson, convener of the Standards, Procedures and Public Appointments Committee, to urgently request a change in the standing orders. This would ensure that,

"If a Bill under consideration in the UK Parliament does not identify a requirement for a Legislative Consent Motion, a member (including a member of the Scottish Government) may lodge a motion seeking the Parliament's consent to treat the Bill as a 'relevant Bill'",

in relation to an LCM. Last month, Labour tabled the necessary Motion, backed by Green and independent MSPs, and will continue to press for this change.

Let there be no doubt: we will fight this tooth and nail, not just in Westminster, Holyrood and Cardiff, but at grass-roots level. Labour-controlled Scottish local authorities have led the way by passing motions of non-compliance with restrictions to facilities time and abrogation of the check-off. Among those councils that declare an interest is the council area where I stay, where my brother, Edward McAvoy is council leader. I make that plain. He has done a brilliant job. He is my big brother by the way; I am scared of him.

Our commitment to standing up for the rights of workers and trade unions across the UK is unwavering. The Bill is nothing more than a Conservative Party political tool that will, in the same breath, undermine effective industrial relations and have a corrosive impact on the entire devolution settlement. Curtailing the powers of the devolved Administrations to act in the interest of the people who have elected them is utterly shameful. I call on the Minister to heed the many warnings and pieces of advice she has received today and take a moment to consider with her colleagues the scale of the constitutional precedent the Bill will set. We have made very clear our views on what we regard as the motivation for the Bill, but, as we have also attempted to set out, our frustration and concern also relate to the Government's disregard for the very foundations of the devolution settlement of the United Kingdom. To rectify this, I beg and urge the Government to accept the amendments.

11 pm

Baroness Neville-Rolfe: My Lords, I thank noble Lords for the debate and note the passion that has been expressed. I am particularly grateful to the noble Baroness, Lady Morgan of Ely, and to the noble Lord,

Lord Hain, for the useful meeting we had last week and for the trouble that they took in taking me through how they see the impact of this Bill applying to devolved public services and public bodies in Wales. I thank the noble Baroness for explaining the legislative consent Motion debate in the Welsh Assembly that took place two weeks ago, for giving her views of the implications this evening, and for reminding us of the forthcoming elections in Wales, where, last year, this party made good progress. I thank the noble Lord, Lord McAvoy, for doing the same service this evening for Scotland.

The Bill will ensure that strike action can go ahead only with a strong and recent mandate from union members. It will increase protections for non-striking workers against intimidation, and increase transparency for union members and taxpayers. It will create an appropriate regulatory environment for unions. It is clear that the benefits this will bring to the wider public should apply consistently across the whole of Britain.

Employment and industrial relations law are clearly reserved matters, as has been said, under the devolution settlements with Scotland and not conferred in Wales. The noble Baroness, Lady Morgan, referred to the Supreme Court judgment in the Agricultural Sector (Wales) Bill, where the court held that the case relates to multiple subjects and thus fell within the competence of the Welsh Assembly. The Supreme Court ruling concerned a completely different situation, where the devolved subject of agriculture was specifically in play. By contrast, this Bill has nothing to do with the regulation of public services. It is squarely concerned with industrial relations and how trade unions are regulated.

The issue of competence is a fact-specific question that can be answered only by careful analysis of the statutory and factual context. In another Supreme Court case in the area of deciding the competence of the Welsh Government—recovery of medical costs—the Supreme Court followed the same approach as in the agricultural sector case, but came to a completely different conclusion. It decided that the area in play was not devolved.

It would be unworkable to have different employment laws applying in the different jurisdictions in Great Britain. This was recently considered by the Smith commission for Scotland, and it concluded that employment and industrial relations law should remain reserved.

The noble Baroness, Lady Morgan, asked about legal advice. As noble Lords would expect, the Government have taken legal advice on the measures in the Bill relating to a number of areas. The Government do not, as she probably knows, disclose such advice; nor do we comment on leaked documents. The Government are committed, in implementing the Trade Union Bill, to fairly balance the right to strike with the rights of millions of people to go about their normal lives. Having said that, it will come as no surprise to noble Lords that I am always keen to explore areas of potential agreement, but the measures before us do reflect our manifesto and were supported by a clear majority in the elected Chamber.

The noble Lord, Lord Hain, said that he was less interested in the substance of the Bill than in the constitutional issues. As it is late, I will not go through the amendments clause by clause—although I can respond if that is wanted. I just point out that many employers will have staff across some or all of these regions. Business leaders have rightly raised concerns that this could create administrative complexities and could result in differential treatment of different groups of employees. This is not a matter of minute detail. The Government's objective is to drive productivity and growth across the United Kingdom. These amendments could generate a lot of confusion and additional costs for both employers and unions and make it more complex for businesses to expand into other regions.

The Trade Union Bill is not the right forum for pushing forward the frontiers of the devolution settlements. Employment and industrial relations are reserved matters and the Bill, which deals with employment and industrial relations law, should respect that.

Lord Foulkes of Cumnock: Before the Minister closes the debate, she has not dealt with my suggestion, which comes from the Scottish Executive, that, at the very least, regulation-making powers for check-off and facility time might be given to Scottish and Welsh Ministers. That does not take away our powers here in the United Kingdom Parliament over employment law. We are still making the law; all that we are saying is that these regulation-making powers for those two areas should be given to Scottish and Welsh Ministers. If the Minister really is in listening mode, she does not need to agree to that today; all she needs to say is that she will look at it, discuss it with her colleagues and come back on Report.

Baroness Neville-Rolfe: My Lords, in the tradition of this House, I do not want to close the debate without saying that we are open to further discussion. We are, of course, open to discussing implementation of the Trade Union Bill in Wales and Scotland. To answer, as far as I can, the questions from the noble Baroness, Lady Randerson, and the noble Lord, Lord Wigley, my colleague Nick Boles spoke only last week to Roseanna Cunningham, Cabinet Secretary for Fair Work in the Scottish Government, and to Leighton Andrews, Minister for Public Services in the Welsh Government; both “stars” who have already featured in this evening's debate. Of course, discussions are still going on in the context of the Scotland Bill, which is being scrutinised by a Committee of this House, and the draft Wales Bill, which the Government published in October. They are also part of a complex picture and need to be taken into account.

My Lords, it is late, we have discussed this at length and I ask noble Lords to withdraw their amendments.

Baroness Morgan of Ely: I thank the Minister and noble Lords who have contributed to this debate. I am sure the Minister has felt the pressure and intensity that Members of this House feel about this issue, particularly the devolution settlement, and why that is the issue we have focused on tonight. We have tried

carefully not to wander into the area of the substance of the debate; this is really about the constitutional settlement of the United Kingdom. It would have been irresponsible of us in this place not to have drawn the Government's attention to the fact that they are writing a law here which will be sent to the Supreme Court. That is irresponsible law-making. It is our job to make sure that people understand that that is what will happen if this is pushed through in its current form.

It is really worth underlining two other Bills going through the House at the moment, which the Minister was right to draw attention to: a Scotland Bill and a draft Wales Bill. Both directly contradict what is happening here. I urge the Government to think very carefully about consistency and respect for the devolution settlement, and to make sure that there is an understanding that legislative consent motions should be respected and agreed to.

I also ask the Minister to think carefully when she suggests that this is not relevant because it is employment law. We would argue that it is not simply about employment law but goes much further than that. It is about public services and the right of the devolved institutions to deliver public services in the way that they choose. Will the Minister think very carefully about how we proceed? Please will she look at the legal advice? I am sure she will not want to go down a route which will take us to the Supreme Court. I hope that she will listen to the passion expressed here tonight. We look in particular for her to think carefully about check-off and facility time, and to think again about accepting the amendments we have put forward tonight, but I beg leave to withdraw the amendment in my name.

Amendment 16 withdrawn.

Amendments 17 to 20 not moved.

Clause 3 agreed.

Amendment 21 not moved.

Amendment 22

Tabled by Lord Balfre

22: After Clause 3, insert the following new Clause—

“Ballots: electronic voting

Ballots: electronic voting

(1) The 1992 Act is amended as follows.

(2) In section 230(2) (conduct of ballot), after “must” insert “either be registered to vote by way of an electronic ballot, or”.

(3) At the end of section 230(2A)(b) insert “, or

(c) it will be convenient for him to vote by way of an electronic ballot while on the ship or while at a place where the ship is.”

(4) In subsection 230(2B)(a) for “and” substitute “or”.

(5) In subsection 230(2B)(a), after “is,” insert “or be registered to vote while on the ship, or while at a place where the ship is, by way of an electronic ballot,”.

(6) After section 230 insert—

“230A Ballots: electronic voting

[LORD BALFE]

(1) A trade union may use electronic voting for the purpose of a ballot under section 226 of this Act, subject to the agreement of the Certification Officer.

(2) The electronic voting system must be—

(a) designed by an organisation which is independent from the trade union, and

(b) approved by the Electoral Commission.””

Lord Balfe: I am a bit lost, as I thought that we had gone past that section. Anyway, the amendment is not moved.

House resumed.

House adjourned at 11.12 pm.

Grand Committee

Monday, 8 February 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 Chamber, the Committee will adjourn for 10 minutes.

Transport for London Bill [HL] *Motion to Take Note*

3.30 pm

Moved by Lord Dubs

That the Grand Committee takes note of the delays in the passage of the Transport for London Bill [HL] and the case for land disposed of under the provisions of that Bill being used to increase social housing.

Lord Dubs (Lab): My Lords, it is quite unusual for a private Bill to be the subject of a certain amount of political attention and controversy. I have had a bit of a job explaining to friends what the difference is between a private Bill and a private Member's Bill—it is not that widely understood.

Let me explain what my concerns are, because I put a stop to a fairly smooth process so that there would be a chance to have a debate, which is what I was after. Why has this Bill been around for so long? I understand that it first got to Parliament in 2010, nearly six years ago. It may have got stuck in the House of Commons—or it may not—but I am puzzled as to why it has taken so long. It is important to note that the time lag has meant that the housing market in London has changed, becoming much more acute and difficult. In one sense, the Bill is a bit out of date because of the passage of time. I have had quite a large number of representations about the Bill and am grateful to Transport for London, which came in to discuss it with me.

I have mentioned my first concern—the length of time the process has taken. It is quite difficult to remember the situation when the Bill first came to this House. It may have been more recently but it still means that some of us are not as up to date as we might be on what happened when it was before the House. What is not controversial is that the property market has changed quite a lot in the last six years, especially in residential housing. There are far more housing pressures and many people in London are finding it hard to find property to rent or to buy.

I understand that Transport for London is facing a large cut in its budget—up to £800 million in the year and £2.8 billion over a five-year period. I may be corrected on the precise figures, but it is a large cut. The politics of the Bill are that TfL has been told that its funding has been cut and it has to raise money by

some other means. The main means open to TfL as far as this Bill is concerned is to dispose of assets of land at or near stations. In the initial phase, most of the sites—there are about 50—have been in zones 1 and 2 but the plan is to expand into wider zones. Of course, the value of the sites in zones 1 and 2 far exceeds the value of the sites further out.

TfL is intending to dispose of land for housing; some will be used for offices as well. It is obviously a good thing to use the land for housing but the next question is what sort of housing. Will it be for more affluent people or for ordinary people who are bearing the brunt of the housing crisis in London? The Minister wrote me a letter, for which I thank him, about the Bill and about housing. He mentioned three ongoing planning applications at Nine Elms, Northwood and Parsons Green, saying that these,

“will deliver ... affordable housing levels ranging up to 40%”,
of the total.

The problem is: what is affordable housing? I have spent some time doing research into this. We understand what social housing is but affordable housing is variable and there is no clear indication as to whether housing that is affordable can be accessible to ordinary people. I have been looking at various definitions. For example, from the national policy and planning framework there is a glossary that mentions affordable housing. It says:

“Eligibility is determined with regard to local incomes and local house prices”.

and it talks a lot more about affordable housing. I find it difficult. If the answer is that all the housing, or a large part of it, will be affordable then that is not quite clear enough and I would like to know more about what sort of housing it will be. I appreciate that London boroughs decide how they define affordable locally and that is a difficulty. London-wide, a lot of the affordable housing is beyond the reach of ordinary people. Therefore, whereas I welcome the idea that the land to be disposed of is for housing, I question for what sort of people it will really be intended for. Of course we could discuss the definition of social housing and affordable housing for a long time but I put it as a question.

As I said, TfL is under enormous pressure from the Government to maximise its return. In a way I have sympathy for TfL, which is caught between pressure from the Government who are cutting its money and pressure from people who want better housing for Londoners at prices that Londoners can manage to pay. It is a bit unfair that TfL is put in this difficult position. Furthermore, TfL has the power via the Greater London Authority to make compulsory purchase orders for land adjacent to these properties. That will of course be a way of increasing the return but, again, it might be a way of taking housing away from ordinary people. So that is also a matter of some concern.

The land we are talking about is currently public land: it is a public asset. It is not a matter of one private developer selling to another, and it is a pity that some of that is not going to social or decently affordable housing. We are talking about public assets spread where there are TfL assets, particularly at stations. I believe the priority in disposing of public

[LORD DUBS]

land should be land that would be used preferably for social housing or affordable housing at a price that would mean something significant.

In the Bill, TfL is to engage with property developers and there is this slightly puzzling concept of limited partnership; it has been much criticised for being less transparent and is a device used to minimise tax obligations. I am not certain whether joint ventures and limited partnerships are the same thing or whether there are technical differences between the two. All I know is that in joint ventures the private developer can have anything between a 10% and 90% stake. Therefore, there is an issue that is of real concern. Those of us who believe passionately that London has a housing crisis that should be tackled urgently do not want to support anything that means moving backwards and losing valuable land that can be used for ordinary people.

I understand that the contentious clause—Clause 5—may be taken out of the Bill when it gets to the House of Commons. I do not think it is a secret so I am not giving anything away in saying that. First, I hope that can be confirmed. If it is taken out, can we have some indication as to the remaining basis on which TfL will be able to sell land? It still has the powers to do it though it will be more limited if Clause 5 disappears. Therefore, I would find it useful to know what sort of powers TfL will have left and whether there will be sufficient safeguards in that arrangement to meet some of the concerns that I have expressed. The proposition is a very simple one. I beg to move.

3.39 pm

Baroness Jones of Moulsecoomb (GP): My Lords, I apologise for not having put my name down to speak. I support the noble Lord, Lord Dubs, because the whole issue of affordable housing is very complex. The waters have been completely muddled by the Mayor of London, who changed the whole concept.

Another issue that I want to put on the table in an urgent way is what is already happening on some of these sites; for example, at Parsons Green there is a thriving artisans' hub and it seems very strange that those people should be driven out without any confirmation of where they can go or the possibility of return. So I stress to TfL that the direction is not only about housing. We all want housing, we all want affordable housing—some of us even want social housing—but we also want jobs and it is incredibly important that those factors are brought in as well with this Bill.

3.40 pm

Baroness Randerson (LD): My Lords, I thank the noble Lord for initiating this debate. It is important, given the age of the Bill, that we have the opportunity to say something about it. As the noble Lord said, it has been around for a long time and I would argue that the financial and political mood has changed in that time. The Bill may no longer be as in tune with its time as it was four or five years ago.

There is greater concern now about corporate social responsibility, financial transparency and corporate taxation. Tied up with all this is a general public unease

about the predominance of foreign ownership of much of our infrastructure. TfL itself has an excellent reputation for what it does and it is essential that it does not undermine that reputation. As a company owned by the public and working for the public, it needs to set the highest possible standards of social and financial responsibility and transparency.

I understand the imperatives behind the Bill. They have been reinforced since it was introduced. The Government's spending review last November cut the revenue grant faster than ever—faster than expected—and it will be cut by £2.8 billion over the period up to 2021. In addition, the London housing crisis has intensified. The truth is, we desperately need the land that TfL will sell as surplus for new homes. So I support TfL in doing that, but with caveats.

First, Clause 5 deals with limited partnerships, which in my view are a step too far for a public body. It could mean additional risk for TfL and it certainly would mean a lack of transparency on ownership of land and who exactly the partners of TfL are. In addition, I urge TfL not to repeat the mistakes that have been made, for example, at Earl's Court. That really is a recipe for how not to do it. I very much hope TfL will learn from that situation. There are too many flaws and disadvantages to that development for it to be called a bonus for the people of London. I would like TfL to commit very strongly and transparently to social housing and rentable housing—not just the umbrella term of “affordable housing”—on the sites that it sells.

Secondly, we need more public consultation and engagement, and more transparency, please. With that in mind, I strongly welcome the announcement last week that Transport for London is partnering with 13 specific organisations with which it plans to undertake long-term development. That is a really good step.

Finally, I urge TfL to take a long look at the mistakes of the past in the transport industry in general. Too often, land used for transport infrastructure was sold off too quickly and was then discovered to be strategically important. I know that there are clauses in the Bill—and indeed TfL manages its business in this way in general—which require it to get permission from the mayor and, in some cases where the land is of strategic importance, from the Secretary of State. However, there is no role, for example, for the National Infrastructure Commission, although that is understandable because it did not exist until recently. However, I ask both the Minister and TfL to consider whether there should be a role for the infrastructure commission in advising on the sale of large parcels of land, which could well prove to be of strategic importance.

3.45 pm

Lord Kennedy of Southwark (Lab): My Lords, I thank my noble friend Lord Dubs for enabling us to have this debate today in Grand Committee. We should all be grateful to him for enabling us to highlight the important issue of social housing in London.

As we have heard, we have a housing crisis in London, and in particular a social housing crisis, which the Government are doing nothing to help us with. Only 11,000 council homes were built last year

compared to 33,000 across the country in Labour's last year in office. It is so disappointing that we are seeing people on modest incomes being driven out of central London. London is a wonderful city—probably the best city in the world. That is why the Olympics and Paralympics were such a success—the languages spoken, the community ties from all over the world, the art scene, the sport, the history, and the spectacle of London. However, for that to continue to grow and to keep London at the top we have to make proper provision for people on all incomes doing every job you can imagine to be able to live in this great city, from emptying your bins to sweeping the street, to working as a classroom assistant through to social workers, lawyers and business men and women, to some of the highest earners on the planet, who run some of the biggest companies in the world. Social housing provision with proper social rents has to be part of the housing tenure throughout this capital city.

If the noble Lord, Lord Ahmad of Wimbledon, comes back and talks about all the affordable housing in London, it would be better if he called it “unaffordable housing” for large numbers of people living in the capital. Where I live in Lewisham, which is a lovely part of London with rows and rows of Victorian terraced housing, people in the private rented sector pay over £2,000 a month to live in an ordinary terraced property, which is £24,000 a year. The new national minimum wage, which will come into force in April, will mean that you will earn £14,000 a year. Even if two people earn £20,000 in London, paying rent of £24,000 a year does not give a huge amount to live on for all the other expenses.

I am very grateful for the briefing note and for the meeting I had with TfL last week. I can understand that TfL must be very frustrated at the time the Bill has taken and the fact that it is still making its way through Parliament. It was originally deposited in 2010, as my noble friend Lord Dubs said. It is in everyone's interest that these private Bills from TfL and other public bodies make much speedier progress through Parliament. I am sure that TfL would have preferred that the Bill was decided on, either way, in a much more timely fashion. It is probably not in his remit but can the noble Lord, Lord Ahmad of Wimbledon, talk to whoever is responsible for managing the process of getting these Bills through Parliament? I suggest that the time for a review is well and truly upon us. Six years on an eight-clause Bill, even though it is opposed, is far too long.

The most controversial clause is Clause 5; it is connected with the Earl's Court development we heard about before, which delivers such a poor rate of return on affordable homes. TfL will say that the development would have gone ahead anyway, as the land it controls is not crucial to the development. I also understand and accept that in order to deliver a transport system that can meet the ever-growing demands of London, options need to be looked at for maximising revenues and minimising costs. That is of course due to the budget cuts we heard about earlier in today's debate. However, when it comes to the redevelopment, rezoning and using public land to build housing, TfL has a responsibility to London and Londoners not only to seek to maximise the money it receives for the assets

but also to ensure that it understands its responsibility and demonstrates its commitment to using its assets in a way that delivers the housing schemes, big or small, which it is involved in. That will enable Londoners to live in their community in a property they can afford to live in and be a part of this great city—and the affordable rent model is only one part of that. As I said, charging 80% of market rent is not affordable for many people in parts of London; in fact, it is totally unaffordable. My plea to TfL would be to make proper provision for property at social rents in schemes that it is involved in.

I understand that we will shortly be advised by the noble Baroness, Lady Grey-Thompson, of some amendments to be made to the Bill later, and I am happy with what is proposed. I concur with the questions of my noble friend Lord Dubs. With that, I welcome the Bill back to your Lordships' House and we will look with interest at its progress through this House and the other place with the amendments we will shortly be advised of.

3.50 pm

The Parliamentary Under-Secretary of State, Department for Transport and Home Office (Lord Ahmad of Wimbledon)

(Con): My Lords, first, I join other noble Lords in congratulating the noble Lord, Lord Dubs, on securing this important debate. I have listened with interest to the contributions that have been made by noble Lords.

As we have already heard, the Bill will enable Transport for London to use financial practices and mechanisms which will allow it to release greater value from its assets and financing arrangements.

Before I come to that, the noble Lord, Lord Dubs, and others raised the issue of the time it has taken for the Bill to reach this stage. It is not often during my five years or so in your Lordships' House that I have taken up a Bill which was commenced prior to my joining, but this is one such.

If we look into the history of the Bill for the record, it is appropriate to note that it was read for the first time in the House of Lords on 24 January 2011, and received its Second Reading on 13 December 2011, when it was debated. As noble Lords may recall, the Bill was petitioned against by the West London Line Group. This petition was withdrawn when TfL agreed to delete a clause, and an Unopposed Bill Committee took place on 28 January 2014. The Bill was then read for a third time on 4 March 2014, and transferred to the House of Commons, where it had its First Reading that day. The Bill's Second Reading took place on 9 September 2014, and the Opposed Bill Committee eventually took place on 13 January 2015. However, the Bill was blocked when it came up for consideration on 12 February 2015; that necessitated a debate, which was held on 16 March 2015. Time then ran out to debate all the amendments tabled by opposition MPs, which included the honourable John McDonnell and the right honourable Jeremy Corbyn.

We are back, however, in this Committee today to debate the use of financial practices and mechanisms which will allow TfL to release greater value from assets for financing. This is a principle that I welcome, especially given the Government's continuing commitment

[LORD AHMAD OF WIMBLEDON]

to finding significant efficiencies in public spending, in the interests of both the taxpayer and the travelling public.

The noble Lord, Lord Dubs, raised the issue of the settlement. As the Minister responsible for London at the Department for Transport, I am acutely aware of the challenging budget discussions that we have had with Transport for London, but they have been held in a very co-operative climate, including those meetings we have held with the Mayor of London.

For information, as noble Lords may well be aware, TfL will receive about £11 billion of government support for the next control period, which runs from 2015-16 to 2020-21. This is a good settlement for London, and will enable TfL to continue to deliver the biggest ever investment across London's roads and streets. TfL has confirmed that the settlement will ensure that it can continue the modernisation of the capital's networks across transport, support thousands of jobs and the creation of new homes and promote economic growth across the UK.

I concur with noble Lords that London is an important city—indeed, it is the capital city of our great country—and therefore requires support and investment. The Government have underlined their commitment. I continue with other colleagues to work very closely with TfL to ensure the delivery of the infrastructure required so that London not only sustains its position on the global stage but strengthens it.

I understand from TfL that the Bill could realise in excess of £50 million in immediate benefits by improving its hedging power, enabling it to borrow money in a more cost-effective way and allowing it to make the most of its assets.

The department supports TfL's commercial programme, and we want it to maximise its unique commercial position to ensure its assets are generating revenues to their greatest potential. We believe absolutely that giving TfL greater financial flexibility will provide it with the opportunity to run its business in a more efficient way.

I know that we will be hearing from the noble Baroness, Lady Grey-Thompson, shortly on some of the matters relating to revised amendments to the Bill but, in principle, for all of the reasons I have given, the Government continue to support this Bill and hope that, after the long delays it has suffered in its passage through Parliament, it can soon be enacted.

3.55 pm

Baroness Grey-Thompson (CB): My Lords, I declare an interest as a board member of Transport for London, which is a public body constituted under the Greater London Authority Act 1999, as listed in the register of interests.

The first part of the Motion of the noble Lord, Lord Dubs, asks the Committee to note the delay in the progress of the Bill. I thank the Minister for giving a brief history of the slow transition of the Bill. Following the debate on 16 March 2015, time ran out to debate all the amendments tabled by opposition MPs, and the debate was adjourned. At that point,

TfL asked the House authorities to table a revival Motion following the State Opening of Parliament. This was tabled and the Motion was blocked. TfL subsequently asked the House authorities for a debate on the revival Motion in order to overcome the blocking Motion. Time was allocated on 16 November 2015, when the Commons voted to revive the Bill. On 30 November 2015, the revival Motion in the House of Lords was withdrawn when the noble Lord, Lord Dubs, asked to speak to the Bill, leading to this debate before the revival Motion on the Bill can be tabled again. The revival Motion is tabled for 9 February, after this debate, and only at that stage can the Bill progress through its next stages in the Commons.

Although the Bill has had a long passage through Parliament, it remains relevant and important as it will provide TfL with additional powers, so that it can meet its business needs more flexibly and take advantage of more efficient arrangements for the stewardship of its financial affairs. London's growth is relentless. It is driving up demand for our services. There is record ridership on the Tube and on the roads. To keep London working and growing, TfL has to invest just to keep assets in good repair, modernise the rail and road networks and continue to improve reliability. TfL's £11 billion capital funding settlement from government covers the period from 2015-16 to 2020-21, and includes a total of £5.8 billion in investment grant, £1.4 billion in general grant from the Department for Transport, alongside £3.8 billion in borrowing powers. This allows TfL to continue to invest some £1.7 billion a year to modernise London's road and rail networks. The Circle, District, Hammersmith & City and Metropolitan lines will be the next four Tube lines to be upgraded.

From 2019, TfL's objective is to cover all the operational costs of running the Tube and bus networks in London through non-DfT grant sources of income. It has planned for some time to achieve operational breakeven by running its business more effectively and efficiently. As part of a continuous savings programme, TfL has already taken 15% out of its costs.

Following the spending review in November, TfL must now accelerate and build upon its cost reduction programme because the revenue grant is being cut faster than anticipated, reducing its overall income by £2.8 billion over the period to 2020-21. The Bill will help TfL with this task by providing it with additional powers so that it can run its business more flexibly and take advantage of more efficient and economic financial arrangements. This will allow TfL to maximise the value of its assets, bear down on fares and deliver significantly better value for money to the public.

The second part of the Motion of the noble Lord, Lord Dubs, asks the House to note,

"the case for land disposed of under the provisions of that Bill being used to increase social housing".

The provisions of the Bill do not give TfL any new or additional powers to dispose of an interest in or develop its land, contrary to assertions made. TfL has had powers to dispose of land since it was created in 2000 and the Bill makes no reference to them nor does it expand them in any way.

Under its existing powers, TfL must obtain the consent of the mayor to dispose of an interest in its land by sale or granting a long-term lease. If that land is operational, or has been operational land in the past five years, the Secretary of State must also give his or her consent. The Bill does not affect these arrangements.

Using these existing powers, TfL has already begun to undertake development on its land, and will be developing more than 300 acres of land to help create more than 10,000 new homes across London using its existing powers. TfL is working with the mayor, London borough councils and the commercial property development sector to bring forward developments in an innovative and creative way. TfL is committed to ensuring that it can achieve the right balance between providing affordable homes, delivering revenues to reinvest in the transport network and delivering local transport improvements. Local authorities set the levels of affordable housing in their areas in accordance with local policy. TfL currently works closely with local authorities, and will continue to do so, at each of its sites and engages in active discussions on a site-by-site basis to ensure that development plans reflect local borough priorities and needs.

TfL has established a commercial development advisory group which provides non-executive guidance to its commercial development programme. The group includes experienced advisers who have expertise in social and affordable housing provision. TfL has recently submitted three major planning applications which will deliver £100 million in revenue for investing in the transport network, a new step-free Tube station and 600 homes with affordable housing levels ranging up to 40%.

The proposed development above the new Nine Elms Tube station will deliver 362 new homes—around 25% of which will be affordable—2,318 square metres of office, 550 square metres of retail, a new public square, play space, pedestrian and cycle connections, cycle parking, and disabled car parking. Revenue generated from the new development will support the funding of the Northern line extension.

The proposed development at Northwood will deliver 127 homes, around 20% of which will be affordable, as well as a new Tube station with step-free access and a new bus and train interchange. It will also deliver a new public space and 300 parking spaces, as well as 1,300 square metres of retail floor space. TfL is exploring options to accommodate existing tenants in the development and is providing relocation options to assist them in continuous trade.

I thank the noble Baroness, Lady Jones, for her contribution—her comments about Parsons Green have been noted. The proposed development is on the site of a former London Underground depot adjacent to Parsons Green Tube station, which is currently used as workspace. The scheme will deliver 119 new homes, 40% of which will be affordable, as well as over 4,000 square metres of retail, workspace and restaurants. The development will also support around 300 jobs and enable the opening of three arches for commercial use.

The Motion of the noble Lord, Lord Dubs, raises a wider issue of policy concerning the disposal or development of land by the public sector generally, not just TfL. However, the discrete scope of the Bill

should be taken as indicative of a desire by TfL to meet its business needs more flexibly and cost effectively. The provisions of the Bill will impact on TfL's ability to manage its financial affairs more efficiently and flexibly, which will assist it in being able to operate effectively and bear down on fares, while still being able to provide a world-class transport network.

To summarise the Bill's provisions, Clause 4 will give TfL subsidiaries the ability to access cheaper finance, subject to the consent of the mayor and, in respect of core operational assets, the consent of the Secretary of State. Clause 5 would have allowed TfL to form limited partnerships subject to the consent of the Secretary of State by way of order debated in both Houses of Parliament. However, TfL took note of the strength of feeling in the House of Commons during the revival debate about this clause. TfL recognises that, notwithstanding the amendments which were made to that clause by the Opposed Bill Committee, concerns remain about the possible future exercise of the powers which would be conferred by Clause 5. Accordingly, if the Bill is revived in the House of Lords, amendments will be tabled in the House of Commons at consideration stage to remove Clause 5 and references to limited partnerships from the Bill.

Clause 6 expands the list of entities through which TfL can undertake commercial activities to include limited liability partnerships and companies limited by guarantee, thus enabling TfL to conduct its affairs more flexibly and net the maximum value from its assets. Clause 7 gives TfL greater flexibility to mitigate its risks through hedging, including by allowing TfL to hedge commodity prices when it is exposed to fluctuations as a consequence of a transport contract and TfL's contribution risk to the pension fund. In view of the significant benefits that it will bring to TfL, it is essential that the Bill becomes law as soon as possible.

4.04 pm

Lord Dubs: My Lords, I am extremely grateful to all noble Lords who took part in this debate. I repeat my thanks to all those who provided me with help in preparing for the debate today. I also thank my friend in the House of Commons, Andy Slaughter MP, who was very useful in giving me helpful advice in preparing for today's discussions.

One or two things puzzle me a little. I have heard words such as "hedging power". I am not an expert in finance, and am grateful to the noble Baroness, Lady Grey-Thompson, for the detailed exposition she gave us, but I do not know what hedging powers are, frankly. I do not have a clue what that means. I am suspicious of it, as it seems to be some sort of financial services device.

Lord Ahmad of Wimbledon: I am a former financial services professional. In essence, it is about mitigation of risk—lowering risks and ensuring that you can use the markets to minimise your risks in any investment decisions taken.

Lord Dubs: I am most grateful. I have learned something that is going to stand me in good stead in the future. In giving the TfL position, the noble Baroness

[LORD DUBS]

said that revenue had been cut faster than anticipated. That is really the clue. Transport for London has taken a bigger hit in its finances than it had expected. We all want more housing in London but we also want housing that people can afford, not in the Government's definition of affordable housing but in the common-sense definition: housing that ordinary people can manage to buy or afford to rent. The temptation in a debate like this is to range widely over housing policy. Clearly that is a temptation I have to resist because it would not be proper to do so. However, the temptation is very strong indeed.

I hope that when the Bill is revised and goes to the Commons, the Commons will have another good look at it and deal with some of the other concerns that have been alluded to. I also hope that TfL will reflect on the concerns expressed in both Houses of Parliament about the possible danger in its proposals of reducing the possibility of developing social housing for ordinary Londoners. That is the real risk. I hope Transport for London will take that on board. Of course, it is in difficulty. It is caught between two opposing forces and has been put in an almost impossible position, for which I have much sympathy. I hope, nevertheless, that Transport for London will do its best and maybe a new Labour Mayor of London will move things on in a better way. I beg to move.

Motion agreed.

Pensions Act 2014 (Consequential and Supplementary Amendments) Order 2016

Motion to Consider

4.09 pm

Moved by Baroness Altmann

That the Grand Committee do consider the Pensions Act 2014 (Consequential and Supplementary Amendments) Order 2016.

Relevant document: 12th Report from the Joint Committee on Statutory Instruments

The Minister of State, Department for Work and Pensions (Baroness Altmann) (Con): My Lords, I beg to move that the Grand Committee considers the State Pension and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 2016 and the Pensions Act 2014 (Consequential and Supplementary Amendments) Order 2016. As the regulations and order both make provisions relating to the new state pension, it seems sensible that they should be discussed together. I confirm that the statutory instruments are compatible with the European Convention on Human Rights.

I propose to speak in most detail about the regulations. In summary, they enable a widowed person whose late partner was in the old state pension scheme to inherit graduated retirement benefit. They modify the rules for calculating a deferred increase, so that the payment accurately reflects the amount of new state pension the person had deferred. They maintain the long-standing policy of not uprating the state pension for people resident in certain countries overseas. Lastly, they

insert a provision relating to survivor benefits that was in a previous set of regulations into the new set that replaces them.

Regulation 3 is a technical provision which relates to the calculation of the weekly pension increase for a person who defers their new state pension. The standard calculation method is set out in the Pensions Act 2014. It provides for the increment for each week in the deferral period to be based on the rate of pension that would have been in payment at the end of the deferral period, if the person had not been deferring. This allows the pension increase to reflect any annual upratings that would have been awarded in that period.

The provision made by Regulation 3 modifies that calculation to cater for what will be the relatively rare situation of a change in the weekly rate while a person is deferring for a reason other than uprating. The most likely reason for a non-uprating change would be where a person is widowed and becomes entitled to an inherited amount under the transitional arrangements. The modification is needed to ensure that the increase is based only on the rate of pension applicable at each stage of the deferral period rather than the rate at the end of the period.

Regulation 4 inserts a new Part 6 into the State Pension Regulations 2015, which will provide for a widowed person who reaches state pension age after 6 April 2016 to inherit graduated retirement benefit. These provisions correspond to the transitional arrangements set out in the Pensions Act 2014, which enable a person whose deceased spouse or civil partner was in the old state pension to inherit SERPS or state second pension in line with the pre-2016 rules. The survivor will be able to inherit half the deceased person's graduated retirement benefit—the same as they would have inherited under the pre-2016 rules. This is provided that the same conditions are met as would have applied in the old system and the marriage or civil partnership existed before 6 April 2016.

Although the great majority of people in the old scheme have accrued some graduated retirement benefit, the amounts involved are small. As a result, we estimate that, on average, widows would inherit around £2.50 a week and widowers less than £1 a week under these provisions. They are therefore principally about maintaining consistency between the way we treat graduated retirement benefit—which was, of course, the first earnings-related state pension—and the rules for inheriting SERPS and state second pension.

The provisions introduced by Regulation 4 also enable the survivor of a pensioner who deferred their old state pension to inherit a weekly pension increase or, if applicable, a lump sum payment based on the deferred graduated retirement benefit. Again, these mirror equivalent provisions in the Pensions Act 2014 that protect the existing inheritance arrangements for the survivors of people who deferred an old state pension.

Regulation 6 is also a minor technical provision and inserts a new Regulation 27A into the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015. The 2015 regulations replace the current 1996 contracting-out regulations. It was decided to replace the whole of these regulations to deal with the requirements necessary for the end of contracting-out, rather than simply amend the 1996

regulations. The aim was to produce a coherent set of new regulations for the end of contracting-out to assist the reader.

In fact, Regulation 27A replaces Regulation 69B of the 1996 regulations without amendment. It requires a scheme converting guaranteed minimum pension, or GMP, into scheme benefits to provide a survivor's benefit in the same circumstances as a survivor's GMP. However, new Regulation 27A requires the affirmative procedure and therefore needs to be debated before it is made, so it is inserted by this instrument.

4.15 pm

Regulation 6 also addresses a procedural error. The provision now within new Regulation 27A was originally made as part of the new set of contracting-out regulations by the negative procedure last July. It should not have been, and the error was addressed very soon after those regulations were made. The regulations were revoked and remade as the 2015 No. 2 regulations without that provision, and these regulations now insert that provision to comply with the requirement for a debate before it is made. This debate would have been needed regardless of the mistake that was made in the earlier instrument. Regulation 6 also makes some necessary revocations in the earlier instrument.

I turn now to the provisions in these regulations that deal with overseas residents. Regulation 4 inserts a new Part 7 into the State Pension Regulations 2015 which provides for restrictions on uprating the new state pension for persons living overseas. Although we are making new regulations that will apply to people in the new state pension, the essential policy, which has been the policy of successive Governments for the last 70 years, remains the same: although we will continue to pay the state pension worldwide irrespective of where a person resides, only people who are ordinarily resident in Great Britain, who are covered by European co-ordination regulations or who are resident in countries with which there is a reciprocal agreement that provides for uprating will receive upratings.

We are introducing a change in the way we treat deferral where the deferrer is resident in a country where we do not uprate the state pension. Under the current arrangements, such a person will effectively get a double benefit from deferral when they finally claim: first, they will get the deferral payment like anyone else; secondly, that payment, and the amount of their weekly pension, will be based on the rate of state pension that is currently in force at the point of claim—that is, the rate of the state pension including any upratings. This applies even though they would not have received the upratings if they had not deferred their pension.

The regulations remove this anomaly for those in the new scheme, so that both the deferral payment and the weekly pension will exclude upratings that would not otherwise have been paid. The person will get a payment based on the rate of pension that would actually have been paid during the deferral period, in the same way as anyone else who defers. As we have explained in the Explanatory Memorandum to these regulations, this is to ensure we are consistent in how we apply deferral rules.

Lastly, I turn to the second of the two instruments we are considering today, the Pensions Act 2014 (Consequential and Supplementary Amendments) Order 2016. As the title indicates, these amendments are essentially technical in nature rather than implementing substantive policy measures. The order basically makes consequential amendments that result from the introduction of the new state pension. They ensure that national insurance credits for parents and carers awarded after April 2016 that relate to a period before April 2016 are included in a person's starting amount. They also ensure that inherited additional pension payable to a survivor in the old state pension whose spouse is in the new scheme includes the appropriate revaluation and upratings. They provide for taxation of inherited lump-sum payments based on deferred graduated pension in line with the arrangements that apply to inherited lump-sums based on deferred main old state pension. They extend the list of factors that can be considered when setting the earnings trigger for auto-enrolment to include the rate of the new state pension. The list already includes the basic state pension. Finally, they amend a provision in the Equality Act so as to allow pension schemes to continue to offer bridging pensions, where tax rules allow, until November 2018, when men's and women's state pension ages equalise.

I trust that on that basis your Lordships will be content for me not to take up time going into any further details on the order. With that, I commend the regulations and the order to the Grand Committee.

Lord McKenzie of Luton (Lab): My Lords, I thank the Minister for her introduction of these regulations and the order and note that the two Motions are to be taken en bloc.

The draft Explanatory Memorandum reminds us that this is the second tranche of affirmative legislation which is needed to support the introduction of the single-tier or new state pension on 6 April 2016, and there is more secondary legislation to come. We have been asked today about taking some SIs on 22 February. Is that it or is there still more to be scheduled?

We know that part of what is to come will cover national insurance credits for spouses and civil partners of Armed Forces personnel to cover past periods of accompanied service overseas. We obviously support this but recall that when we debated this before there were concerns, surprisingly, about the data. Perhaps the Minister will confirm how these have been satisfactorily addressed.

The scope of these regulations is a reminder of the complexity which is still very much a part of our pensions system—state and private—and whatever the promise of simplicity to come from the new state pension, that simplicity is, frankly, some way off. The need for effective communication could not be greater, especially as the change comes in the midst of other pension changes, including the accelerated changes to the state pension age, particularly hitting women, and the so-called flexibilities for private provision. This complexity also requires particular diligence in drafting. I am bound to say that slipping through regulations just before a Summer Recess, which have to be unpicked subsequently is not an efficient way to legislate.

[LORD MCKENZIE OF LUTON]

However, we acknowledge that eventually the new state pension will simplify matters and bring forward the point at which women get equivalent state pension outcomes to men, but not until the 2040s. We also note that the IFS concluded that in the long term the new pension will be less generous than the current system to almost everyone.

We have heard this afternoon that the regulations cover four main topics: deferral of the new state pension; transitional arrangements for inheriting graduated retirement benefit; pension uprating for those living abroad; and technical amendments relating to contracted-out occupational schemes. As we have heard, Regulation 3 deals with the deferral of the new state pension. The opportunity to do this exists, of course, under the current system and is something we support. It is an encouragement to those who wish to stay in the labour market and earning. However, the terms are to be less generous in the future, with the reduction in the accrual rate from 10.4% to 5.8% a year and no opportunity, outside transitional arrangements, to take a lump sum. Any increase is applied to the weekly rate of pension immediately before the end of the deferral period, but this is now to be reduced when there has been an increase other than through uprating. As regards what has been described as an anomaly, does this happen under the current system? What has changed in the need to back out these issues?

The Explanatory Memorandum tells us that the most likely cause of such upratings is where someone has inherited an amount on the death of a spouse or civil partner, so could the Minister please tell us what percentage of entitlements to inherited amounts on death accrue to women rather than men? What is the estimated saving to the Treasury from this measure? Although for those wholly in the new scheme there will not be opportunities to inherit a percentage of a late spouse or civil partner's additional state pension, we can at least support the transitional arrangements that enable someone to qualify for a survivor's pension in respect of additional state pension entitlement built up in the current scheme. We also support the new provisions introduced by Regulations 4 and 5 enabling the inheritance of graduated retirement benefit, including deferral payments. Even though amounts are likely to be small, as has been said, it is reasonable that the transitional arrangements are consistent.

With regard to the uprating of pensions paid abroad, I confirm that what the Minister said is correct: in government we, too, resisted calls to uprate the state pension payable abroad other than to those territories set out in the Explanatory Note. This, too, was largely on the grounds of cost, as well as the uprating factors. Carrying over these provisions to the new system is therefore reasonable. We note, however, that one small change is to include Sark in the reciprocal arrangements. Where on earth did that come from? Can the Minister tell us why and say what representations have been received and from whom in respect of this matter? The definition of an overseas resident is somebody, "not ordinarily resident in the UK".

But can the Minister confirm that a person could be ordinarily resident in the UK but still not domiciled in the UK? As we have heard, the substantive change to

the arrangements relates to the deferral rights of overseas residents. It is understood that the position is to back out the uprating component of the deferral calculation to prevent a benefit being received which would otherwise not be available if there were no deferral. We have no problem with that.

We note that the legislation is deficient in other respects in not allowing a disapplication of uprating where a survivor's benefit is not to be uprated because the deceased person's pension was not to be uprated—perhaps the Minister could expand a little on those circumstances. So I ask: can we therefore look forward to another Pensions Act if that is what it is going to take? The provisions generally relating to contracted-out defined benefit occupational schemes, the GMP requirement and the right to convert to ordinary scheme benefits take us back to the challenges of the 2007 Act. What was essential for conversion was the need to enable a survivor to have benefits at least equivalent to the survivor's GMP. This looks to have eventually been achieved under the new arrangements by paragraph (6) of these regulations and Regulation 27A of the 2015 Regulations. However, this reminds us that contracting out is no longer available from April 2016, with higher rates of national insurance contributions being payable by individuals as a consequence. We have probed before what this means in terms of extra tax and perhaps the Minister would like to take this opportunity to update us on precisely how much the Treasury expects to garner from the switching off of contracting out.

As far as the order is concerned, we support the provisions enabling credits for parental and caring responsibilities awarded after but relating to pre-6 April being included in a person's "starting amount". We wonder why HMRC has to take over the Secretary of State's authority in connection with entitlement to credits but note that this is not a new provision. As for extending the factors that the Secretary of State can take into account to trigger auto-enrolment and set the band of earnings to include the full rate of the new state pension, can the Minister please explain what practical effect it is considered that this change will have?

Paragraph 9 of the Explanatory Note refers to the multichannel communications campaign. Perhaps the Minister can tell us how this is going. Mention is made of a new online service to be rolled out in 2016, which will provide a projection of the new state pension at state pension age. Is this on schedule? What volume of inquiries is currently being experienced and what are the response times?

The regulations and order are complicated but we thank the Minister and officials for a very detailed Explanatory Memorandum. Overall, we judge that they contribute to making the new state pension work properly, and we will not oppose them.

4.30 pm

Baroness Altmann: My Lords, I am grateful to the noble Lord for his contribution to this technical debate. He has raised several questions, and I will attempt to answer some of them. If he requires further answers, I will of course write to him.

It is indeed the case that the analysis conducted by the department shows that the majority of those reaching state pension age between now and 2013 will receive more from the new state pension than they would have done under the old system. In the long run, the aim is that the rollout of automatic enrolment will provide a supplement to that state pension for future generations of retirees. Therefore, in the long run, the overall amount paid out by the state may reduce, but that is to be offset by the impact of automatic enrolment.

Women will get more state pension, on average, under the new system than they would have done under the old one. Notwithstanding the equalising of state pension ages, over their lifetime women will on average get 10% more state pension in total than men of the same age. The idea that women are losing out needs to be modified by some of the data that we have already produced.

Lord McKenzie of Luton: I was not suggesting that women were going to lose out. My point was that there is movement towards equalisation with men, although that is some time in the distance—I think that the 2040s has been the calculation.

Baroness Altmann: The equalisation between men and women of state pension payments may come in the future but, in the mean time, notwithstanding whether they get slightly less than men—the gender gap will be much narrower—over their lifetime they will get more, because the average woman lives longer than the average man. Once equalisation occurs, the gender favour to women will be even greater. In the mean time, the new state pension will put women in a much stronger position under the new state pension rules relative to the old ones. This is a significant improvement in the position of state pension payments for women on average, who, as we all know, have lost out in the past; we are remedying that to a large degree.

The noble Lord asked about contracting out. The idea of removing contracting out is not so much about cash flow or increasing the amount of money that comes to the state, because contracting out merely replaces what the state would have otherwise paid out in the state pension. By ending contracting out, the national insurance payments that are increasing will be offset over the long run. Indeed, depending on the average life expectancy, it could perhaps end up meaning that the Government pay out more in state pension as a consequence of ending contracting out than they do under the current system, where part of the state pension is contracted out to an employer who promises to replace the additional state pensions.

Therefore, it is not clear to me that there is a cost saving. It is clear to me that it is absolutely essential that we move to a simpler state pension system, which people can understand and deal with, because currently they cannot do so. At present, the existence of contracting out means that part of people's state pension builds up in a private pension, which confuses the messages and the planning. Therefore, the principle of the new state pension is that everybody pays the same type of national insurance without some people being able to pay less than others because they are in a particular type of private pension scheme, and that everybody, regardless

of their earnings, the type of credit they have or the type of national insurance contribution they pay, will be able to build up the same state pension each year as they accrue another year on their contracting-out record.

Lord McKenzie of Luton: In relation to the year we are just about to enter—2016-17—is the Minister saying that there will not be extra net revenue in the system that year from the abolition of contracting out?

Baroness Altmann: Of course that is not what I am saying. I am saying that we have to look at the state pension over the long term. National insurance is paid now but it relates to liabilities that will be paid over a long period of time, and Governments, quite rightly, have to plan for that with regard to the money flowing in now and the liabilities that will ensue from that over the longer term. As we know, the new state pension is expected to be cost-neutral to the taxpayer. Given that, I am not convinced that it is appropriate to consider contracting out as a money-saving exercise.

I am delighted that the noble Lord supports Regulations 4 and 5. Most of the measures that are being put in place here are indeed technical in nature and try to maintain the principles of the new state pension as well as protect people when we move from the old system into the new system—in particular, as we said, widows or widowers who inherit parts of the state pension entitlements that they would be able to inherit today.

The noble Lord also mentioned the importance of communications, and I completely agree with that sentiment. Indeed, as he alluded to, we are engaged in a widespread campaign to inform people and improve communications around state pensions. An enormous amount of time, effort and money has been put into this exercise, and we will continue that over the coming period. I assure the noble Lord that we have very much adopted the idea of communications being particularly important and will continue to work in that way.

The noble Lord also mentioned the complexity of the new state pension rules and some of the issues that have arisen with the drafting of the regulations. Of course it is a matter of regret that we had to come back with an affirmative regulation, which should have been done in the appropriate way in the first place. However, the debate is now taking place, as required.

We must not forget that the old state pension is what is so complicated. Dealing with past complexity is imposing difficulties when moving to a new state pension system. We have not been able to just sweep away the old system; we have to carry people into the new state pension system. That means carrying with it the complex rules and the many adjustments that were made over the many years for which it has existed. Once that new system is in place, the scale of complexity will be vastly reduced. For most people, it really will be a simple system, but we have to get from the old system into the new one, when it is fully up and running, and that will take some time before we can reconcile all the records as at April 2016 to know what everyone is starting the new system with.

[BARONESS ALTMANN]

As for national insurance credits for spouses and partners of people in the Armed Forces, we will be providing data when we bring forward those regulations. As the noble Lord said, we plan to have that debate on 22 February. We believe that we have reliable data that we can put before the House. Unfortunately, as I explained, the old system is very complicated. We need to bring in a huge number of moving parts from the current system to try to ensure that people do not lose out.

The noble Lord mentioned inheritance. In the new state pension system, widows will be able to inherit the additional pensions of their late spouses or partners. That inheritance currently exists and will be carried forward. I can reassure the noble Lord on that matter.

The noble Lord asked me about digital state pension statements. At the moment, they are in testing. The testing will be carried out over the next few weeks, and we will then be gradually rolling out the new digital statements, which will be much clearer and more helpful, so that people can see forecasts of what their new state pension will be able to give them.

As for the issue of deferral, as I said, the regulations will correct an anomaly that exists. The new state pension will ensure that the deferral for those who live in overseas countries which do not have a reciprocal arrangement with us, and those countries in which pensions are not uprated at the moment, will apply only to the pension at the date at which the person reached state pension age. That is the increment that will be added for deferral, rather than adding an increment to an increased state pension, which would otherwise give them a double benefit.

The debate has ranged rather widely—probably more widely than the provisions—so it may be helpful if I remind the Committee of what the regulations do. They enable a widowed person whose late partner was in the old state pension scheme to inherit the graduated retirement benefit. They provide for increments from state pension deferral to be based on the amount of new state pension the person would actually have been entitled to if they had been receiving their pension instead of deferring it. They maintain the long-standing policy of not uprating the state pension for people resident in certain countries overseas. They replicate a provision relating to survivor benefits that was in an old set of regulations in the new set that replaces them. The order simply makes consequential amendments that result from the introduction of the new state pension. I therefore commend the regulations and the order to the Grand Committee.

Lord McKenzie of Luton: Would the Minister mind looking at the record after this and perhaps writing where she has not been able to cover matters this afternoon?

Baroness Altmann: Yes. As I said, I am more than happy, if there are issues that have not been covered, to write to the noble Lord.

Motion agreed.

State Pension and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 2016

Motion to Consider

4.45 pm

Moved by Baroness Altmann

That the Grand Committee do consider the State Pension and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 2016.

Relevant document: 12th Report from the Joint Committee on Statutory Instruments

Motion agreed.

Producer Responsibility Obligations (Packaging Waste) (Miscellaneous Amendments) Regulations 2016

Motion to Consider

4.46 pm

Moved by Baroness Chisholm of Owlpen

That the Grand Committee do consider the Producer Responsibility Obligations (Packaging Waste) (Miscellaneous Amendments) Regulations 2016.

Relevant document: 14th Report from the Joint Committee on Statutory Instruments

Baroness Chisholm of Owlpen (Con): Before I explain the specific changes, I remind noble Lords why the Government are amending these regulations or, to be precise, deregulating. The Government remain committed to reducing burdens on businesses—none more so than in the waste sector. Today, we are considering the important topic of packaging. We all use packaging in our day-to-day lives and it serves many essential purposes. These include keeping our food fresher for longer, protecting products from damage and providing security. For instance, the humble cucumber can have its shelf life extended by up to 14 days with proper packaging. Vacuum-packaging and shrink-wrapping can keep meat fresher for twice as long, and resealable packs prevent foods such as cheeses from drying out.

Packaging therefore has a key role to play in the prevention of waste. In addition, at the end of its useful life, packaging can be recycled into a number of new products including clothing, chairs, car parts or construction materials, and there is closed-loop packaging recycling such as bottle back to bottle. Like the valuable role of packaging, the changes we propose are equally important. They are deregulatory and part of this Government's ongoing commitment to cutting unnecessary red tape. These particular changes stem from and build upon the earlier Red Tape Challenge initiative, and have the potential to deliver a net benefit to businesses of about £20.4 million over the next 10 years.

We know that around 10.38 tonnes of packaging were placed on to the UK market in 2013, and 64% of our packaging is currently recycled or recovered each year. Although it is difficult to be sure of exact costs

for the financial damage of improperly disposing of packaging waste, we know that local authorities spend nearly £798 million a year clearing up litter, of which about 30% is packaging in some form.

Turning to the legislative changes, as I said, the Government want to do ever more to reduce waste and encourage the recycling of valuable secondary resources such as packaging. Importantly, we also want to streamline the processes that packaging producers have to go through to adhere to regulations. There are four main proposed changes. First, the removal of operational plans will remove the requirement for packaging compliance schemes, or directly registered producers of packaging, to provide operational plans. This change, subject to full take-up by industry, will reduce significantly administrative burdens, with a potential saving to business of up to £5 million over 10 years.

However, in order to ensure that packaging compliance schemes continue to function efficiently and effectively, we have made provision to retain some key safeguard elements by incorporating these within revised conditions of approval. There are three retained conditions in respect of compliance schemes, and they will ensure that our environment agencies are able to monitor the accuracy of information provided by scheme members; that compliance schemes acquire packaging recovery notes, or PRNs, and packaging export recovery notes, or PERNs, in a manner that least hinders the ability of operators to purchase them; and that compliance schemes preserve sufficient financial resources to maintain the necessary expertise to acquire PRNs or PERNs.

The second proposed change is to the approving body. This change will transfer the responsibility for the approvals process for packaging compliance schemes from the Government to the appropriate agency. Currently, the regulations require Defra to approve a packaging compliance scheme and for one of the environment agencies to register the scheme. Although this is a small transfer between government bodies and a small additional function for the agencies, the change will put both the approval and registration processes directly into the hands of those with the most appropriate expertise to best assess applications.

The third change is the delegation of sign-off arrangements. This will allow an approved person in a packaging business to delegate their responsibilities for signing off reports. This will remove a significant burden on business and will ensure that the authorisation for the signing of reports rests with the person who is the most appropriate and knowledgeable in the organisation. A quality assurance backstop will be put in place that requires the appropriate environment agency to be notified so that appropriate checks can be carried out.

The fourth change is the one-stop shop for packaging scheme application approvals. This will provide operators of packaging compliance schemes based in both Great Britain and Northern Ireland with the right to apply for approval from one UK approving body. This is in contrast to the present arrangement, where operators face the significant burden of having to make applications to two bodies. It will also allow the Northern Ireland Environment Agency to act on behalf of the British agency and vice versa.

The Government consider that the changes proposed in the order provide a significant opportunity for businesses to reduce their administrative burdens and costs. These changes will allow even greater focus by industry and regulators on what really matters: increasing our recycling rates, reducing waste, protecting our environment and continuing to build an economically strong and ever-more-resilient waste industry. I therefore commend the order to the Committee.

Baroness Jones of Whitchurch (Lab): My Lords, I am grateful to the Minister for introducing the amended regulations. On the face of it they appear to make sense. Certainly, the changes to the approving bodies, the extended sign-off arrangements and the one-stop shop for the devolved nations are broadly welcomed and have clearly received considerable support during the consultation. It seems that the claims of savings that will be made by these changes are slightly overegged, but I take the point that there is an established way of calculating such savings and I am not going to quibble about the methodology at this point. That is a matter for another day.

I have two main questions arising from the proposals. First, they remove the requirement to produce an operational plan, as the noble Baroness outlined. I appreciate that the current requirements may be unwieldy and overdetailed, but is it not probable that removing the operational plans altogether also removes a major discipline and pressure on packaging producers to comply with their obligations under the EU directive?

We all acknowledge, as did the noble Baroness, that the priority is to increase our rates of packaging recycling, so how does the complete removal of the operational plan help that? Might we not be better off replacing it with a simplified format that achieves the same objectives? How will its complete removal impact on the monitoring of performance and compliance of individual companies? The noble Baroness referred to that, but perhaps she will enunciate it a little further. Also, would we not be wiser to delay the changes to these regulations so that we can take account of the proposed extension of producer responsibility schemes in the Commission's new circular economy package which relates to these measures?

Secondly, what more is being done to ensure that producers cover the full cost of processing their packaging waste? As I understand it, unlike the rest of Europe, in the UK, the producers' fees cover only about 10% of their waste costs. As a result, a disproportionate cost for collecting and recycling falls on local authorities. This, in turn, means that much of the cost is met by taxpayers rather than the product manufacturers. This goes against the principles of producer responsibility as originally envisaged by the EU. What more are the Government doing to ensure that the costs fall where they belong: at the door of the manufacturers? What further pressures can we bring to bear to encourage excess and unnecessary packaging to be designed out before goods hit the marketplace in the first place?

This is a policy area where we cannot afford to be complacent, because we still have some way to go before we meet our EU targets. Therefore, it would be helpful if the Minister could make it clear what new levers will be introduced to drive up compliance and

[BARONESS JONES OF WHITCHURCH]

innovation in the sector. I realise that these latter points are slightly wide of the content of the new drafts before us today. Nevertheless, they are important and I look forward to her response.

Baroness Chisholm of Owlpen: My Lords, I am most grateful to the noble Baroness, Lady Jones, for her remarks and for the fact that she broadly approves of what we are trying to do.

As regards operational plans, any producer who does not comply with their obligations will face enforcement action by the Environment Agency. We feel that the current operational plan does not add to the value of its function. We are very conscious of the circular economy in relation to recycling. Any amendment will not come into force until 2020 at the earliest. These deregulatory changes will reduce the burden on businesses ahead of that. I hope that that answers the noble Baroness's questions. These additional regulations will allow the Environment Agency further to increase its focus on tackling those who may seek to skirt around or deliberately evade their obligations.

Another piece of inspiration has come from behind me. We acknowledge that producer responsibility costs do not all fall on producers, as they do in Europe, but our market-based system delivers comparable recycling rates. Does that answer the noble Baroness's question?

Baroness Jones of Whitchurch: I was suggesting that the cost is falling on the taxpayer, because local authorities have to do the collection rather than the product manufacturers. Is there anything more we can do about that?

Baroness Chisholm of Owlpen: I may have to write to the noble Baroness to make sure that I get that exactly right for her. I commend the regulations to your Lordships.

Motion agreed.

5 pm

Sitting suspended.

Infrastructure Planning (Onshore Wind Generating Stations) Order 2016

Motion to Consider

5.03 pm

Moved by Lord Bourne of Aberystwyth

That the Grand Committee do consider the Infrastructure Planning (Onshore Wind Generating Stations) Order 2016.

Relevant documents: 15th Report from the Joint Committee on Statutory Instruments, 23rd Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, I will set out the impact of the statutory instrument which I am bringing forward. This affirmative instrument seeks to

amend Section 15 of the Planning Act 2008, removing the obligation in that Act to obtain consent from the Secretary of State for Energy and Climate Change to construct, extend or operate an onshore wind farm in England or Wales. To be clear, this provision relates only to proposed new wind farms with a capacity greater than 50 megawatts. Smaller wind farms, including those owned by the community, are already consented by the relevant local planning authority.

This change, alongside secondary legislation and proposed primary legislation in relation to the Electricity Act 1989, will have the effect of removing the requirements for planning consent to be obtained from the Secretary of State for the construction of new onshore wind farms. Instead, developers will need to apply for planning permission under the Town and Country Planning Act 1990, where the primary decision-maker is the relevant local planning authority. This Government were elected with a clear commitment to give local people the final say on whether to have a wind farm in their area. These changes help deliver just that, as was stated in our manifesto.

The changes are further supported in England by the implementation of the Written Ministerial Statement outlined by my right honourable friend the Secretary of State for Communities and Local Government on 18 June last year. The combined effect of the measures is to ensure that new onshore wind is consented to at local level and built only where local people have said they want it.

Finally, I remind the Committee of the support that the Government have received on this issue both in this House and during the Committee sittings in the other place which were held just last week. I should also be clear that the intention of this statutory instrument, and indeed of the statutory instrument already made to the Electricity Act 1989, is purely fully to implement the devolution of onshore wind-consenting powers to local authorities and away from Whitehall. The order does not change or affect the regime for town and country planning in either England or Wales.

Furthermore, once onshore wind-consenting powers are fully devolved to Wales, it will be for the Welsh Assembly and the Welsh Government to determine how new onshore wind farms in Wales are granted consent. On that basis, I beg to move.

Lord Teverson (LD): My Lords, I thank the Minister for his brief introduction. I fear that I will show a lot of my own personal ignorance about the subject in my questions because, as he said, it is one part of a jigsaw; the question is how it fits in.

Perhaps I am being naive but I expect the Explanatory Memorandum to be fairly objective. Paragraph 7.1 states:

"Local communities are often opposed to onshore wind farm development, arguing that they have direct noise and detrimental impacts on their communities".

Yes, it is true to a degree that some are opposed but, on the whole, they are not. It is usually a vociferous number of people who object to them and make planners' and local councillors' lives very difficult. It is up to them to stand up to that sort of pressure and make the right decision. That does not represent the majority.

Paragraph 7.3 states:

“Such reviews help to strike the right balance between keeping consumers’ bills as low as possible, while reducing emissions in the most cost effective way and ensuring public acceptability of particular technologies”.

As we know, wind power, as shown by the ROC rates and everything else, is one of the cheapest renewable sources of energy, so I am not sure how that paragraph fits in.

Part 10 of the Explanatory Memorandum concerns the impact. I have not read the impact assessment: I think that there was a problem in that it originally referred to the wrong one, but the memorandum states:

“There is no impact on business, charities ... voluntary bodies”,

or,

“the public sector”.

Then what is the point of it? I can see the point, but if there is no impact whatsoever, that is rather strange.

I actually welcome the order in principle. The Minister is absolutely right: local communities should have much more say over their local areas and decisions such as these. Placing them back into the local authority planning process is the right thing to do, so I welcome that.

What I want to understand—this is where my ignorance comes out—is how it interacts with the *National Planning Policy Framework*, which specifically uses the phrase “a golden thread” of sustainable development: that there should be acceptance that schemes should go ahead if they promote sustainable development. Does that still apply when local authority planning decisions are questioned further up the decision tree on appeal?

Paragraph 97 of the *National Planning Policy Framework* states:

“To help increase the use and supply of renewable and low carbon energy, local planning authorities should recognise the responsibility on all communities to contribute to energy generation from renewable or low carbon sources”.

Then it goes through a list of bullet points of things they ought to do. How do those obligations on local planning authorities tie in with this secondary legislation and the other areas that the Minister mentioned around it?

The Explanatory Memorandum also says that local authorities’ planners have to take account of neighbourhood plans or local plans. I want to understand whether that is a “both” or an “either/or”, because a lot of local plans have renewable energy and wind farms in them. What happens if this is not included in the neighbourhood plan but is included in a local plan, for instance? I suspect that that will often be the case given that neighbourhood plans still do not cover large proportions of areas that local planning committees take an interest in.

I have a couple of other quick things for the Minister. Five-megawatt wind farms are pretty large, and I would be interested to know how many applications for such wind farms there have been over the last five years or so. I do not need a specific answer but perhaps the Minister could give an idea of the kind of scale we are talking about. Also, are there other areas where local authorities do not have control over less than 30 megawatts? A number of parallels have been made with shale gas—which I am not against—where there is a big push the other way in terms of trying to

put pressure on local authorities to give permission or to call the decisions in if they do not. I would be interested to hear how the Minister reconciles the two opposite directions that energy policy seems to be going in at present.

Lord Grantchester (Lab): I thank the Minister for his explanation to the Committee today. The order seems to be primarily technical in that it changes the planning consent process from one where the Secretary of State is included to one where the local planning authorities make the decisions on an application concerning onshore wind-generating stations over 50 megawatts—that is, from the Planning Act 2008 to the Town and Country Planning Act 1990. This is in the context of the Conservative Party’s manifesto for the 2015 election and will make the procedure for consent for stations that generate above 50 megawatts consistent with that governing those that generate less than 50 megawatts. Perhaps to underline the simple policy objective sought here, can the Minister confirm that, apart from changing the ultimate determining authority from the Secretary of State to local planning authorities, no other feature will be affected by this change and that there is no other difference between the two processes for onshore generating stations above and below 50 megawatts?

We are content to support this SI. Indeed, we support the right of local authorities to decide onshore wind power applications so that they can decide on the case made in terms of them supporting jobs, providing energy stability, cutting energy bills and contributing to action to mitigate possible global warming. This change is also reflected in Clause 79 of the Energy Bill, which is currently undergoing scrutiny in the other place. During consideration of the Bill, it has been noted that the Conservative Government judge local authorities effective to rule on onshore wind applications, yet will not allow local authorities to assess applications regarding fracking. We consider that communities should be allowed a pertinent voice in both situations.

Your Lordships’ Secondary Legislation Scrutiny Committee drew attention to the lack of a wider impact assessment on the UK’s generating power. The noble Lord, Lord Teverson, drew attention to the wider impact on the national infrastructure framework. I support him in asking the Minister whether he will report to Parliament six months after the passage of the present Energy Bill to update Parliament on the effect of this SI, especially in relation to the carbon impact and the Energy Bill.

Lord Bourne of Aberystwyth: My Lords, I thank noble Lords for their contributions and for their general support. I turn first to questions posed by the noble Lord, Lord Teverson, on the Explanatory Memorandum. He is absolutely right that with this policy we are emphasising the importance of the local say for communities—that is the predominant factor in this legislation. The noble Lord quoted from the Explanatory Memorandum and suggested that it was tilted in favour of one particular view of onshore wind. I recognise, as has become very apparent from the Energy Bill and contributions in other debates, that opinions vary on onshore wind.

5.15 pm

Picking up the points on the impact assessment raised by the noble Lords, Lord Teverson and Lord Grantchester, I apologise that initially a wrong impact assessment was posted. It was corrected fairly expeditiously but I apologise for that. Criticisms have been made about the fact that the impact assessment does not assess the number of likely applications or the economic impact of the measure. Our point here is that it was a manifesto commitment. More importantly, we cannot second-guess the planning system. We cannot know how many applications are going to come forward and how many will be successful. It is in that context that we approach that criticism.

The noble Lord, Lord Teverson, asked about the national policy framework and whether sustainability was still important. Yes, it still is, although obviously within the context of local decision-making, which I am pleased he recognises as being important. He asked about the interrelationship between the local and the neighbourhood plans. The neighbourhood plan is discretionary, it is not as of right, and the local plan will prevail over the neighbourhood plan. It needs to take account of it but in the pecking order, as it were, the local plan will have the superior say. It will take account of the neighbourhood plan but is not obliged to follow it. The noble Lord also asked about wind farms of over 5 megawatts—I wonder whether he meant 50.

Lord Teverson: I meant over 50, I apologise.

Lord Bourne of Aberystwyth: Not at all. I guessed that was what he meant but I just wanted to confirm that. Two developers were involved in discussions about

the transition from the old scheme to the new scheme. That perhaps gives a flavour of the fact that it is not that many. I believe that the noble Lord also referred, as did the noble Lord, Lord Grantchester, to the different regimes in relation to shale. In both, local involvement is key. We recognise that. It is right to say that there is talk about a new system for shale gas exploration. There is a difference when a new technology is being brought on but I reiterate that in both systems we consider a local dimension to the decision-making to be vital.

Lord Teverson: Actually, I liked the Minister's first response, the global one. I thought that was very good.

Lord Bourne of Aberystwyth: I am most grateful. I have mislaid the further questions from the noble Lord, Lord Grantchester. I am not sure whether I have covered everything. Here we are: the noble Lord, Lord Grantchester, asked whether there was any move other than making local authorities responsible for these decisions rather than the Secretary of State. That is essentially true. There is an element of devolution to Wales as well but it just mirrors that in relation to the Welsh Government and Welsh Assembly. There is no other intention here. The noble Lord also referred to the fact that this is coupled with what is now Clause 78 of the Energy Bill—we have lost a clause somewhere along the way—he is absolutely right on that. With that, I commend the order to the Committee.

Motion agreed.

Committee adjourned at 5.18 pm.

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