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

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House of Lords

Tuesday 23 February 2016.

2.30 pm

Prayers—read by the Lord Bishop of Bristol.

City Regions: Pension Funds

Question

2.36 pm

Asked by ***Lord Goddard of Stockport***

To ask Her Majesty's Government what action they are taking to encourage the new City Regions to invest the pension funds they hold in infrastructure developments that will assist in the economic recovery.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford) (Con): My Lords, the Chancellor has announced that local government pension scheme assets worth around £180 billion will be pooled into six British wealth funds to drive investment in infrastructure and local growth. We issued guidance alongside the Autumn Statement that made it clear that authorities should be more ambitious in their infrastructure investment and compare themselves with the example set by the leading global pension fund investors.

Lord Goddard of Stockport (LD): I thank the Minister for her Answer. The Greater Manchester Combined Authority is a leader in pooling funds and moving forward. In fact, its pension fund is developing the housing market. It is also drawing up a spatial strategy for planning for Greater Manchester that will deliver 10,000 homes a year over the next 20 years, and that is to be applauded. Can the Minister say why the Department for Communities and Local Government is threatening each and every local authority in Greater Manchester by saying that, unless they draw up their own local plans, it will withhold the new homes bonus fee? The combined authority does what it says on the tin: it is combined. With every authority doing that, it will be done 10 times. I would like an answer to that question.

Baroness Williams of Trafford: I totally concur with the noble Lord that the GM pension fund performs very well and meets the needs of its members almost 100%. I am not surprised that the noble Lord has brought this up, given the way Greater Manchester has thought over the last few years, certainly in terms of its ambitions for strategic housing. I would be very happy to meet both the noble Lord and members of the combined authority to see what progress we can make in this area.

Lord Beecham (Lab): My Lords, given the disparity between some regions—for example, the north-east compared with the south-east—should not the Government incentivise not local authority pension funds but general pension funds to invest in infrastructure in the areas that have the least resources and the greatest needs?

Baroness Williams of Trafford: I do not think the noble Lord is wrong there. In encouraging local authorities to pool their pension funds, the Chancellor is also encouraging them to make efficiencies in fund management, for example, to maximise what can be drawn from those pension funds.

Lord Tugendhat (Con): My Lords, does my noble friend not agree that the first duty of pension funds is to pensioners, both present and future?

Baroness Williams of Trafford: My noble friend is absolutely right.

Lord McFall of Alcluith (Lab): My Lords, the big legal changes to pension death benefits which were introduced by the Chancellor and took place last April have had a perverse effect, in that it is much more tax efficient if someone dies under the age of 75 than just over the age of 75. The amount is tax-free if someone is under 75, but half the pension savings are lost if they are over 75. That is the result of rushed and thoughtless action by the Chancellor. Therefore, can we have an assurance that before he abolishes the tax-free lump sum, as mentioned in this week's *Sunday Times*, he will think slowly rather than fast and recklessly?

Baroness Williams of Trafford: My Lords, this Question is about local government pension funds and I cannot comment on a policy that has not been announced. However, I concur that if my husband died before reaching pension age, I would be a lot better off.

Baroness Whitaker (Lab): My Lords, following the recent comments of Sir Michael Wilshaw, do the Government consider that the educational infrastructure in the new city regions needs at least as much attention as the physical infrastructure? What are the Government going to do to ensure that the educational offer is as good as the physical offer in these areas?

Baroness Williams of Trafford: My Lords, all these things go hand in hand: infrastructure, education, and the infrastructure and provision of health services all make for the health and prosperity of the city region.

Baroness Janke (LD): My Lords, have the Government considered how European and international cities raise money for infrastructure? They are empowered to borrow money on the private market and to raise taxes for revenue schemes in order to pay those off in the long term. Have the Government considered doing that or are we still condemned to queue up behind each other at the Department for Transport, waiting to hear what it has chosen for cities in the way of infrastructure?

Baroness Williams of Trafford: The noble Baroness raises what is at the heart of the Government's encouragement here. There are cities, globally and in Europe, that are much more culturally disposed to using their pension funds for investing in infrastructure. The Ontario teachers' fund is a very good example of a fund that invests 6% per annum in infrastructure projects.

Lord Christopher (Lab): My Lords, following what was an accurate answer to the noble Lord, Lord Tugendhat, what arrangements are made when various pension funds pool resources to ensure that the individual potential beneficiaries of the funds are looked after?

Baroness Williams of Trafford: My Lords, the noble Lord makes a vital point. The job of a pension fund, first and foremost, is to maximise the returns for its investors—there is absolutely no doubt about that. However, in pooling the resources of a pension fund, for example, you could go to fewer fund managers, which cost a lot of money relatively, and therefore have more efficient pension funds than perhaps we have now in local authority schemes.

Lord Beecham: My Lords, while trembling for the future of the noble Baroness's husband, could I revert to the question I asked, as I do not think she quite understood my point? Will the Government consider incentivising non-local authority pension funds to invest in those areas that need the most economic investment?

Baroness Williams of Trafford: My Lords, I cannot speak for future government thinking, but to maximise the potential of pension funds, particularly where those funds are healthy, it would make sense that that is a very good way to go.

And I just want to tell the House that my husband is very well and healthy.

Scotland Bill: Fiscal Framework

Question

2.44 pm

Asked by ***Lord Selkirk of Douglas***

To ask Her Majesty's Government what progress has been made on the Fiscal Framework that accompanies the Scotland Bill.

The Parliamentary Under-Secretary of State, Scotland Office (Lord Dunlop) (Con): My Lords, significant progress has been made, not least over the course of the last week, in the discussions with the Scottish Government. As I told the House yesterday, although nothing is certain, a deal is within reach. Discussions between the two Governments are continuing this afternoon and are at an advanced stage. The UK Government remain focused and committed to delivering a fiscal framework that is fair to all parts of the UK. We all want to see the debate in Scotland move from what the powers of the Scottish Parliament are to how those powers can be used. The UK Government are confident that, used well, these powers can further help Scotland to prosper within our United Kingdom.

Lord Selkirk of Douglas (Con): In light of the Statement being made by the First Minister in the Scottish Parliament at 2.30 pm today, which may still be going on, will the Minister continue with discussions, however difficult the circumstances may be? Will he keep in mind that this House wishes all parts of the United Kingdom to be treated with fairness and that, if there are to be increased powers, these have to be matched by increased accountability? Finally, I wish to say that I have known the Minister for 30 years as a person of great integrity and ability and I wish him every success in whatever discussions lie ahead.

Lord Dunlop: I thank my noble friend for his kind words. I am aware that Scotland's First Minister is making a Statement in the Scottish Parliament as we speak. The Government will obviously take very careful note of what she says and we will continue to engage constructively until a deal is done. That is what people in Scotland and all parts of the United Kingdom expect us to do. I very much agree with my noble friend that any deal must be fair to Scotland and all parts of the United Kingdom. It is in the interests of all parts of the United Kingdom to have a Scottish Parliament that is more responsible and accountable to the taxpayers of Scotland. I think that, in this House, we can all agree that with power comes responsibility.

Lord Bruce of Bennachie (LD): My Lords, can the Minister acknowledge that, while he negotiates quietly, the Scottish Government are orchestrating their responses in the full glare of the Scottish media? In those circumstances, there are people in Scotland, including those who want the union to continue, who have some suspicion of the UK Government. Does he not agree that when an agreement is reached—and I hope it will be soon—we have to ensure that an independent commission can assess the fairness across the UK, so that the whole of the UK, including Scotland, can be reassured that a deal will not just be agreed but will be monitored to ensure that it is fair to all sides?

Lord Dunlop: On the noble Lord's first point, in any negotiation there is always a balance to be struck between keeping the public informed and providing the private space to get the deal done. Our priority has been to do all we can to reach an agreement, rather than to adopt public positions that in some way make it more difficult to reach agreement. With regard to independent scrutiny, I very much agree with the noble Lord, and I am sure that that will be part of any agreement we reach.

Lord Higgins (Con): Will my noble friend guarantee that we will not proceed with further consideration of the Scotland Bill until we have a clear idea about the financial framework and can judge whether it is fair? It would be quite monstrous, given the history of this affair so far, if we were not to have adequate time to debate the matter.

Lord Dunlop: Obviously, this is a negotiation between two parties, and I cannot give a guarantee on an outcome to a specific timetable. What I can say is that both Governments understand the pressing parliamentary timetables, both here and in Holyrood, and our desire and commitment to see full scrutiny of this fiscal framework.

Lord Wigley (PC): My Lords—

Lord McCluskey (CB): My Lords—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, I think that it is the turn of the Cross Benches.

Lord McCluskey: Can the Minister confirm that the United Kingdom Government will not agree to a deal on the fiscal framework that makes permanent the benefits to Scotland of the Barnett formula, while preserving the disbenefits of that formula to taxpayers in the rest of Great Britain?

Lord Dunlop: My Lords, as I said at the outset, we are very conscious that this deal must be fair not only to Scotland but to the other parts of the UK. We will certainly not, because of the pressure of parliamentary time, do a deal at any cost.

Lord Wigley: My Lords, with regard to the fairness to all parts of the UK, will the Minister accept that no deal will be regarded as acceptable in Wales unless it does away with the iniquitous Barnett formula, as has been recommended by a committee of this House, and replaces it with a needs-based formula as soon as possible?

Lord Dunlop: The noble Lord will be aware of the commitments that were made by all of the UK parties at the time of the last election with regard to the Barnett formula, and I do not have anything to add to that.

Lord McAvoy (Lab): My Lords, it is accepted that this is a difficult and complicated situation, but there is a duty on the UK Government and the Scottish Government to come to an agreement. We in the Labour Party are confident that a deal will be made in good faith by the UK Government and the Scottish Government and, in the words of Ian Murray, we urge both parties to "get on with it".

Lord Dunlop: I say to the noble Lord that we in the UK Government are determined to go the extra mile to ensure that we get a deal.

Lord Lawson of Blaby (Con): Will my noble friend confirm his answer to my noble friend Lord Higgins? Will he give an undertaking that the Scotland Bill will not proceed any further until the fiscal framework has been published?

Lord Dunlop: Our priority is to get a deal done so that we have a fiscal framework that this House can scrutinise. That is our first priority.

Lord Spicer (Con): Is my noble friend aware that, in the end, the one person who did not agree with the Barnett formula was Joel Barnett himself?

Lord Dunlop: I understand that that is a matter of public record, so I will certainly not disagree.

Lord Grocott (Lab): The Minister referred to a timetable that must be recognised and adhered to. The one part of the timetable that is within the Government's control is the passage of legislation through Parliament—not entirely of course, because one can never predict debates, but it is within the Government's power to decide when legislation will be brought forward and even to extend legislation from one Session to the next. Can he please explain that aspect of the timetable, to which he referred earlier?

Lord Dunlop: We are absolutely committed to getting the Bill through in this Session, and I think that we need to operate to a timetable that will achieve that outcome.

Electronic Goods: Sustainable Products

Question

2.51 pm

Asked by ***Baroness Jones of Whitchurch***

To ask Her Majesty's Government what progress has been made in reducing levels of unwanted electronic goods ending up in landfill through encouraging manufacturers to produce more sustainable products.

Lord Gardiner of Kimble (Con): My Lords, we are working with the Waste and Resources Action Programme—WRAP—and industry stakeholders, including manufacturers, to make progress on reducing the level of electronic goods going to landfill by encouraging improvements in the durability of new electronic goods—for instance, through simple design changes—increasing the reuse of unwanted items that still work and promoting and getting better value from the recycling of electrical items.

Baroness Jones of Whitchurch (Lab): I thank the Minister for that Answer, but I hope that he agrees that it is unsustainable that householders are spending some £800 a year on new electrical goods and throwing away earlier models, some of which are still working and many of which end up in overflowing landfill dumps. That is unnecessary waste and an environmental hazard. Some manufacturers have woken up to the challenge and are taking some of the steps that the Minister referred to, but should not the Government do more to set minimum standards and incentivise businesses so that product longevity and reuse become the norm rather than the exception, which is the case at the moment?

Lord Gardiner of Kimble: My Lords, I acknowledge the noble Baroness's work when she was board member and trustee of WRAP. We certainly have a major task ahead. The Government support the Electrical and Electronic Equipment Sustainability Action Plan—ESAP. That agreement, led by WRAP, has 74 signatories, including global manufacturers, and represents 66% of UK TV sales, 55% of washing machine sales and 49% of fridge freezer sales. We believe that ESAP will have a significant impact in reducing electronic waste.

Baroness Gardner of Parkes (Con): My Lords, is the Minister aware that there are people who recycle computers and such things? Some years ago I went with Lord Jenkin to see a man who had set up a successful business of that type. When recycled, the equipment was sent to Africa and countries that desperately wanted it. There was a time when that was

[Baroness Gardner of Parkes]
what happened to our computers here. I have a printer that has packed up—of course, we are no longer given printers for home—and I have been told to just put it in the rubbish. Why is there not more encouragement to provide these bits of equipment that are still valuable to other parts of the world?

Lord Gardiner of Kimble: My Lords, my noble friend is right to say that such equipment is of value not only around the world but in this country. The whole point of ESAP is to ensure that products last longer and can be reused. This is the whole thrust of what we want to do. These are early beginnings, but there is great potential not only for the environment but for the economy too.

The Lord Bishop of St Albans: My Lords, nothing exemplifies our society's throwaway attitude more than modern smartphones, which are almost impossible to get repaired at a reasonable cost, with batteries that are fixed in them and processors which are designed not to work after a couple of years. In contrast, there are now some social enterprises such as Fairphone, a Dutch company, that are producing phones using ethically sourced materials and in which every part can be replaced or upgraded when necessary. Does the Minister agree that such an initiative needs to be held up to the technology industry as a good example of the way forward to find sustainable products?

Lord Gardiner of Kimble: My Lords, I endorse all that the right reverend Prelate has said. The whole thrust of what we want is to achieve better design for waste prevention, reuse and recycling, of which Fairphone is a good example. If the Dutch can do it, so must we. More widely, the Waste Prevention Programme for England includes action on food waste, packaging, sustainable clothing and plastics, as well as electrical and electronic equipment. But there is so much more that we must do.

Baroness Royall of Blaisdon (Lab): My Lords, what discussions, if any, have the Government had with Dame Ellen MacArthur about her circular economy and the excellent work that she is doing? Also, what work are the Government doing to discuss with young people investment in new skills in order to repair equipment and perhaps extract valuable metals such as gold, silver and all the others that are used in such goods?

Lord Gardiner of Kimble: My Lords, the noble Baroness has hit on some important points. One of the key features coming out of the work that WRAP is doing is that there is around a tonne of gold in landfill sites that comes from electronic equipment. We want to get a lot of these important materials back. These are all areas where innovative work will be done. Young people and the innovations that come through them will be tremendously important, so again I endorse what the noble Baroness is encouraging.

Baroness Parminter (LD): My Lords, can the Minister update the House on progress on implementing the recommendations on individual producer responsibility for waste electrical goods made by the working group set up by BIS in 2012?

Lord Gardiner of Kimble: My Lords, while the working group decided that it was not the right time to introduce a system of individual producer responsibility, the introduction of the Waste Electrical and Electronic Equipment Regulations 2013, known as WEEE, aimed to minimise the amount of waste by setting targets for the collection, recovery and recycling of specific WEEE categories.

Accident and Emergency Services: Staffing

Question

2.58 pm

Asked by ***Baroness McIntosh of Pickering***

To ask Her Majesty's Government what assessment they have made of the number of shifts in hospital accident and emergency services not fully manned in each of the last three years.

Baroness McIntosh of Pickering (Con): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so I refer to the register of my interests.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, it is the responsibility of NHS trusts to ensure that they have the right number of staff with the right skills in the right place to deliver high-quality, safe and efficient care. There are already almost 32,000 more clinical staff working in the NHS than in May 2010, including almost 6,000 more nurses and 1,280 more doctors within the specialty of emergency medicine.

Baroness McIntosh of Pickering: My Lords, I thank the doctors who have been looking after my broken wrist. Does my noble friend agree that the problem is not that junior doctors are not working at weekends, but that there are simply not enough junior doctors on the books at this time, and that no other specialists such as therapists, radiologists and so forth are working over the weekend? What will the true cost of seven-day-a-week hospital opening be to the National Health Service going forward?

Lord Prior of Brampton: My Lords, seven-day working clearly goes far beyond junior doctors; it requires senior doctors, pharmacists, social workers, and primary care as well as acute care if we are to deliver a full seven-day service. As my noble friend knows, that is our objective over the next five years.

Baroness Walmsley (LD): My Lords, does the Minister endorse the principle of Kirsty Williams's Private Member's Bill in the Welsh Assembly, the Safe Nurse Staffing Levels (Wales) Bill, which, having passed with all-party support, now ensures safe staffing levels in all wards in Wales? Will the UK Government follow the example of the Liberal Democrats in Wales?

Lord Prior of Brampton: My Lords, I can perhaps be excused for not following all that carefully Private Members' Bills in the Welsh Assembly promoted by

the Liberal Democrats. Safe staffing is obviously very important. I quote Mike Richards on this, who says that it is,

"important to look at staffing in a flexible way which is focused on the quality of care, patient safety and efficiency rather than just numbers and ratios of staff".

That is extremely important.

Lord Hunt of Kings Heath (Lab): My Lords, will the Minister tell me why the Government told NICE that they could not publish safe staffing levels for accident and emergency departments, when they accepted fully the recommendations in Sir Robert Francis's Mid Staffordshire inquiry report, which said that safe staffing levels should be published? Will he also tell me how NHS trusts are enabled to achieve safe staffing levels when they have been told by the regulator, NHS Improvement, that they have to cut their workforce to cut their financial deficits?

Lord Prior of Brampton: My Lords, NHS Improvement never said that trusts should cut staffing levels to below safe levels. It has said that there is a right balance between efficient and safe use of staff. Getting that balance right is so important. That is what Mike Durkin, the national patient safety champion at NHS Improvement, is doing. His work will be reviewed by NICE and by Sir Robert Francis.

The Lord Bishop of Peterborough: My Lords, will the Minister please tell us what is being done to help hospitals to have enough doctors and nurses on their permanent staff, rather than having to rely on banks and agencies?

Lord Prior of Brampton: The right reverend Prelate is right that reliance on agency and non-permanent staff has become far too high. It is something we must reduce, not just because it is very expensive to use agency staff, but because the continuity and quality of care suffers. We are taking strong action to reduce the role of agency staffing in the NHS.

Baroness Finlay of Llandaff (CB): Do the Government accept that demand on services is now outstripping the increasing workforce that they have tried to invest in? The workforce crisis is made worse because of the brain drain, with emergency medicine trainees being attracted to other parts of the world that often have very good working conditions. The Government therefore need to take an urgent look at the whole pinch point of emergency departments, given the increased number of patients who go to where the lights are on all the time and where they know they will be seen properly by someone who is properly trained. The crisis means that they now will often be seen by a locum and the staff are on their knees.

Lord Prior of Brampton: My Lords, the noble Baroness raises an important point, but it is not new: 24% of all doctors who work in the NHS have been trained overseas. This problem goes back over 20 to 30 years. We must train more of our own doctors. On the specific point on emergency medicine, I was surprised that, over the last 10 years, there has been an increase in emergency doctors—A&E doctors in the main—of 9% per annum, against growth in demand of between 2% and 3%. That does not fully answer the noble Baroness's point, but, compared with other parts of the NHS, there has been greater investment in doctors and other staff in emergency medicine.

Lord Watts (Lab): My Lords, will the Minister give us more detail on the action he has taken on the scandalous use of agency staff in the NHS? Will he tell us how long it will take to deal with this problem?

Lord Prior of Brampton: My Lords, this is a big problem, and to fully address it will take up to two years. We are addressing it in two respects: first, the number of people coming in through agencies; and, secondly, the mark-up that agencies charge, which is sometimes more than the cost of the person being supplied.

Baroness Tonge (Ind LD): My Lords, will the Minister tell us when the Government are going to come clean about the health service and actually admit that we cannot carry on the way we are doing at the moment? Will he also tell us when we are going to have a national debate about how we fund the health and social care services in the future, and what services we will provide?

Lord Prior of Brampton: My Lords, the noble Baroness calls for a national debate but sometimes I feel that, in this House, we talk of almost nothing else. However, I understand the serious point that she makes. The fact is that the Government are committed to investing £10 billion of new money into the NHS. It is a very significant investment and is no more and no less than her own party promised at the last general election.

Lord Clark of Windermere (Lab): My Lords, the Minister has said that we have to train more of our own doctors, and on previous occasions he said that we have to train more of our own nurses. In training the nurses, we are taking a risk in abolishing the bursary system so that when those new nurses are qualified in 15 months' or 18 months' time they will have debts of about £40,000. What progress are the Government making in trying to reward those nurses who spend a considerable time in the health service—perhaps 10 or 15 years—so that those debts can possibly be written off?

Lord Prior of Brampton: The noble Lord will know that we are consulting on the proposals to remove bursaries and replace them with student loans. All the indications are that this will enable us to increase the number of nurses because the current system means that many young men and women who wish to become nurses are not able to do so. I think that three out of four people who apply are not able to get on the right courses. We hope that the new system will increase the number of nurses available to the NHS.

Baroness Howarth of Breckland (CB): My Lords, will the Minister tell me why, when they are qualified, it is safe for young nurses to do five 12-hour night shifts on the trot when we would not allow lorry drivers to do five 12-hour nights on the trot?

Lord Prior of Brampton: My Lords, I am not aware of that. Some nurses may work five 12-hour night shifts. The standard may be for nurses to work three 12-hour night shifts because many nurses prefer to work 12-hour shifts rather than the more traditional eight-hour shifts. I do not think that it is especially good for nurses to work those long hours, nor is it particularly good for patients. Nevertheless, offering nurses the opportunity to work 12-hour shifts fits round many young people's—particularly women's—working lives.

Mental Health Taskforce

Statement

3.07 pm

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, I will now repeat as a Statement the response to an Urgent Question given in another place by my right honourable friend the Minister of State for Community and Social Care on the report of the independent Mental Health Taskforce. The Statement is as follows.

"Achieving parity of esteem for mental and physical health remains a priority for this Government. We welcomed the independent Mental Health Taskforce launched by NHS England last year with a remit to: explore the variation in the availability of mental health services across England; look at the outcomes for people who are using services; and identify key priorities for improvement.

The task force was chaired by Paul Farmer, chief executive of Mind, and I want to thank him, the vice-chair, and his team for all their work. The task force also considered: ways of promoting positive mental health and well-being; ways of improving the physical health of people with mental health problems; and whether we are spending money and time on the right things.

The publication of the task force's report earlier this month marked the first time a national strategy has been designed in partnership with all the health-related arm's-length bodies in order to deliver change across the system.

This Government have made great strides in the way we think about and treat mental health in this country. We have given the NHS more money than ever before and are introducing access and waiting time targets for the first time. We have made it clear that local NHS services must follow our lead by increasing the amount they spend on mental health and making sure beds are always available.

Despite these improvements, the task force gives a frank assessment of the state of current mental health care across the NHS, highlighting that one in four people will experience a mental health problem in their lifetime and that the cost of mental ill health to the economy, NHS and society is £105 billion a year. We can all agree that the human and financial cost of inadequate care is unacceptable. Therefore, we welcome the publication of the task force's report, and the Department of Health will work with NHS England and other partners to establish a plan for progressing the task force's recommendations for improving mental health.

To make these recommendations a reality, we will spend an extra £1 billion on mental health by 2020-21 to improve access to services so that people receive the right care in the right place when they need it most. This will mean increasing the number of people completing talking therapies by nearly three-quarters, from 468,000 to 800,000; more than doubling the number of pregnant women or new mothers receiving mental health support from 12,000 to 42,000; training around 1,700 new therapists; and helping 29,000 more people to find or stay in work through individual placement support and talking therapies.

I can assure all Members of the House that they will have ample opportunity to ask questions and debate issues as we work together to progress the task force's recommendations".

3.11 pm

Lord Hunt of Kings Heath (Lab): My Lords, I am grateful to the Minister for repeating this Statement. The final report, which came out recently, gave a very frank assessment of the state of current mental health services and describes a system which is said to be ruining some people's lives. It is entirely consistent with the report by the noble Lord, Lord Crisp, on acute in-patient psychiatric care. It makes a number of recommendations which, if implemented in full, could make a significant difference to services that have had to contend with funding cuts and staffing shortages as demand has continued to rise, leaving too many vulnerable people without the right care and support.

We return to a question which was debated yesterday: the £1 billion by 2021. A number of questions remain unanswered. Can the Minister confirm that there is no actual, additional money other than the existing £8 billion that has been set aside for the NHS up to 2020, as previously announced by Her Majesty's Treasury? Given that mental health services receive just under 10% of the total NHS budget, surely these services would actually expect to receive much of this additional money anyway, as part of the NHS settlement. Will the Minister explain how this can be expected to deliver the transformation that he and the task force say is urgently required?

In a recent Oral Question, there was the usual discussion of whether there should be a national debate about NHS funding. The Government need to get on, not just to debate it but to ensure that the NHS has enough money. Has the Minister studied the advice given by Professor Don Berwick, the Government's safety adviser? He said, "I know of no nation that is seeking to provide healthcare at the level that western democracies can at 8% of GDP, let alone 7% or 6.7%. That may be impossible". His advice to the Secretary of State was that it is crucial that the Government reflect on whether they have overshot on austerity. What is the Minister's response to his own safety adviser?

Lord Prior of Brampton: My Lords, we have strayed somewhat from the subject. On the money, the Prime Minister announced an extra £1 billion in January. It is the same £1 billion and is within the £8 billion—or £10 billion—that was in the settlement in November. The Government asked Paul Farmer to set out in his report where the priorities are and where the money

should be spent, and that is exactly what has happened. Interestingly, I saw Don Berwick last week. He is a very distinguished American with a lot of experience in patient safety and health improvement. There is no question: it is going to be tough. It will be very difficult to do on around 7% of GNP, but there is absolutely no doubt, from the work of the noble Lord, Lord Carter, and others, that there is a lot to go at. If it was not tough, we would not be going at it. We must take advantage of the fact that it is going to be tough by addressing some of the difficult issues which we should perhaps have addressed in the past but did not.

Baroness Tyler of Enfield (LD): My Lords, the task force report, which I greatly welcome, points out that, while mental health activity accounts for some 23% of what the NHS does, it accounts for roughly half of that in NHS spending. Worse still, years of low prioritisation within the NHS have meant that clinical commissioning groups have often diverted money earmarked for mental health spending to areas of physical health, and that is harder to quantify because of obscure methods of data collection. Could the Minister say what steps the Government propose to take to ensure that the extra £1 billion announced, whether entirely new or not, is actually spent on improving mental health services. How will that be monitored in practice?

Lord Prior of Brampton: My Lords, that is clearly a very good question. At our level, we will monitor this through the mandate given to NHS England. Within that mandate, it has told all CCGs that they must increase their spending on mental health services by, I think, at least 3.7%. The noble Baroness will be interested to know that in the first six months of this year the increase in spending on mental health has been 5.4%, so it is higher than the stipulated 3.7%. Over the next five years I think we will see a trend towards more money going into mental health and primary care and away from acute care. We should not underestimate the very difficult impact that will have on many of our acute hospital services. The transformation will be very difficult. We may not agree on how much money it will take but I think we all agree in this House on the direction of travel—that it must be right for money to be spent in those areas. I hope that answers the noble Baroness's question.

Lord Watts (Lab): My Lords, the Minister will be aware of the acute shortage of mental health beds for children. How many new beds will be provided by the Statement?

Lord Prior of Brampton: My Lords, this Statement does not deal with children. The Government have promised to spend an extra £1.4 billion on children and young people over the next five years. I cannot recall the impact that it will have on the number of beds but there will certainly be more beds for children experiencing severe eating disorders. I will have to write to the noble Lord with that information if that is all right.

Baroness McIntosh of Hudnall (Lab): No doubt the noble Lord will tell me if I am wrong, but I believe that attracting people who are in training, particularly as doctors, into psychiatry and other mental health-related parts of the profession is still very difficult. What work are the Government doing with the medical training institutions to encourage more people to regard psychiatry and related professions as a proper way to use their skills?

Lord Prior of Brampton: The noble Baroness is right: psychiatry is one of the shortage areas, along with general practice and a few other specialties. Premia will be available in the new junior doctor's contract to encourage people to do psychiatry. That does not answer the noble Baroness's question all that fully; this is something I should like to look into more myself. However, within the extra spending that has been announced, there will be money for, I think, 1,700 therapists who are experienced in IAPT—cognitive behavioural therapy and the like—which should also help.

Baroness Finlay of Llandaff (CB): Given the problems experienced by emergency departments when they have an acutely distressed and ill mental health patient who cannot be cared for in the community and who needs to have a bed found for them, do the Government recognise that, at the moment, beds in the emergency department have to be blocked off—sometimes for hours, occasionally for days—while a bed is sought for this person, who could not possibly be cared for in the community because they are so acutely disturbed? Will the task force be asked to look specifically at that area of acute provision, separately from some of the other areas of more chronic mental health provision?

Lord Prior of Brampton: My Lords, it is very serious when someone going through a severe psychotic episode ends up in an A&E department, there is no local bed available in a mental health hospital, and they therefore spend time being specially guarded by two or three people, often in wholly inappropriate surroundings. This is the issue that the noble Lord, Lord Crisp, addressed in his report which came out a week earlier than the task force's: people are moved, often many hundreds of miles away, out of their area, to find a bed. Sometimes they get there and the bed is full and they are a long way from their family. It is a highly unsatisfactory, often very dangerous, situation. The approach of the task force is to try to ensure that more money goes into the home treatment and home resolution area, to free up beds in the acute sector. By providing more care in the community, more beds are freed up in acute hospitals, increasing capacity and enabling people who are in A&E departments to be transferred more quickly to the right place. This is clearly a very serious issue.

Baroness Royall of Blaisdon (Lab): My Lords, the response to the Urgent Question makes reference to the needs of mothers with new babies. Will any investment be made in additional mother and baby units, which are critical for mothers, children and families?

Lord Prior of Brampton: My Lords, of the £1 billion, £290 million has been earmarked for perinatal spending on pregnant women and mothers suffering from postnatal depression. I cannot tell the noble Baroness how many extra beds that might provide, or how much of that is being provided away from beds, but I will write to her on that matter.

Lord Lansley (Con): My Lords, does my noble friend the Minister agree that in order to secure parity between physical and mental health services, it is important to ensure that mental health service providers are properly and fairly reimbursed for the activity they undertake rather than subject to a block grant system where physical health service providers are paid for the work they do? In that respect, will the Government commit to working with NHS England and NHS Improvement to make progress now in the development of tariff-based systems for mental health services which fairly reimburse for delivering quality in outcomes?

Lord Prior of Brampton: My noble friend is absolutely right. I am glad he finished by referring to quality in outcomes rather than just activity. That is the critical thing about getting the tariff right, that it is based not just on activity but on quality in outcomes.

Lord Patel (CB): In responding to the task force report, is it the Government's intention to produce a mental health strategy that will encompass all the issues, including the funding?

Lord Prior of Brampton: Together, the task force report, the report produced by the noble Lord, Lord Crisp, and the earlier report on children and young people really do comprise a strategy for mental health for the next five years.

Trade Union Political Funds and Political Party Funding

Membership Motion

3.22 pm

Moved by ***The Chairman of Committees***

That Lord Hart of Chilton be appointed a member of the Select Committee in place of Lord Richard, resigned.

The Chairman of Committees (Lord Laming): My Lords, in moving the Motion standing in my name on the Order Paper, I feel sure that the House will wish to send the noble Lord, Lord Richard, our very good wishes.

Motion agreed.

Scotland Bill

Order of Consideration Motion

3.23 pm

Moved by ***Lord Dunlop***

That the amendments for the Report stage be marshalled and considered in the following order:

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

Lord Higgins (Con): My Lords, my noble friend the Minister has not given any explanation as to why the clauses of the Bill should be taken in that particular order. More particularly, in the earlier exchanges, he declined—I think that would be the right way to put it—to give a guarantee that, before we proceed to debate amendments on Report, the fiscal framework will be before the House in such a way that we can appraise the extent to which it is fair between the various parts of the United Kingdom.

The Minister will be well aware that the suggestion was made in the debate yesterday that, if we do go straight to Report, we should alter the way in which proceedings go ahead on that occasion so that we could at least speak more than once, and perhaps one should give further consideration to the situation. We will not, of course, have the opportunity to debate any clauses stand part on Report.

The way in which this matter has been proceeded with is quite intolerable. Parliament is being prevented from holding the Government to account in the proper way, and we are not being given the information on which we are bound to rely in deciding whether this is a sensible measure or not. It has gone through the House of Commons with no scrutiny at all of the fiscal framework, as I understand it, and we have had no discussion on the details of the framework in this House. It is really dreadful, given the magnitude of what is at stake here, in terms of the effect on individual constituencies and constituents, that we should not have a proper debate on this issue.

I hope that the Government can come forward with a clear assurance that we are not going ahead. I understand all the political implications with Scotland and so on, but the fact of the matter is that we are not being allowed to carry out our duty properly. I believe that this is an appalling state of affairs and has to be put right.

The Parliamentary Under-Secretary of State, Scotland Office (Lord Dunlop) (Con): I thank my noble friend, and will make three points in response. First, the purpose of the Motion that I have just moved is to ensure that we take Report in the same order that we took Committee. Secondly, to address the central point that he makes, we have done that precisely to meet the intent of what he is seeking: to give more time to reach agreement on the fiscal framework and to ensure that, when we come to the second day of Report on 29 February, we have an opportunity to scrutinise that framework. Thirdly, it was suggested yesterday that the rules of Committee should apply to Report, and I know that is being discussed through the usual channels.

Motion agreed.

Passenger and Goods Vehicles (Tachographs) (Amendment) Regulations 2016

Motion to Approve

3.26 pm

Moved by ***Lord Ahmad of Wimbledon***

That the draft regulations laid before the House on 12 January be approved.

Relevant document: 15th Report from the Joint Committee on Statutory Instruments. Considered in Grand Committee on 10 February.

Motion agreed.

Access to Palliative Care Bill [HL]

Third Reading

3.27 pm

The Bill was read a third time. A privilege amendment was made and the Bill was passed and sent to the Commons.

Trade Union Bill

Committee (3rd Day)

3.28 pm

Relevant documents: 15th and 20th Reports from the Delegated Powers Committee, 1st Report from the Joint Committee on Human Rights

Amendment 69

Moved by ***Lord Collins of Highbury***

69: After Clause 10, insert the following new Clause—

"Objects to which restrictions do not apply

(1) In section 72A of the 1992 Act (application of funds in breach of section 71), at the beginning of subsection (1) insert "Subject to subsection (1A),".

(2) In section 72A of the 1992 Act, after subsection (1) insert—

"(1A) Expenditure of money on the following shall not be treated as spending on political objects—

(a) encouraging electoral registration, including campaigns aimed at increasing voter turnout amongst sectors and groups within the population;

(b) encouraging the electorate to vote in national and local elections, including campaigns aimed at increasing voter turnout amongst sectors and groups within the population; and

(c) encouraging the electorate not to vote for a political party or candidate."

(3) In section 83 of the 1992 Act (assets and liabilities of political fund), after subsection (3) insert—

"(4) Expenditure in respect of the items provided for by section 72(1A) may be discharged out of a union fund other than the political fund.""

Lord Collins of Highbury (Lab): My Lords, we had quite a lengthy discussion about this on the last day in Committee. I do not want to go through all the arguments again—sorely tempted as I am—but I do want to focus on the particular aspects of the amendments in this group, which relates to spending out of political funds that is not simply party funding. I know the Select Committee of your Lordships' House will be looking at the impact on trade union political funds, of opt-in, and at how that might impact on party-political funding, but this will of course also impact on other elements of activity that unions carry out in the broader context of civil society and engagement. That is what the amendments are designed to focus on. I want to amplify some of the examples that unions have highlighted of the impact that a reduction in their political funds may have.

I know that it is difficult for some noble Lords to understand, but unions are expressing a collective voice. They are expressing the combination of opinions. It is not that they simply disaggregate views; their purpose is to gain strength by having a collective voice, so that the voice of the individual is amplified strongly in society. That is what the political funds have been so important in doing.

I want to run through some of the examples that many of us have read in briefings from both the TUC and individual unions. In 2010, we had massive campaigns prior to the general election supporting voter registration. Voter registration activity was conducted not only through workplaces, lay membership and lay officials but through materials and some door-to-door activity focusing on union members and stressing the importance of participation in general elections. That is an important role in civil society, bearing in mind that on all sides of the House we have legitimate, serious concerns about the engagement of people in the political process and, in particular, the serious decline in voting since the mid-1950s.

These activities are not limited to voting. Unions are trying to encourage people to become participants in the political process, to understand how important it is and to take the issue of holding public office seriously, trying to get a broader representation in public office—again, something that concerns noble Lords on all sides of the House. The impact of the changes could be seriously to limit the ability of unions to campaign on those issues and to build engagement.

We have heard that many unions have also focused their political funds on combating racism and the rise of the political right, particularly fascist parties. Unions have been at the forefront of campaigns against the BNP and, prior to that, the National Front. They have not only been challenging those far-right parties at election times, ensuring that people understand the implications of those parties, but taking that fight into the workplace, so that people are confronted with the issues in a much broader context. That has been particularly important in building stronger community links and understanding the dangers of racism and divided societies.

Political funds have also been used to address broader issues of inequality in our society. One of my proudest times was working with my noble friend Lord Morris of Handsworth to build equality structures within our union. They were not just internally focused but concerned how we develop gender representation. They meant encouraging individuals from underrepresented groups to take on public office, getting more women to stand for local councils, getting more BAME representatives on local councils and regional bodies, and working hard to ensure that we have broader representation in our society.

The fact is that, if there is a substantial reduction in the amount available in political funds, this really important work will be impacted. That is why we are suggesting that these amendments could solve the problem by ensuring that unions can participate and express their collective voice in civil society on these issues, and not be restricted. When the original political fund legislation was introduced, it was simple: political funds support parliamentary candidates and do not impose any other restrictions. It was clear that it was about party-political activity. But of course we have had changes in legislation, which have brought into scope a much broader range of activity into political funds.

One of the most impressive briefs I saw was from USDAW, which the Minister is fully aware of because—I have mentioned this on previous Committee days—USDAW and Tesco have worked in partnership over

[Lord Collins of Highbury]
many years. In fact, Tesco has been particularly pleased, I think, with some of the political campaigns that USDAW has been able to focus on—in particular, Sunday trading, on which we will have a debate in the coming weeks. But there is also the issue with which Tesco has been particularly concerned in Scotland, of the SNP's large retailers levy, or "Tesco tax", first proposed in 2010-11. Tesco was very pleased that, in partnership, USDAW worked really hard to challenge the political parties on that aspect.

I wanted to focus in particular on how changes in legislation have brought into scope other activities. Of course, the Political Parties, Elections and Referendums Act means that now any expenditure expressing a collective voice on referenda will come out of a political fund. So even when campaigning within unions it will be very difficult to judge that it is restricted solely to member communications. Potentially, if these provisions were in force now, a different voice, and an important voice in our civil society, would be severely restricted in the EU referendum on the case for jobs, employment laws and paid holidays. It would be severely restricted on all those matters, if these provisions came in. They are anti-democratic, imposing restrictions on civil society that would not be tolerated in many other countries, particularly countries that have Governments who do not like to hear opposition. I am sure that that is not the Minister's intent, but it is potentially the impact of this legislation. In future referendums, the voice of working people would be severely restricted. That cannot be acceptable.

I conclude on a point that I have already made, on the role of trade unions in our broader community in building up people's confidence and building up the opportunities for people to play a bigger role. It is a simple fact that the broadest representation in our local councils, in our regions and in Parliament has been achieved through trade unions, far more than by any other community organisation. It is that role of achieving the greater engagement of people that we put at risk, simply by wanting to restrict the opportunities of people contributing to a political fund. It is important that we focus on the issue so that we understand better that it is not simply just about funding political parties.

Lord Hain (Lab): My Lords, I rise briefly to support the coherent case made by my noble friend Lord Collins. I shall refer to two practical areas where I am deeply troubled about the implications of these clauses. I appeal to the Minister, whom I knew in her previous professional life in my role as a Cabinet Minister. I have always seen her as a source of reason and decency, and I hope she will prove me right in her handling of the Bill and in her acceptance of amendments.

I am referring to the role of the Anti-Apartheid Movement in the struggle for freedom in South Africa and in particular to the crucial role played by British trade unions in that campaign. I see around me many noble friends who were leading forces in their trade unions. I shall not name them all, but I can see half a dozen on either side of me and in front of me. Now, everybody says they were against apartheid, but actually very often it was the churches, the trade unions and campaigners such as the Anti-Apartheid Movement—which was joined by many Members of Parliament, including Labour and Liberal Democrats but, I regret, very few Conservatives—which were the foot soldiers in that hard, long battle. The trade unions were crucial. I fear that this Bill would have caught them and, for example, prevented them providing much-needed funds to trade unionists being prosecuted in apartheid South Africa. They could not raise funds for their defence lawyers within the country because it was illegal for them to do so, and external funds coming into the country under apartheid was also illegal. The trade union movement in Britain provided much-needed, vital funds for those trade unionists' freedom through various under-the-radar ways of channelling funds—Canon Collins' fund and various other channels.

In the 1980s in particular the trade union movement played a crucial role in the phase of the anti-apartheid struggle that saw the eventual collapse of the apartheid regime and the liberation of Nelson Mandela after 27 years in prison. The trade union movement in Britain was crucial. Therefore, I urge the Minister to think very carefully about this and to look at whether the amendment submitted by my noble friend can be accommodated to ensure that such activity, which everybody now endorses, will still be legal and that the trade unions will not be restricted, hampered and straitjacketed in the way I fear they will be under this Bill.

Another area of campaigning was the Anti-Nazi League in the late 1970s. It was really important in defeating a worrying rise in the National Front, especially its appeal to working-class youngsters, who were sporting Nazi regalia at the time and had been caught up in that fashion. They were often unemployed skinheads and others. The trade union movement provided a much-needed source of funds in that campaign and, more recently, in the campaign against the BNP through organisations such as Unite Against Fascism. Whether that generosity would have been possible to the same extent under this legislation, had it been in force then, I rather doubt. I think it would have been caught, and I fear that will be the case in the future if this Bill is not amended. I ask the Minister to consider these arguments very carefully, to reflect deeply and to come back on Report with amendments that make sure that such campaigning will be protected under political funds, rather than enacting these draconian measures, which will restrict fundamental freedoms to organise politically for justice and human rights across the world and in our own country.

3.45 pm

Lord Balfe (Con): My Lords, I am advised that at the beginning of each week's proceedings I should declare my interests as president of the British Dietetic Association and unpaid parliamentary adviser to the British Airline Pilots Association, which I duly do. I also give my warm thanks to the Minister, particularly at this point because in the course of the next couple of days she is probably not going to be too happy with some of the things I say. On this set of amendments, though, she might be.

As I read them, the amendments seek to exempt the expenditure from being counted as political expenditure; they do not ban the money being spent. My personal view is that the use of political funds has more or less got

completely out of hand. Recently, noble Lords will have received from an organisation called HOPE not Hate, which was set up to combat racism, a glossy four-page booklet saying that we should vote against the Government's views on electoral reform. I challenged this with the Charity Commission, which came back with some very wishy-washy arguments, to such an extent that its chairman has offered to look at the issue again.

I query how far these things are being pushed. In fairness, people do not join a trade union to campaign for whatever happens to be the favoured cause of the national executive of that union; they join, quite rightly, for social protection.

Lord Lea of Crondall (Lab): I remember that HOPE not Hate was very interesting at the time on the question of the electoral register. My question is: does the noble Lord accept that if he has a go at the trade unions, he has to have a go at the fact that an organisation such as the Institute of Economic Affairs can get charitable status? Do we not need a level playing field, and ought we not to freeze where we are until we have looked at what constitutes one?

Lord Balfe: I certainly agree that we need a level playing field. In the past, noble Lords have been treated to my views on political funding, which is out of line with regard to all the parties. I do not think that public money should be used for political funding, and there should be a severe limit on how much can be donated to parties, so we agree on that.

This clause, however, as I understand it, is not aimed at preventing unions contributing; it merely asks that they be exempt from contributing from their political funds. Personally, I do not accept that argument: if there is going to be a political fund, that is what it should be used for. I fully accept the work done by the trade union movement, which the noble Lord, Lord Hain, has outlined; it was considerable. I was a part of it at that time and I remember slightly more members of the Conservative Party than he does, but I will concede that they were not a majority at any point.

I also counsel that some of the arguments put forward by the noble Lord on the Front Bench were not strictly about political funds. The Minister will know that in the last few weeks I have introduced her to no fewer than 10 trade unions, all from what we would call the moderate wing of the trade union movement, and only one with a political fund—and that one not affiliated with the Labour Party. There is a consensus in certain quarters that a political fund is not necessary to defend the legitimate interests of unions' members. That is possibly why the majority of unions do not have political funds. In short, they can do what they want to defend their own trade union members within their general fund. It is only when they want to step outside that and organise what I would call extramural activity, which is not often closely connected with the aims of their individual members, that we run into this sort of problem.

This is probably the only speech that I shall make that is helpful for the Minister, but I hope that she will resist this amendment and that the unions will continue to use their political funds for this. They should not be exempt.

Lord Judd (Lab): My Lords, very often the noble Lord, Lord Balfe, makes points with which I strongly agree. He is right and very courageous to put forward his views on public money being used for the funding of political parties and on expenditure limits in elections. He and I could go a long way together in what he argues there. But what I do not understand in his logic is why—if people join trade unions to protect their interests in the context of the work they do; and should the bodies they have joined, which are representing their aspirations, come to the conclusion that it is necessary to have a healthy democracy, locally and nationally, for that objective to be fulfilled—parties should be constrained in making their contribution towards that work.

As many noble Lords will know, I spent a great deal of my professional life working in what used to be called the underdeveloped countries but which we now call weaker economies and all sorts of other polite words. In that context, there was a need not just for realising the importance of the redistribution of wealth in the world but to realise that if the people of those countries were to have a chance and make progress, they must have democratic systems. That argument—that we make an advance when we get a democracy established—has had great support from all political parties in this country. However, having done that sort of work for as many years as I have, I have always thought that there is a certain danger of naivety in the belief that, "Right; we've got an elected system established and we're going to have elections—that's the fulfilment of the task". Of course it is not. There will be success only if there is a healthy and vigorous civil society that provides a context in which there will be understanding, effective argument and in which the ingredients essential to a working democracy can be advanced.

It therefore seems that if we look at our own country, we should be rather concerned. The noble Lord and I grew up over very much the same years and entered elected political activity in very much the same years—indeed, we knew each other a bit in those days. When you compare the proportion of the electorate who participate by voting in our general elections or, even more so, in our local elections, we cannot be complacent. What has happened is very sad. The full-hearted public participation in the democratic system seems to any outsider to be on the decline rather than advancing. I would have thought, therefore, that if we are all agreed that we need a healthy democratic system and accountability of government within our democratic system, civil society is more vital than ever in our own country in the role that it plays in encouraging participation in elections. Surely the special role the trade unions have to play is that they can bring home to people that these electoral systems and participation in those systems are not about something different from their working life—they are highly relevant to their working life. Whatever the arguments about supporting particular individual political parties—and of course there are different views about that; I have strong views but respect those who do not have the same views—it seems to me that we all agree that we need everyone in civil society to encourage participation in the democratic process. Whatever policies we may advocate, we need a healthy democracy and the accountability of government.

[LORD JUDD]

Looked at together with some other things that have been happening of late in the approach to government policies and in the approach to controls on, and regulation of, the activities of civil society, we should be a bit anxious about the ultimate objective here. I am quite concerned about this. Do we or do we not believe in a democracy? If we believe in a democracy, how do we encourage full participation in the democratic system? On the one hand, you argue the policies that you advocate and want to see; on the other hand, you want to make sure that whatever emerges is representative and rests on the full participation of as much of the population as possible in the democratic process.

The amendments put forward by my noble friend are the nitty-gritty of generating a healthy democracy with a contribution from the trade union movement. I hope that these arguments will be given very careful consideration by the Minister in her response and in the way she carries forward the Government's position on Report.

Lord Oates (LD): My Lords, I share the view of the noble Lord and I hope that the Minister will consider extremely carefully the comments that have been made, particularly in relation to Amendment 69 but in relation to all the amendments. The real worry here is that the Government seem to regard the trade unions as a threat to be regulated, rather than as a key part of our civil society and as a key contributor to our democracy.

Lord Balfe: I note that the noble Lord from the Liberal Democrat Benches specifically says that he supports Amendment 69, which says that the application of funds should not be treated as spending on political objects if it is,

"encouraging the electorate not to vote for a political party or candidate".

I seem to remember that a lot of unions encouraged people not to vote for his party or its candidates but he now appears to support trade union money being devoted to not supporting the Liberal Democrats. I agree that we should not support the Liberal Democrats but I am not sure I agree that it should be done in this way. Is the noble Lord speaking for his party when he says that political expenditure should be exempt for opposing him?

Lord Oates: The point which we have made and which the former Deputy Prime Minister made in his representations to the Select Committee is not that we like the way that the trade unions operated against us, often to our disadvantage, but that, first, we believe that they have an important role to play in our democracy and, secondly, if any restrictions are to be put in place, they need to be put in place on a fair basis. However, that is not what is being proposed by the Government. They are proposing to restrict the actions of the trade unions through their access to funds but not the actions of the Conservative Party. As we are all aware, it is the Conservative Party which has massive dominance in terms of finance and which poses the real threat to people's participation in a fair and equal way. That is the problem. In its manifesto the Conservative Party said that it believes in all-party talks on funding reform but it has done nothing to bring those forward. Our concern is about a fair approach to this process.

I ask the Minister in particular what objection there can be from the Government to the involvement of trade unions in seeking the registration of electors. That is a positive role, not a partisan role, and a very important one. I think that we all in this House want to have as many people on the electoral register as possible.

Will the Minister also tell me why, if this is to be maintained with all the consequent reporting requirements on the trade unions, it is right for those requirements to be imposed in relation to activities associated with electoral registration and why that should not fall in the same way, for example, on the Conservative Party outside election time? Is the Minister proposing that such measures should be complied with by the Conservative Party? If this is, as the Government say, all about transparency for the members of voluntary organisations, in this case the trade unions, then surely what is right for trade unionists must be right for members of the Conservative Party.

4 pm

Lord Mawhinney (Con): My Lords, I, too, want to look briefly at Amendment 69. When the noble Lord, Lord Collins of Highbury, introduced these amendments, he did so, if he does not mind my saying so, rather well—at least for the bits that he talked about, but it is the bit that he did not talk about that I want to draw to his attention. I will read to your Lordships from new subsection (1A)(c) proposed in Amendment 69:

"Expenditure of money on the following shall not be treated as spending on political objects— … encouraging the electorate not to vote for a political party or candidate".

I had the honour to stand seven times for election to the other place. The first of those seven was the routine safe-loser seat that parties frequently invite prospective candidates to stand for, and I did very well in Stockton and Billingham—I lost by only 18,000. I won the other six. In those elections, there were people encouraging my constituents not to vote for me and there were people encouraging my constituents to vote for somebody else. I say gently, and with a good deal of warm feeling towards the noble Lord, Lord Collins of Highbury, that the noble Lord needs to make up his mind. He either says that the money cannot be spent or that it can be spent, but the logic behind new subsection (1A)(c) in Amendment 69 is totally inconsistent. I hope that your Lordships notice—I am trying to contribute to that noticing—the fact that he did not mention it, and that the contradiction was passed over by the more high-flown rhetoric and passionate exposition on other aspects of political funds. He needs to explain with a good deal more clarity than he has so far attempted, and I hope that the Minister will encourage him to do so, how this particular aspect of Amendment 69 is meant to hold together.

Lord Stoneham of Droxford (LD): My Lords, I will contain my remarks to just a couple of points that have been made during the debate. I do not think this problem would exist if the Government were not actually trying to reduce the amount that is raised through the political levy. That is at the bottom of the story here. They are trying to reduce the political fund money, and these amendments—which I accept complicate the whole process of accounting for political funds—are

being drafted only because trade unions are concerned about where will they get the funds for the activities they want to carry out if they are to lose so much funding and their political funds are restricted. So the issue is both the cost to trade unions of the bureaucratic requirements to comply with this legislation, and the fact—although the impact study will not admit this—that a major objective is to reduce the amount of money coming forward in the political funds.

The points have been very well made. The noble Lord, Lord Judd, made the point that those of us who believe in civic society support the principle that funds must be available in the political process, and one of the major sources of funds in our political system is the trade unions. If that source is being constrained by the opposing side—as it clearly is—then we regard that as unfair, unless they are also taking the opportunity to look at exactly what they are raising and spending in opposition to the trade unions and, indeed, the Labour Party and ourselves. We want to see fairness in this whole process.

There are quite strict requirements already in the system. The unions have ballots to support or not support the operation of political funds every 10 years, so there is accountability. They are required to account for this money. All the Government's efforts are clearly designed to reduce the amount of money in the pool. For those reasons, we are opposed to this aspect of the Bill, and we hope that the Select Committee will find a much fairer way through it than the Government clearly are intending at the moment.

The Earl of Sandwich (CB): My Lords, I am unusually tempted to come into this debate, but it has had an international character and I will not delay the Minister for more than a minute. I support everything that the noble Lord, Lord Judd, said about civil society all around the world and the importance of trade unions, and I was very cheered by the noble Lord, Lord Hain, bringing me back to the 1994 elections in South Africa and all the work that he did and churches and trade unions alongside each other. I could not resist saying something about that, having been on the staff and the board of Christian Aid and seeing at first hand how the churches were woven into society.

Nor can I resist having a go at the Conservative Party and taking it back to those days when my father was a Member of Parliament for 21 years for the Conservatives. When they ousted him for being against the Common Market, they sent him up to Accrington. There, he needed to take a loudspeaker to the factory gate because trade unionists were behind gates and could not be approached, except through a megaphone. The Conservative Party has come a long way from there, but it is significant that today it is still catching up with everyone else.

Lord Morris of Handsworth (Lab): My Lords, I support Amendment 69 because one of the greatest challenges that we face in our workplaces today is not strikes or boycotts but the new evil that is confronting our country: radicalisation. Anyone who thinks that radicalisation stops at the factory gate, or the gate of the bus garage, has got it wrong. It permeates our social activities and, indeed, our industrial activities. Therefore, we have to find a response to that evil. It can indeed pass from generation to generation and that is the prime objective. It means that we need strategies. We need to win the arguments and chart a new direction. But it also means that we have to find positive alternatives, which means winning the battle not just at the factory gate but inside the factories. That battle has to be built around people of like minds—people who find such ideologies totally unacceptable.

This is not just about leaflets and slogans; it is about the actions inside the workplaces—the one-to-one discussions, the meetings that are not advertised. Those are some of the tactics and approaches. Most of all, it is about the provision of education to those of positive thinking and progressive minds. We have to win those hearts and minds, young and old. We have to take charge of the education facilities that are offered in some workplaces. We must make sure that the political objectives are very clear for those people who want to be part of a progressive system.

I ask myself, how on earth do we arrive at these objectives if there is no resource to fight a counterargument and win the hearts and minds in a positive way? You cannot write it off on the basis that it is a political objective and use the political funds, because the Certification Officer in a new role may want to have a word to see exactly how the funds are disbursed. The amendment in the name of my noble friend Lord Collins is saying that we have to face many challenges but if we see them all as political objectives, we will have neither the resource nor the opportunity to make a real difference in changing hearts and minds, but more importantly, in changing actions and behaviour. For those reasons, I support Amendment 69.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe) (Con): My Lords, I am grateful to noble Lords for this lively debate, which builds on the debate we had on our second day. I particularly thank the noble Lord, Lord Collins, for his knowledgeable comments on some important union campaigns and for his Tesco tales. I always like the opportunity to commend the forward-looking work of USDAW. But I do not agree with the noble Lord's suggestion that such campaigns would be stopped by the sort of transparency we suggest here. The campaigns may be worthy and legitimate, but they are political in character so they should be paid for out of the political fund, and that would include the important campaigns the noble Lord, Lord Hain, described and the noble Earl, Lord Sandwich, supported. I am with my noble friend Lord Balfe on this issue. They are legitimate activities, but members should know about and choose to opt in in support of such political causes.

We want in this Bill to give members more information about what unions are doing with their money so that they can make an informed decision on whether to contribute. We also want to ensure that a member's decision to contribute to the political fund is done with their explicit consent. My colleague the Minister of State for Skills has set out his evidence to the Select Committee, which is of course considering these clauses. Indeed, we debated Clause 10 in some detail on the second day in Committee.

[Baroness Neville-Rolfe]

I should like to comment on Amendments 69, 70 and 71. A key part of our reforms concerns the provision of information. We have seen that some unions do not provide any detail about how their political funds are used in their returns to the Certification Officer, and I do not see how we can expect union members to make informed choices on this basis. Some unions, which I commend, already provide details about their political funds, so I do not see how making this position more consistent across all unions would be problematic. To pick up on the points made by the noble Lord, Lord Oates, the Bill uses the current six categories of expenditure that unions use to establish a political fund and require reporting against them. For example, as has been said, one category is payment to or expenses for a political party. That is a straightforward and I believe necessary piece of information for a union member.

We are not imposing new requirements on what counts as political funding; we are asking that union members be made aware of them. Unions are membership organisations run by and for their members. The Government have therefore always sought to strike a balance between trade union autonomy and the imposition of statutory requirements on the internal operations of what are essentially voluntary organisations.

4.15 pm

Lord Harris of Haringey (Lab): My Lords, I have been following the debate with great interest. If the Minister's argument is that union members are part of an organisation which they voluntarily join, would the Government therefore think it appropriate to impose on, say, a golf club—an organisation that consists of members providing services which are run for its members—precisely how it presents information to the members of that golf club about how it operates? If she is saying that it is appropriate for trade unions, why is it different for another organisation like a golf club?

Baroness Neville-Rolfe: My Lords, there have been a number of pieces of trade union legislation over the years and this is the latest iteration. It seeks to bring forward some sensible reforms which are mainly about transparency and obviously reflect manifesto commitments that were voted on last year. These amendments seek to reduce the categories of expenditure that count as political objects which should be made through a political fund. They are long-established categories in the legislation and I am not aware that they have proved problematic. The amendments would reduce the current level of accountability and transparency, and union members would no longer have a say over those areas removed by these amendments at the time of the political fund ballot.

Lord Collins of Highbury: I do not understand that point. One of the things that gets omitted in our debates about political funds is that trade unions are democratic organisations. They have rule books and they have democratic structures, right from the shop floor, all the way up. Decisions are made in an accountable way, so to suggest that there are somehow hidden processes ignores that. If the noble Baroness wants me to reiterate, unions have rule books that govern the relationship, not laws. If they were laws, we would be back in the days of the Soviet Union. They are independent, free and democratic unions that have rule books.

As it happens, we also have a Certification Officer who oversees those rule books, and if they are not complied with, members have the opportunity to challenge any decision. The noble Baroness is saying that decisions are somehow not transparent. What is not transparent in a democratic organisation like a trade union?

Baroness Neville-Rolfe: I am grateful to the noble Lord. I have given some examples today, and we have done so in the past where the good practice in transparency that is found in some unions is not practised elsewhere. This provision, along with others in the Bill, seeks to address that using, as the noble Lord acknowledges, the existing regulator in the form of the Certification Officer to make sure that individual members always know what they are opting in to and what political funds are being spent on, because we think that that is the right thing to do.

I think that I have responded to the amendments, and I urge—

Lord Collins of Highbury: I return to the question that the noble Lord, Lord Oates, raised. People have been quite understanding about the purpose of these amendments because they are trying to generate a debate, but there is a specific question about voter registration—not about how you vote or who you vote for, but specifically about how, in civil society, we encourage people to register to vote. We have heard that that is covered; the Minister says that it is. I plead with her to consider that organisations such as trade unions have a duty to encourage their members to participate in the political life of this country. Will she please consider that specific element?

Lord Balfe: There is nothing to prevent any trade union encouraging its members to register to vote. It is not the job of the trade union movement to put itself in a position where it becomes the voter registration officer for the rest of the country. Even without a political fund, a union can encourage its members to vote and to register.

Baroness Neville-Rolfe: My Lords, to sum up, our provisions will not impact on what unions decide to spend money on or the causes they choose to support. We are introducing transparency, and it seems to me absolutely right to try. A series of amendments is linked to this point, trying to take things out. However, we are trying to ensure, on the existing basis, that people know what is being spent and have the opportunity to opt out.

Lord Collins of Highbury: I thank the noble Baroness for her comments. The debate has been worth while and I am glad that we tabled the amendments. They were designed to probe, to provoke and to get a better understanding of what the Bill could possibly lead to. As the noble Lord, Lord Stoneham, said, the amendments

would not be here if the Government were not proposing to change the system of opt-out to opt-in, which we, most unions, most independent observers, and even some noble Lords on the Minister's Benches believe will impact on the total funds available for political purposes. We have a Select Committee looking at that impact and it will reach a conclusion, but the one thing I am pretty certain about is that that change will have an impact.

The purpose of the amendments was to focus on the areas of political funding that people do not normally consider. The amendments would not be here if not for the potential impact on the total funds available. This is about more than simply supporting political parties. It is about the role of trade unions in civil society. As my noble friend Lord Morris suggested, it is about challenging ideas and ideologies that are incredibly dangerous to our democracy. It is about supporting and encouraging people to participate in the political process. It is important in getting people to do the basic thing in terms of voter registration.

I appreciate the comments of the noble Lord, Lord Mawhinney. On my part, kind comments are always appreciated. I accept that proposed new subsection (1A)(c) is a difficult proposition, particularly when, in the past, we have had two parties contesting seats, so saying do not vote for one is an obvious implication to vote for somebody else. I tabled the amendment to highlight the work that unions do, not simply in encouraging people to vote but also to challenge ideologies, particularly those far-right ideologies that lead to racism and splits in our communities. The trade union movement has been critical in binding communities together. The noble Lord will know of the role that trade unions have played in the peace process in Northern Ireland in trying to bridge communities and bring them together. A lot of that obviously involved political work. We shall shortly discuss transparency on another group of amendments, so I will have an opportunity to focus on those areas.

As I say, this has been a worthwhile debate which has provoked contributions. I hope that before Report the Minister will think hard about the proposals, particularly as regards encouraging people to register to vote. This is not about being partisan but about encouraging people to register to vote. In the light of those comments, I beg leave to withdraw the amendment.

Amendment 69 withdrawn.

Amendments 70 and 71 not moved.

Clause 11: Union's annual return to include details of political expenditure

Amendment 72

Moved by ***Lord Collins of Highbury***

72: Clause 11, page 7, line 25, leave out "£2,000" and insert "£50,000"

Lord Collins of Highbury: My Lords, this group of amendments concerns transparency and reporting requirements. I hope the Minister will consider that I do not intend these remarks to be provocative but I want to better understand what the Government are trying to achieve by these reporting provisions. What does the Minister think is broken? She seemed to suggest that somehow there is hidden spending that members do not know about. The one thing that I am absolutely certain about is that members of trade unions know full well that their unions tend to support the Labour Party. If their unions did not tell them that, the media and the Conservative Party would, and, indeed, have been very good at doing so, ensuring that people are well aware of that. I have heard many people say that only 50% or 60% of union members vote Labour, and ask about the 40% or 50% who do not do so. Believe it or not, lots of trade union members may not vote Labour on occasion but are quite happy to support their unions' campaigns and the political levy. In fact, I happen to know somebody who was a member of the Conservative Party, became a Conservative MP and continued to pay the political levy because he thought that it was right to do so given the role that trade unions play in civil society.

The Minister has already referred to AR21s—the annual returns that unions make—and the information in them. I used to frequent the Certification Officer's website at regular intervals. I admit that I have not done that so much recently but this morning I went through it and through the AR21s. I also looked at the Certification Officer's annual report. There is a variation in terms of what is contained in the AR21s. Certainly, there is not necessarily the breakdown that you would expect, but you can then go to the annual reports and accounts, which are fully audited.

4.30 pm

I come back to the basic principle: what governs the relationship between a member and their union is its constitution; its rulebook. It is open to a member to challenge every element of activity through the regulator, the Certification Officer. Breaches of rules are dealt with through that. There is a suggestion here that something is not quite right; something is broken. How many complaints have we had? Where has the concern come from? I do not accept, for one moment, that people do not know that their unions are political. Apart from anything else, as we have heard previously in Committee, every 10 years a union is required to have a ballot on whether it has a political fund or not. It is disappointing that, despite all the publicity and campaigning efforts, the turnout for these ballots is low. Maybe the problem we need to address is how to encourage participation. The problem with the Bill is that, in every element, it does not address the issue of participation by saying that we need to do more to mobilise people. The Government's response is to say that participation is a problem and we should have restraint and impose thresholds. This does not show understanding of the issues we are focused on.

The requirements in these clauses impose additional reporting burdens on unions that are not imposed on any other organisation. What would a ceiling of £2,000 mean in these terms? I will come on to the political party funding later, but it would mean hotel accommodation for delegations, training events, equipment, regional forums and booking stands at conferences. There could be a huge amount of specific detail which will not add

[Lord Collins of Highbury]
to the member's ability to make an informed choice about whether they participate in the political fund or not: it is purely more regulation. I thought that this Government—and the Minister in particular—were concerned to reduce regulation, but when it comes to the trade union movement that is not the case: it has all got to be added on to.

There is one thing which the Minister will not mention in this debate. There is a reporting requirement: there are AR21s and the detailed, audited annual reports and accounts, all democratically processed through the union's constitution. It is all there, but if it does not give information in a way that the Minister suggests, a member is, of course, entitled, under Section 30 of the Trade Union and Labour Relations (Consolidation) Act 1992, to inspect the relevant accounting record. There is no problem with the member being able to see anything. The trade union gives far more rights to a member than any other organisation. If that right is refused, the union can be referred to the Certification Officer. One can see, on the officer's website, every single such complaint, whether acceded to or not. The Certification Officer, not requiring fines or penalties, can order the union to ensure that the accounting records are supplied to the member. Where is the transparency issue? I suspect it has more to do with some poor person in the Conservative Central Office research department who is told every election time, "Tell me how much Unite has given to the Labour Party—I want to know!". I can hear the voices and I can hear that poor researcher thinking, "Where do I go? How can I make it easier?". I suspect that is why this is in the Conservative manifesto. It has nothing to do with the rights of members, regrettably, or with increasing transparency. It has everything to do with burdening unions with more regulations and requirements.

I hope the noble Baroness will understand that the transparency issues in relation to trade unions are not simply about what the law can do. We should be defending the unions' constitutions and rulebooks and stop interference from Governments. I beg to move.

Lord Cormack (Con): My Lords, I intervene briefly to support, in general terms, what the noble Lord, Lord Collins of Highbury, has said. As noble Lords know, I am concerned about this Bill, particularly these two clauses. I also regret that we are having this debate at all this afternoon. We have, by a fairly substantial majority, of which I was not a part, decided that a Select Committee of your Lordships' House should look into the issues that are brought to the fore by Clauses 10 and 11. That committee, under the chairmanship of the noble Lord, Lord Burns, is obliged to report to your Lordships' House by Monday of next week. No latitude is given, even though, sadly, for reasons of his health, the noble Lord, Lord Richard, has had to be replaced as a member of the committee by the noble Lord, Lord Hart of Chilton. However, I understand that that is not in any sense impeding the progress or speed of the committee.

We will know next week what the committee of your Lordships' House, on which there are distinguished representatives from all parts of the House, will recommend, so it seems to me that we are having this debate in a bit of a vacuum. When my noble friend responds, I should like her to tell us how the Government will manage the timetable for the remainder of the Bill after publication of that report. I hope she will be able to give a complete, unequivocal assurance that the report will be debated before we move on to Report stage. That seems to me absolutely essential. If she can give that assurance, we should not waste a lot of time today because we can then debate what the Select Committee of your Lordships' House has recommended and the Government can respond, having reflected on that. I hope we will then be able to move forward.

As I have said, there are many things in the Bill that are not provocative or extreme. There are, however, things that give it the appearance of being a little mean and niggardly and they mostly—not entirely—centre on political funding and the deprivation of one particular party of a source of funding which we may regret but have to accept is there. That party should not be placed at a disadvantage vis-à-vis other parties, and I hope we can get over that.

So I appeal to the Minister to give us an indication of how the Government intend to handle the Bill after publication of the Select Committee's report. I very much hope there will be a proper opportunity to consider and debate it before we move on to what I hope will be a fairly expeditious Report stage.

Baroness Donaghy (Lab): My Lords, I thank the noble Lord, Lord Cormack, for making those points about having this debate in a vacuum. I support the amendments in the name of my noble friend Lord Collins. I appreciate that the discussion on the role of the Certification Officer will take place on day four of Committee, but in case my silence was taken as meaning that the issue was not sufficiently important, I felt that I should place on the record that Clause 11 will provide the Certification Officer with new powers to investigate how unions' political funds are used and where the money goes.

As part of their annual return, unions will be required to report to the CO on how all expenditure from their political funds has been used, who it has been paid to and for what purpose. This is not even-handed, as the Government claim. It might apply to employers' associations in theory. However, none of the 94 employers' associations listed by the Certification Officer currently has a political fund—not one. Instead, companies choose to make political donations individually or via other channels. These measures will create significant new administrative burdens for unions, as my noble friend Lord Collins said. They will need to collate detailed information on political expenditure at branch and regional level, and the Government will be able to monitor how unions spend their resources and will invite significant public scrutiny of how unions choose to use their political funds.

In itself, this might not be of significance to anyone outside the trade union movement—if it was the only thing in this area relating to the subject. However, if you combine it with the ability of anyone outside the trade union to launch a complaint, it starts to look like an attack on trade unions. The Government may not be concerned about strangling trade unions with all the extra red tape under the guise of consistency of information, which is what I think the Minister is concerned about with these amendments, but they

should consider very carefully how this will change the nature of the function of the Certification Officer. It will become a much more political position and because this function will be essentially one-sided, it will lead to accusations of political bias.

Lord Stoneham of Droxford: My Lords, I agree with everything that the noble Lord, Lord Cormack, the noble Baroness, Lady Donaghy, and the noble Lord, Lord Collins, have said.

I thought that the Conservatives were in favour of reducing regulation and bureaucracy and simplifying the way we go about things. That seems to be with the complete exception of the trade unions—I wonder why. It is not realistic or proportionate to require all items of expenditure in excess of £2,000 to be reported to the Certification Officer. How is he going to cope with this? It is mammoth and unnecessary bureaucracy, whereas if you were really intent on having greater scrutiny, you would have a review of the categories of expenditure and you would look to see that there was greater transparency. But to require every invoice over £2,000 in a total expenditure of more than £20 million—the bureaucracy just beggars belief. We know that the Government failed to consult the Certification Officer on the implications of this—that has come out in the work of the Select Committee. They seem to be blindly going ahead without any comprehension of the workload and the way in which the trade unions will be bogged down in the bureaucracy of fulfilling all these requirements.

For those reasons, the Government must question whether it really is necessary to put this bureaucracy on the unions. Is the figure of £2,000 realistic? In the other place, the Minister sort of said that this figure of £2,000 was comparable to that for company donations to political parties that have to be declared. The type of expenditure we are talking about here is not just donations, but all trade union expenditure. That will vary, as speakers have already said, from sending people to political conferences, to paying for stands as part of campaigns and hiring vehicles—or whatever it is—but it is all very detailed expenditure. Is the Certification Officer meant to go through all these invoices and check that they have been done properly?

We have seen the great difficulty the Conservative Party already has with its invoices, and now it seems it will impose this on the trade unions. We should not forget that the Electoral Commission is already looking at all political donations in excess, depending on the recipient, of £1,500—£7,500 for the national parties—so all the information is there. Have there been discussions with the Electoral Commission and has it been consulted on the twin track of bureaucracy the Government are now imposing on trade unions—through the submissions they already make to the Electoral Commission and the excessive ones they are now going to have to give to the Certification Officer? Have they also found out from the Certification Officer what dealing with all this extra work is going to do to his staffing and expenditure requirements?

4.45 pm

Lord Leigh of Hurley (Con): My Lords, I rise to oppose the proposed amendments to Clause 11. We discussed tangential matters on earlier days, but this focuses on the core issue of transparency. I think that of the 25 unions with political funds in the UK, 10 are not affiliated to the Labour Party and the remaining 15 will fund political campaigning unconnected to the Labour Party. We are not talking here about the donations to a political party, which are of course disclosed very easily, normally being large sums of money, but the amounts which, given that the amendments to Clause 10 will not happen, will be within the political fund. This is about understanding what those payments from within the political fund will be. It is very difficult to know what they are at the moment.

Doing some desk research, one can see the nature of the recipients of the fund but one cannot see the amounts. In the past, of course, these have included campaigns which all of us would approve of, encourage and welcome, such as those mentioned by the noble Lord, Lord Hain, against apartheid or the BNP. Currently, as far as I can see, they include campaigns supporting the Campaign for Nuclear Disarmament, opposing outsourced contracts in the public sector, opposing welfare reform and, in particular, opposing Israel in the sense of supporting BDS—boycott, divestment and sanctions—as well as just general funding of think tanks.

Union members might be happy with all of this, but do they not deserve the right to know the amounts that are being spent on these causes? I take the point from the noble Lord, Lord Collins, that there is the requirement for a ballot, but that ballot is open for, I think, about three weeks. The last one, for Unison, was in May, I think, and despite being open for three weeks, it attracted only 18% support. It is not clear that people are focusing on what is going through the political fund.

Lord Collins of Highbury: I come back to the point that there is a tendency to forget one fundamental principle: unlike the Conservative Party, for which the noble Lord is treasurer, trade unions are fully democratic in terms of their structures. Decisions to spend on particular issues stem from the branch structure or the workplace structure, all the way up to the executive. These decisions to spend on particular things are taken not in isolation but within the constitution and the rulebook. If people query whether they have been made in accordance with that constitution and rulebook, members have a remedy.

Lord Leigh of Hurley: I do not think anyone is suggesting that these are improper payments; the suggestion is that there is a lack of transparency as to what they are. I am not sure I take the point about the Conservative Party being undemocratic, but we will leave that for a moment. The noble Lord invited me to look at the accounts on the Certification Officer's website, and I have done so. The total political funding is about £24 million. The largest fund is that of Unite, with £7.8 million of income. When one tries to understand the expenditure within that, one sees that it simply states that political fund expenditure was £1.17 million and that expenditure under Section 82 of the Trade Union and Labour Relations (Consolidation) Act 1992 was £3.82 million. No further information is supplied, other than the quite interesting information that Unite has in its balance sheet of the political fund £14.8 million. It is much the same for other unions—I have been through quite a few of them.

[Lord Leigh of Hurley]

The point remains that I am sure that many members of unions would like to know and to have reported where their money is spent. Are all union members who are working on Trident submarines happy that union funds are spent supporting CND?

Lord Stoneham of Droxford: The noble Lord is a director of companies. Would he say, in the interests of transparency, that for a company with a turnover of, say, £20 million, he would require to see every invoice over £2,000, or rather, as an accountant, would he seek to improve the categorisation of that expenditure? The Government are demanding that we have every invoice over £2,000 revealed, rather than improve the categorisation.

Lord Leigh of Hurley: With respect, a director of a private company, as I am, is a different phenomenon from a public body, such as a union. Directors of private companies have to account for all expenditure.

Lord Collins of Highbury: Let us pose a question to which the noble Lord may know the answer. He is a treasurer of the Conservative Party. Local associations hold substantial funds, but Conservative Central Office appears not to know just how much they have or how they spend it. Perhaps he could enlighten the House now: how much is held in funds of local associations of the Conservative Party?

Lord Leigh of Hurley: With great respect, this is a debate on the Trade Union Bill.

Lord Balfe: Perhaps I can help my noble friend by saying that the Conservative Party has a democratic structure where the local bodies have a much higher degree of autonomy than in the Labour Party, in which everything is centralised. I doubt that CCO knows how much money Cambridge Conservatives, of which I have the honour to be president, has, because we are not required to divulge it. All donations have to be declared, but a different structure exists.

Lord Lea of Crondall: Is the noble Lord aware of the adage that what is sauce for the goose is sauce for the gander?

Lord Balfe: I am aware of all those sayings, and I see some of the difficulties that noble Lords opposite mention, but when I was secretary of the Royal Arsenal Co-op political fund, we had to submit full accounts to the central board, which detailed far below £2,000 in expenditure, so I really do not see the great difficulty in submitting these returns.

Lord Leigh of Hurley: I take the point that £2,000 is a low threshold, and willingly take on board the discussion over the amount, although £50,000 is far too high. I do not agree with the proposition within the amendments. However, I ask the Minister to consider carefully Clause 11, perhaps at Report, to ensure that all payments from political funds other than to political parties are covered in that clause.

Lord Stoddart of Swindon (Ind Lab): My Lords, I had not intended to speak in this debate but, having heard the contributions, I felt that I ought to get up and say that the general view of this Bill and these clauses is that unions are being put in a spiteful straitjacket for no really good reason. I speak as a former union-sponsored Member of the House of Commons, and I assure Members here that unions do not hand out money on a plate. They hand out money to be spent on proper political organisations, and they are entitled to support candidates who will support working people in the House of Commons.

People seem to have forgotten that the whole raison d'être and beginning of the Labour Party was the unions deciding that workers in the United Kingdom needed representation in Parliament. That is why they set up the Labour Party and, since they set it up, they are entitled to support it; indeed, they have a duty to do so, and they do support it—that is their proper role. I deplore the way in which some people attack the trade unions on the basis that they are not properly controlled. Of course they are properly controlled; there are branches, executive committees and auditors, who have the duty to see that money contributed is properly spent. They are under very good control indeed—far better control, I might say, than many industries in this country. I hope with those few words I can give some assurance to those who are worried about how members' money is spent by the trade unions, because trade unions are very careful of the funds that they spend and the membership has an absolute right, as the auditors do, to examine the accounts of a trade union at any stage.

Baroness Neville-Rolfe: My Lords, I start by making a general point. Over the last few years, we have seen a step change in the way that the Government, businesses and other organisations provide information to the public. Such transparency strengthens the public's trust in organisations, can help to drive efficiency and encourages greater public participation in decision-making. As I have said before, we want to give union members more information about how the political fund is used so that members can make an informed choice on whether to contribute.

As far as I am aware, trade unions are the only type of organisation in the UK that collectively spends millions of pounds, as my noble friend Lord Leigh of Hurley has reminded us, on political activities, using funds taken from members on the basis of presumed consent. That is why the Bill ensures that unions respect the principles of transparency. There are also restrictions on companies when they make political donations. Our proposals build on current practice in relation to expenditure on political objects and are similar to the current reporting requirement on political expenditure by companies, where the threshold is, of course, £2,000. I know what the noble Lord, Lord Stoneham, said, but I think that there is a strong logic there.

We have looked at the annual returns that the 25 unions with political funds provide to the Certification Officer, whose work, as the noble Baroness, Lady Donaghy, said, we will discuss in more detail on day 4 in Committee. We do not expect that unions that currently comply

with good practice will have a problem with our proposals but, as the noble Lord, Lord Collins, made clear, there is a significant variation in the amount of information on political fund expenditure that unions make available. Take the Communication Workers Union: it provides a very detailed breakdown of spend on political objects, including on election campaigns, affiliation fees and delegations to conferences, whereas the National Association of Schoolmasters Union of Women Teachers gives no breakdown at all. We need more consistency so members can see what is happening and whether they want to contribute.

5 pm

The ballot the noble Lord mentioned takes place every 10 years, which is not very often. Our review of the forms for online membership of the 25 unions with political funds showed that 12—nearly half—do not mention the existence of a political fund.

Amendments 72 and 73 would not support the transparency we need. Amendment 72 would increase the threshold by 25 times. That would dramatically reduce the supply of information, especially as Amendment 73 would also limit reporting to the overall amount of expenditure.

My noble friend Lord Leigh asked about coverage. As I think we have already said, we are not amending the categories of political objects in the current legislation. They have been in place for 30 years. Campaigns mentioned today, such as those which support anti-racism—for example, HOPE not hate—are considered political in nature and must be made from the political fund. That is the approach taken by the Certification Officer, but I will certainly make the check my noble friend requested.

My noble friend Lord Cormack asked about the consideration of the report by the Select Committee on Clauses 10 and 11. I noted what he said, but arrangement of House of Lords business is a matter for the Chief Whip and the usual channels. Of course we will consider what the Select Committee report says, but we have a manifesto commitment to implement a transparent opt-in process for contributing to a union's political fund, so our consideration will be in the context of the manifesto commitment as noble Lords would expect.

I am very grateful for the opportunity to set out why I believe so strongly in the need for and value of transparency and consistency generally and in the information that unions make available to their members. I urge the noble Lord to withdraw the amendment.

Lord Collins of Highbury: My Lords, I appreciate the Minister's sincerity, but I find it a little galling when I read the newspapers today. When she uses the term "the transparency we need", does she reflect on the Government's intention to review the Freedom of Information Act, which could possibly lead to less information being available to the public? Please do not simply focus on the trade union movement. Let us all judge ourselves on everything.

The purpose of this debate was fundamentally to look at the regulatory burden that will be imposed on trade unions. I appreciate the remarks of the noble Lord, Lord Leigh. From the comments the noble Lord, Lord Stoneham, and I made, there is clearly an issue over the £2,000 reporting limit. It will require substantial numbers of invoices to be produced and accumulated. It is not really going to be about transparency in the choices that members may make. I come back to the fundamental issue that the Electoral Commission compiles all donations to all political parties, and the Labour Party is not the only recipient of trade union money. Other, smaller parties have received funds from unions with political funds. In fact, the union that was a major player in the establishment of the Labour Party is no longer affiliated to the Labour Party, disappointing as that is.

The fact is that huge regulatory burdens are being imposed on trade unions beyond what is proportionate. I am going to grasp the one element where there is cross-party consensus: £2,000 is not proportionate for the total spend for political funds. I plead with the Minister to look at that aspect before we come back on Report. In the light of her comments, though, I beg leave to withdraw the amendment.

Amendment 72 withdrawn.

Amendments 73 and 74 not moved.

Clause 11 agreed.

Clause 12: Publication requirements

Amendment 74A

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

74A: Clause 12, page 8, line 13, after "authority" insert "specified, or of a description specified, in the regulations"

Baroness Neville-Rolfe: My Lords, I have listened to and reflected carefully on concerns voiced in the other place about the importance of public authorities knowing whether or not they will be required to publish information. I have tabled amendments to provide such clarification.

Regarding the information required for publication, I have written this week to various interested Peers around the House setting out the details of the information requirements that the facility time regulations will require public sector employers to publish. In addition, I have enclosed a copy of the skeleton regulations on check-off to be made under Clause 14. I have placed copies of these letters in the House Library, and I hope that noble Lords will find that the draft framework sets out an appropriate and reasonable range of information.

Noble Lords may be reassured to know that a significant part of the public sector already recommends the publication of such a set of information as best practice. The Civil Service has now published such data each quarter since the start of 2013, and English local authorities publish their data as part of the Local Government Transparency Code 2015. The Department for Education also recommended in its 2014 guidance that all schools should publish facility time data.

[Baroness Neville-Rolfe]

Government Amendments 74A and 78A respond to the observations of those who have taken an interest in which public authorities are required to publish information. The amendments will ensure that only those public authorities set out in regulations will be captured by Clause 12. This will enable the regulations to provide the level of clarity that has been demanded. The amendments also allow stand-alone public authorities to be specified in the regulations, in addition to categories as currently drafted. The intended amendments will bring the regulation-making provision more closely into line with comparable provisions in the clause on check-off.

Our approach to the drafting of the facility time regulations will bring two positives. First, as I have said, we have listened carefully to the concerns raised about the potential scope of the regulations. I assure the House that it is our intention to draft the facility time regulations in order to provide complete clarity as to which public sector employers are in scope, in the way that we have for the skeleton check-off regulations, which, as I said, I have placed in the House Library. Secondly, these regulations will apply only if an employer has 50 or more employees, and only if the employer has at least one trade union representative. The narrower focus is both reasonable and proportionate and will help to manage any burden on smaller public sector employers.

I hope that noble Lords will also welcome the fact that we have listened to and reflected carefully on concerns voiced in the other place. There will be just one set of regulations, and those will be laid by the Minister for the Cabinet Office. This is instead of individual Ministers making regulations for each sector and will avoid any disparities when implementing.

Amendment 89C simply brings Clause 13 into line with our proposed amendments to Clause 12. It allows for standalone public authorities to be specified in regulations rather than just categories, as currently drafted. I ask for noble Lords' approval that these amendments stand part of the Bill. Shortly I will make available the draft skeleton regulations for facility time publication.

Amendment 74A agreed.

Amendment 75 not moved.

Amendment 76

Moved by ***Baroness Hayter of Kentish Town***

76: Clause 12, page 8, line 18, leave out ", or relevant union officials within specified categories" and insert "and"

Baroness Hayter of Kentish Town (Lab): My Lords, in moving Amendment 76, which also stands in the names of my noble friends Lord Mendelsohn and Lord Collins, I will speak to the other amendments in this group, and will especially oppose that Clause 12 stand part of the Bill. We see no need at all for this provision.

Clauses 12 and 13 are some of the most pernicious in this rather nasty little Bill. Why? They undermine good industrial relations—we are talking about facility time. They give enormous and unnecessary powers to Ministers over areas that are none of their business; they were introduced without proper consultation—just a rather hurried, minor one over the summer, in contradiction to Cabinet Office guidelines on consultation; they are not based on any evidence; they have not been demanded by public sector employers; oh—and they were not in the Conservative manifesto.

Clause 12 would require public sector—very widely defined—employers to log, detail and publish how much time union reps spend on facility time. This is time which allows union, safety and learning reps to do their job, to speak for or advise the workforce and to contribute to healthy industrial relations. Worse is that Clause 13 gives a Minister, not managers, a wide-ranging power—indeed, a blank cheque—to cap such rights to facility time to an arbitrary and undisclosed amount for an unspecified group of employees. That is why I want to make some general points about both clauses, as they explain both these amendments and those in subsequent groups.

The main issue is that the question of how to decide and document facility time is one for management, not for Ministers. Managers know the geographical spread of their workforce, the current issues, the challenges and the types of problems on which they need to work with workforce reps, and virtually every manager knows that their own staff negotiate far better than full-time officials. These lay reps are of and from the shop floor. They understand the business and, importantly, they will be there during the implementation of any agreement, to iron out any creases and to ensure that any deal sticks. As the Royal College of Nursing says on what lies behind our objection to Clauses 12 and 13, "The RCN's lay members take time and effort to advise and represent their colleagues, while the union itself invests in these reps to bring skill, knowledge and experience to the workplace, facilitating effective partnership working".

This is a cost-effective way of managing any organisation. Such input towards good relations is as true for small unions, such as the FDA; with just 20,000 members, it has only 30 employees, meaning that most work is undertaken by lay officials. Similarly, for the podiatrists, who have fewer than 10,000 members, facility time is vital, as that organisation is too small to have many union officials, so it is heavily reliant on learning, equality, safety and union representatives. It is a professional body committed to improving standards, which is what its members' facility time is all about.

I therefore ask the Minister, where on earth is the evidence that we need Clause 12 to report on time spent on representation, safety or learning? Research at City University London shows that facilities for union reps in the public sector are very similar to those in the private sector, and from neither have we heard, nor have the Government demonstrated, calls for change. Indeed, evidence points the other way, with facility time being beneficial to the safety of work environments, staff welfare and, consequently, particularly in the case of the health service, patients. For that reason, the RCN has warned that Clauses 12 and 13 may have unintended consequences for patient safety. The benefits of facility time are well known to anyone with an

ounce of management experience, which I would have assumed included the Minister. Therefore, Amendment 78 would require these benefits also to be documented.

5.15 pm

Facility time allows reps to engage in meaningful negotiation with employers to facilitate, innovate and change. They often do so far more effectively than full-time union officials, who may arrive at the workplace only on the morning of a negotiation, whereas employee reps well understand the work situation, their colleagues' roles and the crunch issues, and they often find imaginative ways around a problem. Certainly, when representing members in either grievance or disciplinary matters, lay reps have a far better grasp of the intricacies of a particular situation than any outside trade union official, no matter how well briefed. So lay involvement usually leads to earlier intervention and fewer tribunal cases and appeals.

Furthermore, unions have a positive record in promoting skills and training and in improving industrial relations. That means higher morale, which is better for employees and employers. It also means less sick pay, more productivity and, in the case of the health service, better patient care. ACAS has shown that union representation helps communication, improves workforce engagement and ensures that employees' concerns are listened to and addressed before they become a problem. Crucially, union input at times of restructuring, relocation, job evaluation, performance measurements, grading and similar issues is invaluable to staff and employers alike.

The City University London research has shown that a large proportion of public sector management agrees that union reps can be trusted to act with honesty and integrity, and also that they work closely with management to introduce change. BIS's predecessor, the DTI, found cost savings associated with union representation, with fewer tribunal cases, fewer injuries, fewer work-related illnesses and lower dismissal rates. Why do the Government want to undermine that?

We heard in the debate on a previous group about the red tape being put on trade unions, but the red tape involved in Clause 12 should worry every employer caught by this. In this case, it is the employer rather than the trade unions that will have to produce endless extra paperwork. Despite all the Government's commitment to cutting red tape, to less regulation and to reducing bureaucracy, here they are demanding extensive new documentation from a range of small, medium and large employers. The list we were sent yesterday gave nine possible pieces of information to be documented, including the distinction between facilities provided for duties and those provided for activities. I am sure that employers, head teachers, housing association CEOs and university deans have better things to do with their time than to try to document, let alone monetarise, all that.

I note that the Government's impact assessment suggests that,

"it is not expected that the proposed legislation will result in a significant impact on trade union representatives carrying out their trade union duties for which there is a legal entitlement to reasonable paid time off work".

That begs some questions. First, what evidence do the Government have that the proposed legislation will not result in a significant impact on union reps carrying out duties for which there is a legal entitlement, and what do they consider "significant"? Is the real attempt behind this to reduce such facility time and, if so, why? Do the Government propose to measure and monitor the impact of this change, and how are they proposing to do so?

The impact assessment also suggests that it will cost employers £2.2 million to familiarise themselves with the new rules and £2.4 million to report a year. It is very hard to believe that this is not an underestimate given how much information will have to be collected, which the Government seem to say will take only eight hours per employer. Is that true for employers with thousands of staff and hundreds of reps? Even if that figure is accurate, why impose it on employers with no related benefit? Because, of course, the published information will show nothing. A high level of facility time might be needed where lots of meetings are taking place because of large-scale redundancies, mergers, relocation or indeed sudden scale-ups following flooding or foot and mouth disease. What does a high level of facility time for safety and union reps indicate? It could indicate really meaningful negotiation on new standards, job evaluation or workplace education, or it could indicate poor management causing lots of grievances and sicknesses. Or maybe it indicates lazy union reps pulling a sort of sickie because they prefer endless meetings rather than nursing patients or teaching children. I have a feeling that the Government think it is the last one. I tend to think it is one of the first two.

Above all, the amount of facility time and the way of documenting and accounting for it should be a matter for management, not for Ministers. As managers themselves, the Government can already embed, and have embedded, levels of facility time in their own departmental agreements with the unions. If they want to, they can count, negotiate away, reduce or increase those levels. So the Government have always been able to cap facility time for their own employees. This clause is about the public sector outside of central government, which surely ought to have the freedom, as does central government, to decide what is best for its own workforce and circumstances. Management really do know best, and it should be left to them.

With regard to local councils, as the Minister has said, the *Local Government Transparency Code* already requires information on facility time, so there is no need to include them in the Bill. Hence Amendment 87, tabled by my noble friends Lord Beecham and Lord Harris. On local authorities, perhaps I might refer to one notable local government leader, John Pollard, the leader of Cornwall Council, who the *Local Government Chronicle* lists as one of the top 25 most powerful people in local government. He recognises the positive contribution that local trade union members make in their workplaces in Cornwall. The council places great value on the constructive relationships it has with local unions and the commitment of those members to the delivery of good-quality services. The council says that its good record of addressing employment issues is helped very much by locally determined facility time arrangements. Therefore, Cornwall Council is extremely worried that this Bill would hamper its discretion in agreeing working arrangements with the

[Baroness Hayter of Kentish Town]
unions. Its members find that the Bill is totally inconsistent with the Government's localism principles and their commitment to devolution. It wants to protect its local discretion with regard to facility time.

Our principal fear is that this provision on facility time, rather than encouraging good employer-employee relations, will undermine them. It will disrupt existing relations which, on the whole, are good. How much better it would be if the Government sought, if not industrial democracy, at least co-operation, which does not happen by accident. Smoothing day-to-day working relationships and building good relations leads to happier workforces. We know that turnover in organisations with no union reps is higher than in those with union reps. It is an indication of the work that they do to facilitate really good working relations. Facility time reductions will come at the expense of constructive industrial relations and undermine good joint working between unions and employers. The whole idea of documenting facility time can only be a run-in to the next clause, Clause 13, which gives the power to cap it, with no evidence and to the detriment of industrial relations.

In view of the powers proposed, which are extensive and uncertain in scope, our Delegated Powers and Regulatory Reform Committee has called for regulations under this new section to be by affirmative procedure. Our Amendment 83 allows for this, and we assume that it will be accepted by the Minister today. I beg to move.

Lord Hain: My Lords, I support the amendment so expertly moved by my noble friend Lady Hayter, and I refer to my entry in the Members' register in doing so. Listening to my noble friend, I was struck by the chasm between the Bill's punitive restrictions and the realities of management and industrial relations on the ground. I will refer to two personal experiences in this: one as a Cabinet Minister, the other as a trade unionist.

As Secretary of State for Work and Pensions, with my noble friend, who was a Minister alongside me, I oversaw a budget of £140 billion and a staff of more than 100,000 at the time, in 2007-08. It was very apparent to me and my Permanent Secretary—at the time it was Leigh Lewis, who was very respected, including by me—as well as to his senior managers that facility time for union representatives was often crucial in resolving grievances and local disputes, which otherwise could have got out of hand. Sometimes these grievances resulted from personality clashes, not only from management's side but from the union or staff side, and union representatives with facility time played an indispensable role. I am absolutely confident, from direct experience of working with the senior managers at the DWP, that union representatives played an indispensable role in resolving matters which would otherwise have escalated and sometimes taken a great deal longer to resolve. There was a network of representatives, known to management as well as to staff members. If something came up, staff could immediately contact the representatives, who would normally be available because of facilities arrangements. On the other hand, if something came up that management was concerned to pre-empt or to resolve, it could contact somebody to sort it out. This is common-sense industrial relations. Again, I am sorry to refer to our previous lives—myself as a Cabinet Minister and the Minister as a senior manager in an important private-sector organisation dealing directly with trade unions—but she must know that what I am saying is true: facility time helps the smooth running of organisations in the public sector as well as in the private sector.

In the DWP, it was not always plain sailing. We had to deal with the PCS union, and senior managers had their frustrations with that; frankly, sometimes I shared those frustrations. There was the odd abuse—there often is, in all forms of life—but those abuses could be dealt with by the unions and managers concerned. But with trade unions playing the role which they were founded to play, and which their members insist, through accountability mechanisms, they always play—that is, to represent their own staff—I would have thought that managers would welcome facility time, particularly when, as my noble friend Lady Hayter so aptly put it, it should be for management to decide these matters, not for statutory obligations, imposed sometimes through draconian regulations which we have not even seen but which are hinted at in this Bill and look draconian as a result. That seems to be very negative and reactionary indeed. That is the first example.

5.30 pm

The second goes back to my experience as a trade union officer, initially with the Union of Post Office Workers, which I joined in 1976 as a research officer—which is now of course the Communication Workers Union. It was apparent to me then working within the union and subsequently from a parliamentary relationship that union representatives in the Royal Mail and the other organisations that the union represented played an absolutely vital role in promoting industrial stability. The Government seem not to recognise that. Unions are seen in this context as almost subversively irresponsible bodies that have to be whipped into line through draconian legislation instead of organisations that play a vital role in our society in ensuring that we move forward in a progressive manner. The very same union members are delivering a commercially successful outcome in the case of private sector organisations and ensuring in public sector organisations that there is efficient delivery of public services.

The role of union reps is especially important in the Royal Mail, which has such a time-sensitive function and is involved in the delivery of millions of items a day. If disputes happen, that whole process is badly disrupted. I have seen time and again experiences where union reps on the spot, known by all concerned, can resolve matters in the sorting office or other areas where the union is represented. They play a vital role in health and safety work—recognised union reps with the facility time to learn all the legislation and acquire the experience to apply it—to ensure both that employers are protected from action that could otherwise result and that employees are protected. They play a vital role in training and upgrading of skills, which I would have thought the Government would want in the public sector as well as in the private sector. Yes, there are arguments and disputes, but the truth is that 99% of those are resolved with the union representative who has the facility time to resolve them playing a vital role. The other 1% are escalated, but that is life.

I have concentrated on the advantages for employers of facility time, but what about the advantages to and the rights of employees to have proper representation? To be frank, many of them pay their subscriptions and forget about their trade union membership until a problem hits them and then they need someone whom they can go to. This Bill is blowing up out of all proportion some of the concerns that Conservative Ministers may have. The proof of my argument, surely, is to be made in respect of the Royal Mail and British Telecom, both of which contain members and employees that the Communication Workers Union represents. Those very same facility time arrangements that applied under public ownership when they were nationalised industries now apply under privatisation. In other words, these were not subversive arrangements that had to be crushed with a great big anvil in the public sector. They were so sensible that, in the private sector, they were maintained. They made commercial sense and they still make commercial sense, just as they meant public sector efficiency when in the public sector.

A further problem now arises under this legislation. I have looked at the almost Henry VIII provisions under the regulation powers granted by the Bill, particularly in the new Section 172A(9) introduced by Clause 12. This has provoked a whole series of questions for the Minister to consider and answer, if not in reply to this debate then in writing, for which I would be grateful. New Section 172A(9) deals with an issue,

"in relation to a body or other person that is not a public authority but has functions of a public nature and is funded wholly or partly from public funds".

Let us take the example of the Post Office. It is 100% publicly owned, but it is not clear whether it will be caught by these regulations, as it operates in a commercial sector. It is increasingly a shop-front activity. Crown offices are more often franchised out to the private sector now, as are all sub-post offices, for the delivery of public services that the Post Office is charged with. Would it be affected by these regulations or not? That question should be answered. Will the facility arrangements that apply very successfully to Post Office counters and the Post Office generally be chopped under the Bill, even though some of its services are franchised out?

Then there is the Royal Mail. It is of course now privatised, but it is VAT-exempt for products such as first-class and second-class stamps, parcels and other products that are covered by the universal service obligation. That obligation uniquely applies to Royal Mail compared with competitor mail operators, of which there are many. Does that mean that Royal Mail, despite being privatised, will be caught by the regulations and in particular by new Section 172A(9)? Finally, British Telecom has long been privatised, but its Openreach, which is the part of British Telecom that delivers the engineering connections to people's homes and private premises, is in receipt of some public funds for the delivery of superfast broadband. Otherwise, it would not have reached all these remote, hard-to-deliver-to areas for broadband. Would it be caught by these regulations or not? These questions point to the Minister reconsidering the whole of these clauses. This draconian attempt to restrict facility time is reactionary and punitive and, I may say, unbecoming of this Minister.

Lord King of Bridgwater (Con): My Lords, I may embarrass the noble Lord, Lord Hain, by saying that I agree with every single word of the first 10 minutes of his speech. I certainly did not agree with the last bit and his suggestion that BT Openreach had achieved its objectives. I advise him to travel more widely in the country and he will get a very different response to that.

With great respect, I must say that the noble Lord did not talk about the clause at all. He made a moving speech in favour of the opportunities of facility time. I agree with him entirely. I worked for a long time in the private sector in the printing industry. We had it there, and it was very important. The value of responsible trade unionism is something that I have always respected and is enormously important. Listening to the noble Lord, one would have thought that somehow Clause 12 abolished facility time. But it is not that at all. Noble Lords who came in half way through this speech may have wondered whether that was going to happen. All that the clause is saying is that there should be transparency and that bodies funded by the taxpayer—public bodies for which the taxpayer is paying—should be prepared to say how much facility time is offered to the trade unions. How much is paid for out of taxpayer-funded money to provide trade union services within their organisations? I am not suggesting for one moment that if those figures are then published there should be an instruction to say, "And the figure should be nil". That would be extremely unwise. Facility time has a valuable function to perform.

I listened with great interest to the noble Baroness, Lady Hayter. We were given one of those speeches which suggest that this marks the end of civilisation as we know it. In my previous incarnation, when I did employment, I listened to the speeches on the Trade Union Act 1984 and I was told that it would mark the end of civilisation and the destruction of all responsible trade unionism. I listened to Mr Tony Blair and Mr Gordon Brown promising—as new Members of Parliament on that occasion, making their early speeches in the Commons—that it would be repealed immediately. Of course, as we know, it never was, and I am prepared to take any bet in this House today—although I am probably not allowed to do so—that no responsible Government would repeal this provision in respect of facility time, requiring public sector bodies that are publicly funded at least to publish the details of how much facility time they offer within their organisations.

The Lord Bishop of Bristol: My Lords, I hesitate to question the assumptions being made by the noble Lord, Lord King, because he is a resident of my own diocese. However, it seems that he may be missing the point. The transparency that he speaks about is quite appropriate, but I thought that the aim of Clause 13 in particular was to assess the cost of facility time and possibly for the Minister to restrict it. That is what is being seen as the threat by trades unions. The noble Lord is quite right in one way, but this carries with it a threat. It would be interesting to know how much it will cost a Minister and his staff to vet all this stuff, but I think that that is where the threat lies and that is what the noble Baroness, Lady Hayter, and the noble Lord, Lord Hain, have been talking about.

Lord King of Bridgwater: If the right reverend Prelate will allow me, we are actually on Clause 12, which is about transparency. He is quite right to say that Clause 13 raises a different issue, but this debate is on amendments to Clause 12 and a Motion tabled by the noble Baroness that the clause should stand part. That is the issue I am addressing.

The other interesting fact here is that this is not some sort of great leap into the unknown because, as noble Lords know, this is already happening because it has been introduced in the Civil Service. I have not heard either the noble Lord, Lord Hain, or the noble Baroness, Lady Hayter, say that it has caused riot and confusion within the Civil Service. My understanding is that what has actually happened is that following the publication and examination of the figures, there has been quite a significant reduction in expenditure on facility time. I have seen this happen, as has anyone who has worked in a big organisation or in industry. I had facility time in a factory for which I was responsible and I saw what happened there. It started off as quite a modest enterprise. Then one rather powerful shop steward, or father of the chapel as they were called in the printing industry, established a position of his own so that he managed to turn what was meant to be a part-time activity into a full-time one; that was all he did. He then persuaded the factory manager that he was a very busy chap and was getting older, and asked if he could have someone else to help him.

I thought that the right reverend Prelate was going to accuse me of encouraging gambling in your Lordships' House, so I will not indulge in another bet. I say to the noble Lord, Lord Hain, that I favour facility time, but I know what is going to happen and I am absolutely sure of it. We will find that when these figures are published, there will be a huge variety of situations. Some managements will have kept reasonable control over the amount of facility time by starting out with the best of intentions and ensuring that it is properly monitored. That is probably what happened in Cornwall, if I may say to the noble Baroness. I believe that they are already required under local government regulations to publish their arrangements. I expect that the leader of Cornwall Council, if that is the person to whom she referred, is probably rather proud of the efficiency of the arrangements. What we will find as a result of this transparency is a huge variation.

We cannot walk away from the actual figures. I do not know if they have been challenged, but I have some figures which show that the cost of facility time in the Civil Service was running at £36 million. Since publication of the figures and some further negotiation, the cost has come down to £10 million, and the saving to the public purse is now more than £50 million. If that is right, what responsible Government or Parliament or House of Lords would walk away from saying, "If that is the case in the national public Civil Service, do we not have a duty to see whether other publicly funded bodies that are organised in this way are being run efficiently in this respect?". That is why I say that this provision will not be repealed. We will find that some public bodies are being run very efficiently and have a sensible balance in the amount of necessary facility time that is paid for out of public money and that some others are being grossly excessive. Even before publication we will find that changes will be made to ensure that the figures are not wildly out of place with those elsewhere.

I support facility time, and I support the recognition that public bodies should publish their figures so that people can see the amount of facility time being taken and then stand up and be prepared to justify them. I am prepared to stand up with those organisations in support of a sensible amount of facility time.

5.45 pm

Lord Beecham (Lab): My Lords, I have listened carefully to the noble Lord, Lord King, and I accept entirely that he is genuine in his support for facility time, but I am afraid that I share the doubts of the right reverend Prelate that we may be seeing the first instalment on an instalment plan to dilute further the position of trade unions and their capacity adequately to represent their members. In addition to the Government's naked attempt to damage their political opponents through legislation in relation to the political levy, about which we have heard this afternoon and about which even some of their own MPs and some Members of your Lordships' House opposite have misgivings, as again we have heard today, we are seeing a trend in legislation that is clearly hostile to trade unions—all trade unions, not just those affiliated to the Labour Party or which might, as we heard from my noble friend Lord Collins, lend their support to other political parties.

The Royal College of Nursing is not known for its militancy or left-wing politics, but it has circulated to Members of your Lordships' House a 13-page briefing setting out its concerns about the provisions in the Bill relating to facility time and what they might lead to. Under legislation by a previous Conservative Government, of course, trade unions are able to negotiate with employers for union representatives to have time to work with employers and union members on matters affecting the workplace. The college says, "The ability of the health service to transform and improve, without protected facility time for union representatives to enable smooth transition to facilitate learning and ensure safety is a significant cause for concern". It cites a number of hospital trusts, including one from my own region of South Tees, that strongly support facility time, as does the Chartered Institute of Personnel and Development. There is also research demonstrating a much lower turnover of staff in organisations with union representatives which it is estimated saves the NHS £100 million a year, while government research confirms major savings in relation to work-related illness, accidents and employment issues.

The noble Lord, Lord King, calls for transparency, while the Government have themselves produced reports and information about the effect of facility time that support its continuation. Some 91% of public healthcare service managers agree that trade union representatives can be trusted to act with honesty and integrity. The RCN calculates that the impact of union reps on the turnover of staff and the cost of replacement by agency staff is alone to save the service £112 million a year.

Yet, the Government propose to take powers to impose a limit on the amount and cost of facility time for the National Health Service. It is not just a matter of providing information; they are taking the powers

to impose a limit on the amount and cost of facility time. They would enact this by secondary legislation, which usually undergoes minimal scrutiny, certainly during its passage through the House of Commons and to a lesser extent here. They would be able to restrict the right of union reps to paid time off, and even to rewrite collective agreements and contracts of employment. Studies show that this is likely to result in greater cost, rather than savings.

As is the case with check-off, where the employer deducts union dues from wages and passes them on to the union, there is an issue of principle here. Public or private employers, councils and health service trusts should be free to determine what policy to pursue and not have decisions imposed on them by the Government —a Government who profess their belief in and support for localism, but which, at virtually every opportunity, certainly under the previous Secretary of State for local government, took powers to control the most minute detail. Obsessions with weekly bin collections were the least of the previous Secretary of State's concerns in that respect.

As an example, my authority is renegotiating its facility time scheme. This authority, with approximately 8,000 or 9,000 employees, which is about half of what we were only a few years ago, will have the equivalent of 5.9 full-time staff paid for, with 3.6 in addition paid by the city's schools, which, of course, are free to engage or not with facility time—a tiny fraction of the council's workforce and a total cost of £135,000, which is substantially less than 0.1% of the council's budget.

During the long period in which I was leader of Newcastle City Council—too long in the opinion of some people, not necessarily exclusively belonging to the opposition parties in the council chamber—I never found facility time to cause problems. On the contrary, it helped councillors and officers to make the best of difficult problems as they arose, whether they affected particular groups, or, critically, promoted efficiency and protected services.

Clause 12 appears to be based on unproven estimates of the cost and ignorance of the benefits of a properly developed scheme. It is the more objectionable because, once again, any change will be made by secondary legislation. As the Delegated Powers Committee points out, new Section 172A(9) contains a wide power to treat, for the purpose of the Bill, a person,

"that is not a public authority but has functions of a public nature and is funded wholly or partly from public funds",

as a public body. As the committee points out, this would appear to extend to private companies or non-profit organisations to which services are contracted, or voluntary organisations receiving grants. The Minister earlier gave assurances about that. If she is right in what she said—and if I am right in understanding her—and the concerns raised by the committee are not really valid, I hope that such assurances can be embodied in the Bill. Let us have in the Bill what is and what is not to be included if this part of it goes forward. The committee points out that such bodies would be caught by publication requirements. That is why it concluded that if these measures go ahead they should do so by the affirmative procedure. If the Minister is unable to assure your Lordships that the Bill will clarify matters, I trust she would accept that the affirmative procedure should be available.

Clearly, I support the amendment moved by my noble friend Lady Hayter. My Amendment 87 seeks to exclude councils, the National Health Service and the Greater London Authority from the clause's provisions. That is partly because local government is accountable to the public anyway, to the auditor and to audit committees. I should say that I am a member of the audit committee in Newcastle City Council. A degree of scrutiny is already available in local government, if required, but it seems to me unnecessary for the Government to extend its provisions in this respect to bodies that are accountable in a variety of ways. Even the health service is, to a degree, accountable to local government because health scrutiny committees can look at these matters—again, I serve on a health scrutiny committee in my authority. The Government's concerns here are, to put it mildly, exaggerated. I hope that the Committee will either persuade the Government to change their position, or, if necessary, pass amendments requiring them to do so.

Lord Callanan (Con): My Lords, I support the Government's position and these clauses. I strongly associate myself with the remarks of my noble friend Lord King, who put the argument perfectly. We are talking about a taxpayer subsidy for trade union activities, the amount of which we do not know—it may be tens of millions or even hundreds of millions of pounds a year. Nobody knows. It seems to me perfectly equitable to ask local authorities and taxpayer organisations to say how much that subsidy amounts to. It may well be, as my noble friend said—

Lord Watson of Invergowrie (Lab): Has the noble Lord read the impact assessment on facility time? It has done a calculation. We do not know how, but it at least gives a figure.

Lord Callanan: I have seen the impact assessment, but I do not think that it is particularly specific about how much is spent. Once the regulations are published we will know how much is spent across the piece. It is a taxpayer subsidy. It may be justified; we do not know. There are some egregious examples of abuse of the facility, which I referred to in my speech at the start of the scrutiny of this legislation, which are well known and have been well publicised.

We spent the previous couple of hours talking about the campaigns that trade unions run and the tens of millions of pounds they spend campaigning against Israel or whatever. That is perfectly proper and it is their right to do that, but they cannot argue on the one hand that it is in their members' interests to spend lots of money campaigning on these various issues, but on the other that they need a taxpayer subsidy to represent their members in the workspace because they do not have enough money left in their coffers to pay for this facility themselves.

Lord McKenzie of Luton (Lab): My Lords, how would the noble Lord characterise the cost of health and safety reps and the work that they do to ensure the workplace is safe and that the employer's legal obligation is supported by their efforts?

Lord Callanan: Of course expenditure on health and safety activities is justified and I would support it, but equally, I would not support the activity of organising political demonstrations. The noble Lord will be aware of the famous case from which these reps derive their name, that of Jane Pilgrim, the nurse in the London hospital who has not done any nursing for about seven or eight years, who was supposed to be representing her union's activities, but managed to find the time to organise demonstrations against Jeremy Hunt when he visited the hospital in that area. It is her right to do that—it is a free country—but it is not her right to do that while paid for by public taxation.

Figures have been released. In the Metropolitan Police there are 57 full-time equivalent employees engaged in trade union activities. The Scottish Fire and Rescue Service has 78 full-time equivalent employees engaged in trade union business. I find it hard to believe that they need so much free time and have received so much subsidy for their activity in those organisations. It may well be justified, but we will see whether it is when the regulations are published. We will be able to compare how much the Scottish Fire and Rescue Service spends with equivalent fire and rescue services. We will be able to compare how much Newcastle City Council spends on its trade union subsidies against maybe better local authorities and how much they spend at all. It will bring transparency to the whole process.

I understand why the Labour Party wants to try to maintain this subsidy, but it seems to me that the central Civil Service has managed to save £57 million by the publication of these figures, as my noble friend Lord King made clear. If there are equivalent sums to be saved in other parts of the public sector—it seems to me that the central Civil Service still manages to function, trade unions are still represented, the world has not come to an end—perhaps we can also save equivalent amounts of money in other public sector organisations. Until the figures are published and we know how much is spent, we will not know that.

6 pm

Lord Harris of Haringey: My Lords, I apologise to the Committee that I did not have the opportunity to speak on Second Reading. I declare my interests. The first is a practical and domestic one in that my wife is a lay official of a trade union, works in a hospital and has a certain amount of facility time which she devotes to representing individuals, primarily at hearings of one sort or another, or to sitting on partnership boards. Most of those activities are conducted in her own time. Rather like Lady Eden, I am aware of the Suez Canal flowing through the living room in terms of the detail and nature of those cases.

As regards my own personal involvement, I have been a member of a trade union all my working life. When I was very young, I was a branch official for various periods. However, the experience I want to bring to this debate is of my 24 years as a member of a local authority, 12 of which were as a council leader and, indeed—given the contribution that the noble Lord, Lord Callanan, has just made—my period as chair of the Metropolitan Police Authority. He cited in that connection the shocking statistic of 57 people being on full-time release in the Metropolitan Police. I do not know whether that figure is correct; I would need to check my files. However, given that that organisation has expenditure well in excess of £3 billion, the relevant expenditure is way less than one-tenth of 1% of the organisation's expenditure. That organisation is enormously complex and many issues arise all the time. It is extremely important that its disciplinary matters and grievances are properly handled. My experience as a council leader, and, before that, of chairing committees, showed me how valuable and important the use of facility time was in improving the effective running of the organisation.

The noble Lord, Lord King, has done us all a service by telling us why he also supports the principle of facility time. However, he did so in the context of arguing that this clause, and the amendments we are considering, are completely irrelevant to whether or not one thinks that facility time is a good thing.

However, the question that the Minister has to answer is: what is all this about? We have a Government who are committed to reducing costs and bureaucracy. Therefore, various government departments have put out edicts that certain sorts of statistics and performance measures should no longer be collected. Indeed, the Home Secretary made a great point about the waste of police time collecting information which the Home Office always used to collect and no longer requires. In some instances, after five years in office, she is now starting to reinstate that because the relevant information is rather important and she wants to have it. However, this Government are committed to reducing the amount of information collected. So why, in this one area, are the Government saying that it is so important and there is such a big problem that they need to reverse their policy and collect the relevant information? The only real purpose there can be for collecting this information lies in the next clause of the Bill—the clause that I think the noble Lord, Lord King, suggested was perhaps a little bit over the top, but I may be putting words in his mouth. So the only purpose of collecting the information and of the legal requirement is to create a framework whereby some of the expenditure in this area can be capped. My experience is that that would be counterproductive, costly and inefficient for the organisation.

I recall on a number of occasions sitting on disciplinary hearings where the person who was potentially being disciplined, or perhaps witnesses, were clearly so emotionally involved and wound up by what was happening that without the assistance and support of a lay official the evidence and discussion would have gone on interminably. I remember one occasion which did go on interminably simply because the person concerned had declined to have a lay representative or official with them. Lay officials help to codify things and sometimes explain to a member that perhaps their case is not quite as strong as they feel on an emotional level that it might be. Sometimes they explain to members why they are in that situation. That is what local lay representation is all about. I have also been present when a full-time official from the area or regional office has represented someone. I say with all due respect to my noble friends who have served in this capacity that it was always more useful to have a

representative who knew the local environment and was part of what happened locally. That is why the service is so valuable, particularly when grievances between groups of employees are involved—I say this having experienced the "Suez Canal in my living room" scenario as much as anything else—where the local lay official is often able to make progress so much easier when rather heavy-handed management intervenes, as is sometimes the case.

My other experience which I think is relevant to this issue is of dealing with big issues in a local authority, when we needed to introduce major changes. We made what we thought were very significant and substantial cuts, although I suspect that local authorities now face cuts of even greater proportions. I valued being able to talk to the local representatives on facility time, explain to them what was happening and take them through it. They did not like it. They would much rather it was not happening. In some instances, they would have much preferred the council to act illegally rather than doing what we needed to do to balance our budget. However, that dialogue was an important part of setting the parameters and making sure that the changes that needed to be made could be implemented sensibly. That is why participation in the partnership structures in the health service is so important. The note we have all had from the Royal College of Nursing spells this out. That takes time. Sometimes I think it takes a lot of time because local management is not quite sure what it wants, but the important thing is that there is an involvement at that stage and that people are able to feed in their experience and local knowledge. Often, the trade union lay representatives on facility time have a better understanding of the circumstances and the changes than the management representatives who are trying to bring them about.

As regards public safety, a significant amount of facility time is devoted to health and safety matters affecting not just employees but the public, particularly in the NHS and local government. That is what people are engaged in. Are we saying that those public bodies carrying out their responsibilities in respect of health and safety should no longer have the support of local lay representatives, who, again, will have an intimate knowledge of the way things operate and of the particular problems that may arise? Yes, of course, the management structure can set up its own people to do that work but I suspect that that would cost more and be less effective and less useful.

Lord King of Bridgwater: I thank the noble Lord for giving the most brilliant support to the point I wanted to make. He is not frightened to stand up and say why this issue is important and why facility time is vital to an organisation. He is not frightened of this being made public. It has been made public as regards the Metropolitan Police. He will be able to explain why it is necessary and why it is a real benefit. I strongly support that.

Lord Harris of Haringey: I am grateful to the noble Lord for that support. I was about to conclude by saying that I rather wish that the noble Lord was the current Secretary of State because I would then be much less concerned about the context in which this clause sits within the Bill. If we had a Secretary of State who unequivocally understood the value of facility time, as the noble Lord, Lord King, clearly does, I would be much less worried that there is some hidden agenda behind the inclusion of this clause. I suspect that, as my noble friend Lady Hayter made clear, the real reason behind all this is to provide the framework for the capping which is intended to follow. That is why we have to be extremely cautious and extremely clear about this clause. I hope the Minister will accept some of the amendments or, perhaps, abandon the whole project.

Lord Hayward (Con): Before I make any comments in relation to the speeches that have gone before, I echo the noble Lord, Lord Harris, and apologise to the House for not being present and participating at Second Reading, for other reasons. I come to this House with many years' experience of trade union negotiation. I also sat on the Back Benches when my noble friend Lord King was Secretary of State for Employment. I wish I had heard from the Labour Benches then all that the noble Lord, Lord Harris, has said this afternoon. At that time, it was all sorts of vitriol and condemnation. The noble Lord certainly did not get the expressions of support he has just received. I have experience of negotiating with a large number of trade unions, face to face, over a number of years. In this House—and particularly in the other place—I have so often been depressed that in these debates we have a lauding of every trade union on that side and no condemnation of management on this side.

When I negotiated, I was involved in the removal of two managers because they were so bad at managing in their negotiations with the trade unions that they endangered relationships. We should be honest on both sides that we know there have been bad trade union officials and bad managers. I have unhesitatingly admitted—I will go no further than that—that I have been involved in removing two managers because they were so bad at trade union relations. I worked for many years in the oil industry and in the distributive trades. I am sorry that the noble Lord, Lord Morris, is not in his place, because I negotiated with Alan Law of the Transport and General Workers' Union in the West Midlands. I think it would be fair to say—and recognised on the Benches opposite—that he was a man of a certain repute. Earlier on in Committee, I was interested that the noble Lord, Lord Stoneham, referred to mine winders. I know about these, because I was involved in the heavy engineering industry at the time and I negotiated with the trade unions who made them in factories in the Midlands.

I do not want to duplicate the comments made by my two noble friends. However, it is right that we should have a clear indication of the cost which taxpayers are required to pay to cover facility time. I am as passionate about facility time as Members on the opposite side. I was once a guest speaker at the General and Municipal Workers' Union conference, to give the management perspective. One might say that I was there on facility time from management. I do understand every ounce of the sincerity shown in relation to identifying good, useful, constructive, long-term facility time, whether it is for paid officials, lay ones or part-time ones. However, let us be honest with ourselves. There are occasions when it runs riot. In the private sector,

[LORD HAYWARD]
that is a decision for management; in the public sector, it is a cost for the taxpayer. We have a right to know when that cost applies. I note from her comments that the noble Baroness, Lady Hayter, has done a lot of research. However, a letter was sent from the Minister to Sir Alan Meale, the Member of Parliament for Mansfield, some five months ago, identifying the difference in costs per hour between the private sector and the Civil Service. The noble Baroness did not quote it: my noble friend Lord King made reference to it. That is an indication of why Clause 12 is in the Bill.

Lord Sawyer (Lab): My Lords, there is one difference missing here. We are, essentially, talking about good employee relations and resolving problems. We are not necessarily talking about management and unions. We should be directing our energy and thought processes towards how to get the best employee relations and, thus, the best-quality service for the taxpayer. When a trade union representative engages in bargaining with an employer, we surely do not expect the trade union to pay for it. If we did, we would expect the taxpayer to look at how much time was spent by the employer's side. In other words, could it be that the amount of time employers spend on employee relations should be equal to the amount of time the trade unions spend? Should it be the same, because all parties are there at the negotiations?

6.15 pm

One point which has not been made is that the time trade unions spend when they act in negotiations to improve employee relations is not just facility time, it is something else—employee relations time. The two things can be quite different. We are surely not going to argue that when all trade union representatives are employed and engaged in improving the quality of public services the trade unions ought to pay for it. That is my first point: it needs to be carefully looked at because it is not a simple equation. Secondly, if we had all the information on facility time which the Bill would allegedly provide, what would that tell us? Would it tell us about: the quality of the negotiations; what was being talked about; whether the time was usefully spent? It will not tell us that at all. It will not give us any—or only crude—information about facility time.

The Civil Service example, which the Minister seems quite pleased about, is a separate case. I do not know anything about Civil Service employee relations. I know a lot about employee relations in the health service and local government and I know that, by and large, they have been extremely good for many years and continue to be so. There are no employers in the health service or local government who want this piece of legislation. In the private sector, the decision about how much facility time is spent is for employers to make. Why is that not the case in the public services? Do we have different standards of quality employee engagement in public and private sectors? Of course we do not: none of us believes that. It is up to the employer to decide on the amount of facility time and to account for the quality of work that comes out of that time. That is where we ought to be heading. The Bill does not take us in that direction. It is a crude, unnecessary measure and I agree with the speeches made on this side, particularly that by my noble friend Lady Hayter. As somebody who worked in this sector for many years, I can say that it was a great speech: she hit all the right issues and said all the right things.

Baroness Emerton (CB): My Lords, first, I apologise for not being present at Second Reading. I know it is customary not to speak in Committee unless—

Lord Teverson (LD): It is not necessary to have been at Second Reading to participate in Committee. No noble Lord should feel guilty about it: it is not a problem. The House is delighted that the noble Baroness is speaking to amendments in Committee, despite not being at Second Reading.

Baroness Emerton: I joined the Royal College of Nursing in 1957 and I am still an active member and fellow of the college. I support all that it does on both the professional and labour relations sides. I have also been chairman of a trust and of a regulatory body, so I have had a considerable amount of management experience. Had I been present at Second Reading, I would have spoken clearly against Clause 12 because, in my experience, it is important that the culture of the organisation is maintained by good relationships throughout it. It is there with labour relations and the trade unions. If we do not pay attention to that, we fail in any innovation or forward movement. Particularly in the health service, we are talking about patient safety and high-quality care. I believe managers are beholden to ensure that in their business plan they allow an allocation of money for facilities for staff to participate. Even up to board level, I always had a member of staff present at the board meeting. We will be doing an injustice, particularly to a large part of the health service, if we reject the fact that staff need that facility time, particularly as they are the lower-paid portion of the health service and public service.

We must not forget that there are care homes that are not part of the public service, or that we have problems with the private sector as well in terms of its being able to ensure that its labour relations are correct and staff are able to participate. We cannot go on having strife between management and staff. We have to tackle this and the Bill is the opportunity to do it. I ask the Minister to pay some thought to what I have said, particularly in terms of the large workforce in the health service. However, every workforce needs to be able to participate and give satisfaction in whatever the job is, getting a high standard and ensuring that there is a culture of working together.

Lord Watson of Invergowrie: My Lords, I shall speak to Amendment 87 in particular, but before I do so I shall address a few remarks to the noble Lord, Lord King. The example of the Civil Service is clearly what underpins this part of the Bill as far as the wider public sector is concerned. The noble Lord, Lord King, said that there had been a significant reduction in the cost to the Civil Service since facility time was reduced. That is true, of course, but there has also been a reduction in the representation of civil servants by the people to whom they have previously looked for assistance

in times of difficulty. The staff rep is basically a mediator and part of the HR process. In many cases, issues that may go to the grievance procedure are dealt with before that, which is to the benefit of the Civil Service as a whole, management and employees.

I know for a fact that at HMRC, since the reduction in facility time, staff reps have had considerable difficulty getting time off for union work, particularly for looking after individual cases. In some ways the most important part of such work is looking after individuals who, for whatever reason, do not feel confident enough to look after themselves. There have been other reductions as well—that is natural. So I say to the noble Lord, Lord King, and other noble Lords who have highlighted the Civil Service as an example: if you cut the time available, thereby saving the Civil Service money, a situation results in which civil servants do not get the representation that they have a right to expect.

I shall focus on Amendment 87 because it concerns an area that has not yet been highlighted in this evening's debate on facility time for representatives. The specific impact assessment on the part of the Bill on facility time—not the overall one—contains a table listing the number of public sector bodies affected by this measure. I was surprised, as noble Lords may have been, that they totalled 21,000, 20,000 of which are state-funded primary and secondary schools.

Many primary schools in particular are small and de-delegate their union facility arrangements to shared local authority organisations. School employers recognise the benefit of this as being cost-effective and efficient. Part of the benefit of what is known as de-delegation—an ugly word but it seems it is quite effective—is that it allows joint local authority organisations to use the paid release of experienced, trained and accredited trade union representatives. In some circumstances this is done on a full-time basis because it is to everybody's benefit. The Bill's prohibition of full-time release would seriously undermine the availability of trade union representatives to attend meetings at which they are required to represent the interests of school staff. That means not simply teachers but all the other categories of staff so essential to a school's day-to-day functions. It could lead to the need for trained and accredited union representatives in each individual school, which would surely lead to an increase in costs at those schools at a time when they are already under considerable financial strain.

I understand that the Government want generally to weaken trade unions through this Bill, but did they really intend that local schools should be forced to provide local representation at least at an acknowledged cost when it is already being provided more effectively by other means? The Bill puts that at risk and it puts at risk collective agreements on facility time to which employers and unions have signed up. There is no justification for the Government interfering in agreements that unions and employers are content with and regard as beneficial to the smooth running of schools.

There is of course the wider issue that the provisions apply only to public sector workers, which means that their right to representation is unfairly limited compared to other workers. That is very much to be regretted; it is unnecessary and unacceptable that the Bill is creating a two-tier workforce in this area. Perhaps this reflects the Government's view that imposing bureaucracy, red tape and what they like to refer to—and regularly do—as burdens is unacceptable when it applies to the private sector, but acceptable when applied to the public sector and the trade unions that seek to represent public sector workers.

I referred earlier to the impact assessment on facility time. Under the heading "The rationale for intervention" on the issue of facility time, the impact assessment says:

> "The whole public sector needs to ensure it delivers value for money; it is unacceptable that taxpayers' money should be spent without proper monitoring and control".

On the face of it, that sounds perfectly reasonable; I do not think anybody could seriously disagree with it. However, I shall return to that point. The impact assessment also contains a section entitled "Problem under consideration". I suggest that it is a problem only in the minds of government Ministers, but it states:

> "The cost of facility time in the public sector is paid for out of public funds".

That is not terribly revealing; everything the public sector does is paid for out of public funds. It goes on:

> "There was inadequate monitoring and control of this spending in the Civil Service and evidence (including research carried out by the Taxpayers' Alliance)"—

which is accused of many things but balance is not one of them—

> "suggests this remains the case in the wider public sector. These measures will extend this publishing requirement to the wider public sector, in the interests of transparency and accountability".

So transparency, accountability and value for money are the three pillars on which this attack on the ability of trade unions to represent their members adequately is supposedly based.

When it comes to these pillars, some consistency is required. I shall limit my one comparison to the schools sector, on which I am focusing. There are now some 5,000 academy schools, which annually receive around £20 billion of public money. Yet transparency and accountability are next to non-existent as far as academy schools are concerned. Try seeking the detail of the operation of the regional schools commissioners. Try seeking information on the decisions made by the academy chains. In many cases it is almost impossible to judge whether value for money is achieved, due to the lack of information made publicly available. This is for £20 billion of expenditure. That is surely a much more urgent target for legislation, yet the government impact assessment estimates the potential saving from cutting back on facility time in the public sector at around £100 million. I will not say that £100 million is an insignificant amount, but some balance is required here.

The impact assessment estimates that the percentage of the public sector pay bill spent on facility time is around 0.14%. With the Civil Service figure now roughly half that, it suggests that bringing the wider public sector into line would deliver that £100 million—give or take—saving. Yet there is neither rationale nor explanation in the impact assessment as to how that figure is arrived at.

[Lord Watson of Invergowrie]

Returning to education, the Association of Teachers and Lecturers cites the DfE's own statistics on school spending, which show that the per pupil rate for the teaching staff pay bill is £2,500. So the average cost of trade union facilities currently constitutes 0.07% of the total pay bill—remarkably, exactly the same figure as applies now in the Civil Service.

For that and other reasons that I have referred to, I believe there is a pressing need for education and indeed other public bodies listed in Amendment 87 to be excluded from the Bill.

6.30 pm

Lord Balfe: My Lords, part of the problem here is that the Government have a bit of history to live down on this. As the noble Lord, Lord King, said, this clause is about the publication requirement—it is not about the detail, which comes in Clause 13—but I can understand why people are a bit suspicious.

When I started doing trade union work for the Conservative Party back in 2008, a huge number of Questions were being put to the then Labour Government about facility time. At one time, I asked the honourable Member in the House of Commons whether he had calculated how much cost he was generating in finding out about the cost of facility time. But if you look back to the records of 2008 to 2010, you will find 400 or 500 Written Questions asking various things about the facility time. I am not surprised that the trade union movement got a bit suspicious about what was going on. It is similarly unhappy about this.

I do not think that anyone would justify the examples given by my good friend, the noble Lord, Lord Callanan. Those were unacceptable. But the question is: whose job is it to sort out the unacceptable? My view is that if there is sufficient publication of what is happening, it is then up to the bodies concerned to sort it out. After all, facility time is something that comes from the employers locally to the unions. Clearly, there have been examples where the employers—not the unions—have bought off trouble by giving facility time that might not be justified. It is not all on one side. As has been mentioned many times, the fact is that facility time—which equals local representation rather than someone from the hierarchy of the union—is often far more effective in sorting out disputes.

It is also extremely useful for smaller unions. The noble Baroness, Lady Hayter, mentioned a couple of the smaller unions, which, in the interests of fairness to all sides, have also written to me, so I will not repeat what she said. I will use the example of the union of which I am president, the British Dietetic Association. It has 10,000 members, very thinly spread around the country, the vast majority of them in the National Health Service. Because it is a union of 10,000 members—which also, incidentally, acts as a professional organisation—it does not have many staff. It relies to a very large extent on its local representatives gaining local knowledge to help sort out the generally minor problems that come up at a local level.

One difficulty that some people have, in my party particularly, is that they imagine that unions spend all their time on class warfare. In fact, in my experience—and I was for a time a lay union official—they spend most of their time dealing with and sorting out extraordinarily mundane difficulties in the interface between the troubled worker and the troubled institution. I am afraid I find it very difficult to attach the words "taxpayer subsidy" to the time that is given. Local authorities, as employers, are required by law to have facility agreements and to involve trade unions in a quite wide range of processes and activities involving staff. It is a legal requirement. Whether they are in the public or private sector, they have to involve union officials in certain areas, such as redundancy, disciplinary procedures and grievance procedures. If it is a legal requirement, it cannot be a taxpayer subsidy.

I have a letter here from the Conservative leader of North Yorkshire County Council. He says:

"North Yorkshire County Council has some 22,000 staff including 5600 teachers and in the current climate there is a cost benefit analysis to be considered in relation to whether facilitating trade union input at work is a good thing or not. Our experience at a local level is positive … Since 2010 there have been over 200 service restructures, affecting over a third of the workforce in some way with a proportion of our staff going through potential redundancy processes … To date all changes have been delivered in the timescales set … We have worked closely with Unison as the locally recognised union to deliver the savings".

This is the Conservative leader of a county council, a very responsible official looking after a lot of people. He ends his letter by saying that,

"the local unions have been a real asset in delivering the changes needed and I hope this will continue for the foreseeable future".

I have never met Councillor Carl Les, leader of North Yorkshire County Council, but I venture that he probably knows how to handle his local facility time better than someone working off a spreadsheet in an office which is probably some way away from there.

By all means let us have transparency. That is a good thing. But let us not use transparency as a weapon to try to force out the best of what we have had. A British Dietetic Association lay official said to me recently, "The atmosphere at the moment is a bit difficult. I'm not sure I want to put my head over the parapet". If a feeling gathers that we do not want to put our heads over the parapet, industrial relations will suffer. They will get worse, not better, because situations that would have been solved by the input of someone who knew what was going on locally will be referred upwards to full-time union officials who probably will not have the time to do the job properly anyway; industrial relations will deteriorate and the employers will lose out.

I was very impressed by the words of my noble friend Lord Hayward, who clearly has a lot of experience in this field. I counsel the Minister to let us have transparency, by all means, but let us not use transparency as a way of yet again making life difficult in an area of industrial relations which, overall, actually benefits from the ability of unions and management to negotiate sensible levels of facility time to help employees and employers deliver their targets.

Baroness Donaghy: My Lords, I, too, thank the noble Lord, Lord Hayward, for putting some balance into the debate. I have a lot of respect for his experience. He called for honesty. I could say a few words about my experience when I was chair of ACAS of certain behaviours on both sides of industry but I do not

think it would be a good idea or take the debate forward, but I would be very happy to have private discussions with him at some stage so that we could swap examples. I am also very grateful to my noble friend Lord Harris, who reminded me what it was like to be a lay union representative, which I was for 33 very long years, for both NALGO and UNISON. I was not a full-time official; we prided ourselves on dealing with our problems without needing a full-time officer.

This issue of transparency needs to be looked at in the context of the Trade Union Bill. The noble Lord, Lord Balfe, touched on this just now. This is not just about transparency being a good thing, so that everybody who undertakes a fishing expedition can find out wicked things about what certain individual trade unionists are up to; the context is that the Bill appears to be a general attack on the trade union movement. The context is the clause that is coming up next, which talks about cutting, curtailing and capping facility time. One of the things that I worry about is that facility time should be seen in the light of a cost-benefit analysis. Nothing has been said by the Front Bench on the government side about the positive work that is done by union officials and the savings that are made by union health and safety representatives and union learning reps, through saving time dealing with grievances, redundancies and reorganisations.

There were times during my trade union lay career when I was accused of being a management stooge because I was delivering an unwelcome message to the members about what was practical; there were times in ACAS when I was accused of being a management stooge because I was not in a position to agree with everything that the union said; and there were times when I was accused of being a union stooge because of my background and because I did not always entirely accept what the management argument said. It is extremely important that we keep on reminding ourselves, in the context of the Bill, that things of this kind are not just about saying, "Oh let's get some information; it'll be a jolly good idea". It is more like a scene from an Arnold Schwarzenegger film with him standing there, fully armed, and saying, "We are not going to do you any harm, just give us the information".

Lord Stoneham of Droxford: My Lords, I share experience of the print industry with the noble Lord, Lord King, although mine is slightly more recent than his, I think. I know the benefit of union facilities. I also accept that both management and unions should question those facilities from time to time to ensure that they are efficient and the money is well spent. It also has to be said—here I agree very much with the noble Lord, Lord Hayward—that if we just look at this from a slightly anti-union perspective, we will not take into account the fact that, often, more union facilities are needed when the management is poor. I do not know the detail, but I suspect that in the modern successful car plants we now operate in this country, they will have union facilities but not to the degree that they needed them in the 1960s and 1970s when they had all their problems. They will now have much more professional management and, indeed, much more professional union representatives.

Union facilities are also a factor in change. When you are undertaking a lot of change, you need more facilities, such as when you have redundancies because skills and so on are changing. I remember in the print industry taking union delegations abroad to try to negotiate manning agreements on the basis of what our competitors were doing on machinery. Noble Lords may remember that. It took a lot of time and cost to do that, but that was because we were conducting major changes.

I also find it extraordinary that a Conservative Government can advocate another layer of bureaucracy to achieve this so-called change, but that is what they are doing. The impact assessment says it is going to cost £2.4 million to have the information collected regularly. The initial cost of getting that information together will be over £2 million and then there will be another £2 million going on. The Government also say that they expect there will be £100 million of savings. I accept that is not insignificant and that it is important to have those changes, but I question, when we are trying to find £35 billion of cost savings in the public sector, with all the change that that requires, whether this is the priority. I suspect we are just going up a blind alley here, and it is wrong.

6.45 pm

The strategy is also wrong. I do not know how the health service manages. I am amazed when I listen to debates in this House on the health service, because more regulations and requirements are always being put on people who should be concentrating on care. I do not know how people actually carry out their roles in the health service under all this regulation. We have to question whether we actually want all the ongoing bureaucracy involved in collecting all this information on these facilities every year. If the Government really think that there is a lot of money wasted on union facilities, why not have a one-off review and expose it? The Government could achieve the change they want and the cost savings, but probably without the ongoing regulation and information-gathering that this proposal is going to require for ever more and for no clear purpose.

We also have the example of the Cabinet Office producing all these changes to facilities. Why do we have to legislate to get change in the public sector? Why can we not just have managers do it? Why do the Government not initiate these sorts of reviews so that they can get these savings? Why does there have to be an ongoing burden of regulation to get change? It is madness, and the Conservatives should question themselves about this further bureaucracy they are imposing on the public sector. In time, what will happen of course is that when they want to blame all this bureaucracy on somebody, they will come up and impose the cap. That is what will happen and that is why we are very worried about that clause.

As has been said in this debate, this one-sided approach is worrying. It is wrong as a concept because you could get this by having, as I say, a one-off review. It does not need the regulation and of course it is very one-sided: it is basically saying that excessive facilities are the fault of the trade unions, when actually anybody who has worked in industry knows that this should be about partnership, and that unions and management have an interest in using them most effectively.

Baroness Neville-Rolfe: My Lords, this has been a very interesting debate. I believe that our proposals can save money, strengthen people's trust in government and encourage greater public participation in decision-making. We have already made changes in the Civil Service in relation to facility time, and it is in the spirit of this Government's transparency agenda that we are introducing publication requirements for public sector employers elsewhere.

The noble Baroness, Lady Hayter, mentioned the Conservative manifesto. The provisions in the Bill reflect that manifesto, on which the Government were elected, which said that we would,

"tighten the rules around taxpayer-funded paid 'facility time' for union representatives".

We therefore have a democratic mandate in this area. As my noble friend Lord King said, we are not abolishing facility time. We value the role that public sector unions can play, but we need to know the costs in the public sector—the cost to the taxpayer, as my noble friend Lord Hayward said so clearly.

These regulations will bring transparency across the whole public sector. For those who currently publish facility time information, it will bring a consistency of reporting which will allow taxpayers to compare the various employers which they fund. For those not currently publishing data, it will bring them in line with local councils in England, government departments and other organisations such as Transport for London. The noble Lord, Lord Hain, asked about the Post Office, Royal Mail and BT Openreach. They are not caught by the provisions now that we have clarified their scope.

Responsible public sector employers—they, not Ministers, are the managers, by the way—should already know what time and money they spend on facility time. Many already formally record the information. It is not onerous for the Civil Service to publish it and nor should it be for other public sector employers. Where an employer has trade union representatives, it is hardly bureaucratic to expect that it should know who they are and what they do. Any employer, especially one which delivers a service to the public, should know how much time its staff spend delivering the role that they are employed to do. It should, therefore, also know how much resource is spent on facility time.

The Bill simply requires the publication of that information so that the public will also have access to it. Transparency breeds greater accountability and public scrutiny that ensures that taxpayers' money is used effectively and efficiently. Public sector organisations are becoming more transparent. For instance, government departments publish the salaries of the highest-paid senior civil servants and, beyond the public sector in England, NHS Wales publishes its expenditure data. As an ex-civil servant, I was always a bit worried about the great transparency drive that we started when we came to power in 2010, but it has been a very good thing and I am glad to see it extended here. I was also grateful for the points made by the noble Baroness, Lady Emerton, who brought her experience to our debate. The NHS is the biggest employer group in the UK and delivers such valuable front-line services.

Let me be clear here. Transparency is not the same thing as seeking to reduce or remove facility time. The Government do not view facility time simply as a cost. I echo the positive points made by several noble Lords, including the noble Baronesses, Lady Hayter and Lady Donaghy. We recognise the value of facility time and do not for one moment wish to suggest that it is simply a drain on the public purse. There is the work on improvement in skills, especially for the disadvantaged, which the noble Lord, Lord Hain, mentioned. I know that facility time is used to very good effect on trade union duties, such as during employer restructuring, which the noble Lord, Lord Stoneham, talked about; for health and safety, as several noble Lords said; and when accompanying an employee to a grievance hearing, which was always a valuable service in my experience over many years in both industry and the Civil Service. We expect such valuable facility time to continue—although, as the noble Lord, Lord Harris of Haringey, said, such duties are not exclusively performed by trade union representatives. Where I am less sure of the value to the taxpayer is where it funds trade union activities such as attending conferences or voting in union elections. We do not seek to ban the reasonable use of facility time; we want greater transparency and public scrutiny.

I turn to some points made by the noble Baroness, Lady Hayter, on local government. The aim of the facility time regulations is to ensure consistency of approach across the public sector. The *Local Government Transparency Code* requires only a high level of information. As for monitoring the impact on unions, the Government will be able to use the transparency data to monitor the impact of the changes, as will members of the public and parallel institutions with an interest, such as neighbouring councils.

On evidence, in the Civil Service, we introduced the requirement to publish similar information three years ago. We have seen significant savings for taxpayers—cumulatively, £52 million, to respond to my noble friend Lord King. We reduced spend by nearly three-quarters, from 0.26% of the pay bill spent on facility time down to 0.07%. That approach in turn helped the Civil Service to identify and reduce inefficient spending. For instance, it was found in one department that more than £400,000 of taxpayers' money in one quarter alone had been spent on sending union representatives to the annual conference at the seaside. This transparency also showed that 200 civil servants, paid for by taxpayers, did no regular Civil Service work at all.

Lord Sawyer: Perhaps the Minister can help me to understand her argument. Let us say that in a local authority, professional architects went to their conference to improve their architectural skills, and a trade union representative went to a conference to improve their ability to be a good trade union representative. Would they both be paid for by taxpayers' money, or would one be right and one wrong?

Baroness Neville-Rolfe: I do not think we are requiring anything here; we are introducing a level of transparency, and how it would be recorded would be set down in the regulations. That is the point that I am trying to make. I can see that there could be value in a conference. Indeed, I have spoken at trading standards conferences in my time; they can be valuable. That is the sort of thing I had in mind.

The public sector as a whole spends an average of 0.14%—that is, £200 million—of its total pay bill on facility time. Civil Service transparency data is available on gov.uk, which shows the costs of facility time in Labour councils such as Bristol City Council, which spent 0.09% of its pay bill on facility time and employed 107 representatives, eight of whom spent the majority of their time on trade union work. By contrast, Suffolk County Council spent just 0.05% of its pay bill on facility time.

Lord Beecham: Perhaps the noble Baroness will recall that Bristol has an independent mayor, who controls the council.

Baroness Neville-Rolfe: I am grateful to the noble Lord for correcting me. The point I was making is that it is interesting to compare different council experience; we could probably agree on that.

Lord Hayward: For the sake of accuracy, following the comment of the noble Lord, Lord Beecham, the independent mayor was formerly a Liberal Democrat, so the noble Lord and I may agree on the role there.

Baroness Neville-Rolfe: In London, local government displays significant variances. Lambeth Council spends 0.33% of its pay bill, or £281,000 a year, on facility time; Tower Hamlets spends 0.15%. At Transport for London, facility time costs £4.1 million a year, which is 0.3% of its pay bill. Those are large figures when one considers that Wandsworth Council spends just £22,000 a year, or 0.01% of its pay bill, on facility time.

Amendments 76 and 77 would limit the range of information published to just the total number of union representatives and the total cost of facility time. To promote reasonable transparency and accountability, there needs to be an appropriate level of detail published. That is to improve efficiency and is not—as was suggested by, I think, the noble Lord, Lord Harris—just as a trigger. That is a separate provision, which we will be debating in a later group. The inefficiencies identified in the Civil Service would not have come to light if only the total cost of facility time and number of union representatives had been published. A single cost figure for a large council and another single figure for a small government agency are just not comparable. That is why we propose the publication of the data as set out in the annexe to my letter.

Amendment 78 would expand the range of information that relevant employers should be required to publish to include cost savings and the value of facility time arrangements. It would be very difficult, if not impossible, for any employer to quantify the efficacy or value of existing facility time arrangements. Unlike calculating the cost of salaried facility time, this strikes me as an exercise for an academic. It would be unreasonable to expect every public sector employer to undertake calculations that would be so burdensome. Of course, should employers feel able to estimate the information suggested in the amendments, they are free to do so.

With regard to the proposed amendments to the public authorities which could be required to publish information, Amendments 83 and 84, I acknowledge that some types of employer are clearly understood to be a public authority, such as government departments or local authorities. For other public sector employers, such as academy schools, the position is less well understood. I hope that noble Lords are reassured by the government amendment brought forward today which will enable the regulations to be drafted so that they apply only to those bodies specified either individually or by category. If I may, I shall take away the point made by the noble Lord, Lord Watson, on primary schools, because I am not quite sure where that falls, in the light of that letter.

The Delegated Powers and Regulatory Reform Committee set out in its 15th report on 4 December the view that the powers to specify the information to be provided were properly exercisable using the negative procedure, as the noble Baroness, Lady Hayter, reminded us. The committee expressed concern that the regulations could be extended to private companies receiving a small amount of public funding—we had some examples earlier—and, in turn, the reserve power to cap facility time could be applied to those organisations. Amendments 83 and 84 reflect similar concerns. I hope that noble Lords will accept that by amending the Bill as proposed and as agreed, and largely mirroring the regulations for Clause 14, we have taken a reasonable and proportionate approach to capturing only those public authorities that should rightly be accountable to the taxpayer.

7 pm

On Amendment 87, I believe that when a public sector employer grants paid time off for facility time, regardless of the sector of the employer, it still represents a cost. Much has been said about the Government's localism agenda, but the *Local Government Transparency Code 2015* already requires facility time information to be published as best practice. We are simply asking that this information be meaningful enough for the taxpayer to see how resources are being allocated, and that the format be standardised across the public sector to allow proper comparison. Also, given that the practice already applies to local authorities, the Civil Service and schools, there seems no reason why a major publicly funded employer, such as the NHS, should be excluded.

We have debated this matter well and at length and for today I ask noble Lords not to press their amendments.

Baroness Hayter of Kentish Town: My Lords, as the Minister said, this has been an interesting debate, but I have to ask one question—where on earth this all came from. I am getting a bit jaded, I guess. A couple of weeks ago we finished debating the charities Bill in this House and a couple of days later—I think that it was a Saturday morning—I woke up to hear that the Government had announced changes to charitable law or, at least, to charitable practice. They suddenly announced that they were going to stop any charity getting government money from using any of it to influence either Europe or indeed Parliament in its work. The press release began with the words, "The Institute of Economic Affairs", and went on to say what the Government were going to do. Today we have something where the evidence given in the impact assessment is from the Tax Payers' Alliance. So I am beginning to wonder why this Government can seem to jump and follow when those outside bodies try to

[Baroness Hayter of Kentish Town]
influence them, but somehow when trade unions or charities want to do the same it gets them very nervous.

This point was best put by the noble Lord, Lord King. I am not particularly responding to him, but he encompassed so well whether Clause 12 is simply about transparency, so I shall respond to how he put it. If it was just about transparency, I wonder why the Government's own explanation says that it is,

"to encourage those employers to moderate the amount of money spent on facility time".

So in the Explanatory Notes it is clear that it is not just about transparency; it is with a view to moderation—by way of instalments, as my noble friend Lord Beecham said.

Baroness Neville-Rolfe: The whole point about transparency is to encourage efficiency of use. I explained by reference to what has been happening in the Civil Service that there have been some advantageous changes. That does not mean to say that this is not worth doing and that we do not value many of the facility time activities.

Lord Stevenson of Balmacara (Lab): I am sorry to intervene in this debate, but I wonder whether I could make an additional point. Many of the bodies to which the Minister refers would already be covered by existing legislation. If those bodies are receiving grant in aid from government, by a simple stroke of the pen the Government could add a couple of paragraphs to the contract requiring them to publish the cost in the interests of transparency. So why is primary legislation required?

Baroness Hayter of Kentish Town: And the intention is clearly to moderate—it is not just about transparency. In fact, I thought that the Minister actually undermined her own case at the very end when she read out all those statistics from local government, because that has all existed but actually no one has gone looking. They do not look over each other's shoulders, and it has not had the effect that she supposedly wants from this—that they will be competitive as to how little they each get away with.

Baroness Neville-Rolfe: We believe that by setting it out in a clear way and doing the numbers on a consistent basis we will get a much better idea about what works and what works less well, making the sort of comparison that I should like to see across the public sector. That is against a background and experience of improvements having been made within the Civil Service, where some of these changes have already been introduced.

Baroness Hayter of Kentish Town: As I hear from behind me, who says they are improvements? The point is that for local government, as the Minister says, the statistics are already there, and it has not led to a levelling up, levelling down or averaging out. So it is not just about transparency—it is clearly about moderating.

Lord Beecham: Would not my noble friend agree that the answer to her question is really that this clause paves the way for Clause 13, with the reserve powers to the Secretary of State to limit paid time off? Is not that what this is about?

Baroness Hayter of Kentish Town: Yes, it was a point that I made in my original case—that is why we do not think, as the noble Lord, Lord King, said, that it is just about transparency. We have a feeling that these are two of the same bits, which is why there is great nervousness about this.

In a sense, this is the same issue that my noble friend Lord Sawyer, raised. If you are going to talk about transparency in terms of saying which trade unionist will go off to a safety conference, that gets listed. But I used to work in the health service, and doctors were always going on very nice "continual professional development", often in ski resorts. If we are going to have transparency, maybe we should look at some of that. Why are we picking on one particular small element for all this transparency, with the list of nine things that have to be covered? It is the employers who will have to do this. Why not perhaps look at the gender pay gap in some of these organisations? That might help and give us the tools to improve the situation of women. Or maybe we should look at diversity statistics and make more of these organisations that are not all covered by that. That sort of transparency should help much more.

Maybe we should look at the compensation paid by some of these organisations, where employers have not been very good. Perhaps the noble Lord, Lord Hayward, would say that not only did he remove those two people but there was quite possibly compensation that went with it that was not declared. So there are other ways. The interesting thing is why on earth we are picking up on just this aspect, if not for what my noble friend Lord Beecham said—that it is the trailer for Clause 13.

What the noble Lord, Lord Callanan, said about fire, rescue and police is really important. But this is a management issue. I started by saying that good management manages this—it does not need an outside Minister at 30 Whitehall, or wherever it is going to be, to be able to set this down. We will come on later to which organisations are covered by this, and I shall not respond to that at the moment. There will be some organisations that the Minister has not even heard of, let alone visited, but she will still have the ability to put a cap on that. This is about management. It is something the Minister should keep well out of and leave to good managers.

It is fairly clear that we will be coming back to this at a later stage, but at this stage, I beg leave to withdraw the amendment.

Amendment 76 withdrawn.

Amendments 77 and 78 not moved.

Amendment 78A

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

78A: Clause 12, page 8, leave out lines 36 to 39 and insert "may make different provision for different employers or different categories of employer"

Amendment 78A agreed.

Amendment 79

Moved by ***Baroness Hayter of Kentish Town***

79: Clause 12, page 8, leave out lines 42 and 43

Baroness Hayter of Kentish Town: My Lords, rather than looking at the types of organisations that are covered, this amendment looks at the role of safety and learning reps. My noble friends Lord McKenzie of Luton and Lady Donaghy have put their names to it.

The role of safety and learning reps is probably unparalleled. Having worked a lot with trade unionists from other countries, I know one of the things that they have learned from us is how it has improved the workplace. The work these reps do benefits the whole organisation enormously. Our fear is that it will be at risk if these representatives are denied the time to undertake this work and to do it at a high standard.

There are some workplaces where safety representatives are particularly important, where there is heavy machinery is one, but also in hospitals where there are drugs, surgical equipment, radioactive equipment and very pointy needles often with nasty things on them, so safety is clearly particularly important. I shall take just one example which could affect any one of us. It is when firefighters come to our homes to put out fires. Safety is key to their lives, but it impacts on our property and often our lives. The Fire Brigades Union is a proud and active trade union, but it is also the professional voice of firefighters and has a key role in improving health and safety. It trains highly qualified serious accident investigators who work with fire authorities to investigate incidents where firefighters have been injured or killed in order to identify problems and implement improvements. Our fear is that any restriction on facility time for health and safety reps—that could be without even Clause 13, just that they are concerned about what it looks like on paper—could come at a very high price, particularly in safety-crucial industries, such as fire and rescue. Cuts in any such time could stop FBU reps investigating incidents thoroughly and consequently retraining or redesigning protocols.

The amendments in this group would exclude safety and learning reps from these provisions. Both contribute to the success of the relevant businesses as well as to the wider economy. I beg to move.

Lord McKenzie of Luton: I shall speak to Amendments 87A, 89A and 89B, which are in my name and that of my noble friend Lady Donaghy, and in support of Amendments 79 and 80A to which we have added our names. Our focus in this contribution is health and safety and particularly the role of safety reps. I should make it clear that focusing just on that does not mean that we resile from the broader issues of representation and facility time which have been argued so effectively by my noble friends.

I came at this issue and learned about health and safety not through long active work in the trade union movement, like a lot of my noble friends, but as Minister for Health and Safety in the DWP under the tutelage, for a period, of my noble friend Lord Hain, who is not in his place. I understood from that the importance of partnership working, the role of the HSE and, in particular, the role of safety reps and the contribution they can make.

7.15 pm

Anything this Bill does that potentially undermines that role and undermines health and safety should be opposed as rigorously as we can. If we need reminders about the impact of health and safety, let us look at the statistics for the economy as a whole, not just the public sector. Despite the fact that we are recognised around the world as having a very good and effective health and safety system, in 2014-15 142 workers were still killed at work, 1.2 million working people suffered a work-related illness, 611,000 injuries occurred at work according to the Labour Force Survey and 27.3 million working days were lost due to work-related illness and workplace injury at an estimated cost, according to the HSE, of something like £14.3 billion. There are still around 13,000 work-related deaths, predominantly from cancer caused by past failures to address health and safety issues. I return to the point that anything that undermines good health and safety potentially has very substantial costs for our economy, individuals and employers.

So far as Amendment 87A is concerned, I will address in a moment the reason why we consider that health and safety reps should be removed from the scope of Clauses 12 and 13 but, should that view not prevail, we consider that the publication requirements concerning time spent by safety reps and their costs would not show a meaningful picture without recognition of the benefits which they bring to an organisation, a point that has just been made by my noble friend Lady Donaghy. These benefits accrue to the employer, employees and more widely. As a former health and safety Minister, I recall a case where there were problems with a construction site where a crane collapsed and killed somebody walking in the street nearby, so it is not just employers and employees who are affected by this. It is simply a nonsense to look at costs of safety reps without looking at the other side of the question. Of course that begs the question of how you construct this requirement, and that would have to be dealt with in regulations, but it is perfectly possible to flesh out rules that would require some balance if this publication is to take place. What lessons do you learn in terms of the time that safety reps spend for an employer? You cannot just look at the time or the cost without understanding the risk profile of the business environments in which they are working.

Amendment 89A would remove from Clause 13 the prospect of a Minister making regulations which restrict the right of safety reps to time to carry out their duties. Amendment 89B would prevent the time costs of safety reps being included in the calculations which can be used to restrict facility time. On this point, I am grateful to Hugh Robertson of the TUC for focusing on this matter and reminding us that time off for health and safety reps to perform their functions is not strictly facility time but a separate legal requirement of the Health and Safety at Work etc. Act 1974 and of the European framework directive. Indeed, it would be

[Lord McKenzie of Luton]
a breach of European legislation—long may this be relevant—to restrict or cap the time that safety reps take. It has been suggested that the Government accept this view. I think the Minister may have expressed that; perhaps she will take this opportunity to confirm that. So if there is no intent to restrict the time of safety reps, why not remove them from the scope of Clause 13? If that is the case, the Bill allows a back door to impose a de facto restriction on the time of safety reps which would be in breach of legislation if imposed directly. The mischief is that the Government are saying that health and safety reps can have as much time off as they need, but the total amount of time that a union can have off will be capped, so the Government are trying to force unions to restrict the time themselves by saying that time spent by health and safety reps will come off the time available to other representatives. This must be opposed.

The Robens report on health and safety, which led to the Health and Safety at Work etc. Act 1974, was clear that an effective health and safety system requires the involvement of all the workforce, and that health and safety systems work best when trade unions and employers work together. This has proved to be the case, which is why the Act gave legal backing to union safety reps. This is all in the context that it is of course the duty of the employer to ensure, so far as reasonably practical, the safety and welfare of all his employees. It is not for Ministers to intervene or to take over that responsibility, or to second-guess employers. Employers have the legal responsibility, and that is as it should be: those who create the risks should have the responsibility for managing them.

We know what health and safety reps do. It is massively effective, saving countless numbers of people from injury and ill health, let alone costs to the benefit system and the NHS, and indeed preventing the human tragedy that comes with accidents or fatalities in the workplace. There have been numerous studies over the years underlining the benefits that union safety reps bring to employers and society. Indeed, over a decade ago the then DTI estimated their value to society to range up to £578 million per year. Although for manufacturing an earlier study found that employers with health and safety committees had half the injury rates of employers who manage without, the Health and Safety Commission—before its merger with the HSE—produced a declaration stating:

> "Trade union safety representatives, through their empowered role for purposes of consultation, often lead to higher levels of compliance and better health and safety performance than in non trade union systems".

The current HSE website cites a large body of evidence that points to the advantages of involving workers in health and safety risk management. Trade unions covering the public and private sectors can offer countless examples of the benefits of health and safety reps making workplaces safer, as well as identifying the training that they undertake and encourage in others—in many instances, as we have heard, spending their own time on it. We should be supportive of these systems and not, because of some antipathy to health and safety or to trade unions, seek to chip away at what has been achieved. Given the acknowledged benefits that safety reps can bring to the workplace, it is perhaps surprising that more is not being directed to ensure compliance with the legal requirement for employers to consult with employees on matters of health and safety.

We should genuinely be proud of our health and safety system but never complacent, as the costs of failure can be high. We should be encouraging safety reps to play a full part in securing the safety of our workplaces, rather than seeking to embroil them in a bureaucratic process that devalues their efforts. Have 20,000 schools, many of them riddled with asbestos, not got better things to do than form-fill for the Secretary of State?

Lord Deben (Con): My Lords, I address the House as a former Minister for Health and Safety. I agree with almost all of the speech by the noble Lord, Lord McKenzie. Health and safety in this country has received a pretty bad press for quite the wrong reasons, but health and safety in the workplace is something that we should be immensely proud of. I think it is still true that the United States has about four times the number of accidents in the construction industry, for example, that we do here. We have a proud record in what we do but it is not a record to be complacent about; the noble Lord rightly said that this is something that you have to keep on about all the time.

So I do not rise with any antagonism either to the health and safety laws or to the very important role that trade unions play in ensuring that, in workplaces up and down the country, these laws are adhered to and employers take their responsibilities seriously, and indeed that work people take their responsibilities seriously. Very often, when employing in these circumstances, I found that it was the trade union representative who did most to ensure that, for example, people used hearing protection, which is always such a difficult thing to get many people to wear. Indeed in one factory, when I was Minister for Health and Safety, I found that the staff failed to put the earplugs in their ears but put them in their noses because they did not like the smell of the oil, which was not the purpose of the whole process.

The trade unions play a hugely important part in this. However, I do not understand why in those circumstances we should be ashamed of saying how much time it takes. We should be wanting to say how much time it takes, generously speaking of it and being able to point to businesses and parts of the public sector that do not seem to do as well as others. I am not afraid of transparency in this area. I know that there is a feeling on the Benches opposite that that it is all designed to stop things, but I am not sure that that is true.

I share very much the Minister's point about anything that starts with a comment from the TaxPayers' Alliance, which means that it is probably fallacious; its use of words, and certainly of figures, is almost universally to be questioned, at the very least—rather less so than the IEA, but I would certainly be careful about relying much on its figures. I seem to remember some figures produced by the TaxPayers' Alliance showing the suggested cost of the necessary green measures on energy efficiency being entirely wrong, and I want to take that opportunity to say so.

Lord McKenzie of Luton: Does the noble Lord accept that there are plenty of ways to promote good health and safety practice without forcing safety reps through the processes in the Bill, with the risks that run from the subsequent clause, under which they could be restricted?

Lord Deben: There are plenty of good ways, but I have to say to the noble Lord, having said that I agree with so much of what he has to say, that in the world of the internet, when everyone expects to be able to know everything, it is an odd argument to say that we should not know how much time is spent on this. I just think that that is not of 2016; it is the kind of argument people used 20 years ago. Today we need to know. We need to use those figures in order to point out that this borough spends very little time on health and safety while that borough spends much more, and it is about time that I as a taxpayer in a particular borough could say, "I don't think my council is behaving properly". If I do not have the figures then I cannot make that point.

I quite agree with the noble Lord about the consequences if this were used to push down the unions, but I have no evidence whatever that this Government, or any previous Conservative Government, have done that on health and safety. All I am saying is that I know of no evidence of that. I can imagine that in some areas suspicions might arise, and indeed I might find myself equally suspicious, but on this particular measure I do not think that is a fair assertion.

Still, it gives me an opportunity to say to the Minister something that I think needs to be said more often. Just because certain popular newspapers find ridiculous things that health and safety has insisted upon, and just because it is true that many local organisations fail to do the things that they used to because some unnecessary intervention by health and safety has suggested that it might be dangerous—children might fall over or something untoward might happen—that does not mean to say that we should not continually press for better health and safety in our workplaces. I particularly want to make the point about health and safety as far as hearing is concerned; we still have far too many people who retire to an old age of deafness because the health and safety provision has not been satisfactory.

In supporting my noble friend's view about this amendment I would like to hear from her a very robust defence of the need for health and safety, the role of trade unions in ensuring that, and a determination to use the knowledge which we get from the Bill to ensure that those public sector bodies which do not treat this seriously enough can now be pinpointed because we shall know that they are not giving the time off which they should for the trade unions to play the part that they ought to play on health and safety.

7.30 pm

Baroness Burt of Solihull (LD): My Lords, these amendments aim to remove from this clause elements of facility time that are used on health and safety. I suppose that our attitude to this just depends on how we view the status of health and safety activities. I wonder whether the Government are saying that health and safety should be part of the same category as everything else that trade union representatives do. It is of great credit to employers and trade unions that the health and safety record of this country's workplaces has improved so much over the last 20 years, as the noble Lord, Lord McKenzie, said. Let us also not go back to those dark old days he describes, when employees could be regarded as some kind of an expendable commodity. They are costly to recruit and train, they have fewer days of sickness absence if other health and welfare issues are attended to, and they work harder for an employer when they are properly regarded and looked after.

We understand that no element of facility time should have carte blanche to take up as long as anyone wishes. There has to be a balance. Nevertheless, we do not want to go back to restrictions leading to short cuts and more risks. Therefore, to echo the words of the noble Lord, Lord Deben, if we could have some kind of a robust explanation from the Minister as to why specifically health and safety is included in this clause, I think everyone in the Committee would rest easy.

Baroness Donaghy: My Lords, I should be clear that I do not support the Government's intention—I still think it is their intention—to reduce facility time in the public services in principle. It is a matter for employer and employee to agree between them. Even the claims of cost saving in the Civil Service which were made in the last debate made no attempt to produce a cost-benefit analysis, which includes the undoubted benefits of facility time to the employer. The attempt to aggregate all facility time, including that of health and safety representatives and union learning reps, is cynical. The Government will decide what are "unacceptable inefficiencies" in the system and what is,

"poor value for money for the taxpayer".

One wonders how objective that will be. It is to be hoped that the benefits, including staff satisfaction, improved health and safety and learning, will also be taken into account.

It is clear, as has already been said, that those employers with the best health and safety record welcome and support union safety representatives. Workplaces with union safety representatives have half the serious injury rate compared to those without. They also have lower rates of occupational illness and disease. The 100,000 health and safety representatives also save the economy millions of pounds and help to develop a positive safety culture in organisations and the reporting of injuries, and risk-awareness.

I will give two examples of health and safety partnership between employers and UNISON, my former union. In 2015, over 1,000 employees took part in a high-quality dementia awareness training in conjunction with the Open University in a range of workplaces. More partnership work is planned with the Open University around mental health awareness and autism awareness. While days lost through strike action amounted to 0.8 million, those lost through injuries or illnesses caused by work were 29.2 million—more than half because of "stress, depression or anxiety", according to the CIPD. I am not trying to claim that

[Baroness Donaghy]
health and safety representatives in most of the public services face the same physical hazards as, say, the construction industry. However, promoting well-being at work leads to huge savings for the employer. No attempt has been made by the Government to assess the benefits of this work.

A recent report by the CIPD, *Growing the Health and Well-Being Agenda*, reveals that the average cost of sickness absence alone is £554 per employee per year. This is the tip of the iceberg, as it does not cover the "indirect costs" of ill health,

"such as lost productivity, impaired customer service and lower employee morale".

If you compare that cost of £554 per employee with the estimated cost of the apprenticeship levy and the national living wage at approximately £483 per person it illustrates the importance of well-being strategies and the link with day-to-day management.

I turn to union learning reps, because I have an amendment in the same group. It is important to place on record the important work undertaken by union learning representatives and their involvement in lifelong learning. A recent report by Exeter University also documented the significant added value which employers and individuals derive from projects provided by the Union Learning Fund. The report found that each £1 invested from the fund generates a total economic return of £9.15. The authors of the research estimate that £5.75 of that return goes to individuals in the form of improved prospects of employment and higher wages and £3.40 to employers, resulting from the greater productivity of a better skilled workforce—less output lost as a result of working time taken off to engage in learning.

I will give an example of other partnership deals, first, with Stoke Mandeville Hospital and local learning agreements with Sodexo and Carillion. One member, Louise, said of her own experience:

I left school at the age of 14 with no qualifications as I never sat my GCSE – I was a very rebellious teenager! … I took an NVQ2 admin course at college … I started working for the council in July 2009 … and was fortunate to work with UNISON ULRs [union learning reps], who encouraged me to do my level two adult literacy and numeracy in 2010" … I became lead ULR in January 2014 and began the digital champion project with the help of branch, ULF and UnionLearn funding, which is still going strong … By November 2015, I was already looking for my next learning mountain to conquer and I start an Institute of Leadership and Management leadership and management qualification this month".

Louise went on to say that it was the investment of time by the union learning reps at the beginning which helped her life improve, and of course I pay tribute to her own commitment and dedication to lifelong learning. The investment of time in lifelong learning pays enormous dividends for our society, and nothing should be done to inhibit the work of union learning reps, which a cap on facility time will almost certainly do.

Lord Monks (Lab): My Lords, I want to underline one point: British health and safety standards are the bedrock of European health and safety standards. The Single European Act—a great achievement of the Conservative Government at the time—allowed standards for health and safety to be set across Europe. I know that noble Lords opposite are delighted that the working time directive falls under this heading, and a lot of other things fall under it too. It demonstrated that if we had good health and safety regulations and other countries were brought into line with our standards, that would be in the interests of Britain. We raised standards across the European Union. There are not too many areas in the labour market where we have done that—in many areas we have tried to reduce them—but in health and safety we are top of the league.

Therefore, I hope that anything that the Government do in this area will continue the traditions of previous Conservative Governments, distinguished representatives of whom are sitting on the Benches opposite, and maintain high health and safety standards. We cut them at our peril.

Baroness Neville-Rolfe: My Lords, these amendments all seek to limit the information published under our transparency regulations by excluding certain types of trade union representative. I start by agreeing with the noble Baronesses, Lady Hayter and Lady Donaghy, about what health and safety and union learning representatives do for their organisations. The debate that we had about the dangers in the NHS, about heavy equipment and about many other areas showed how important health and safety is. Of course, there are duties on employers as well. If you sit on a public body or on a company board, you take these matters very seriously in this country, and that is a good thing. As my noble friend Lord Deben said, we have a strong record, although we always need to keep working at it. He gave examples of where trade union reps are very helpful in enforcing the detail of health and safety, which is so important. As the noble Lord, Lord Monks, said, we have taken our fine traditions in this area to Europe, and that has been important as well.

I also commend the work that the TUC and Unionlearn do right across the public and private sectors in working with adults who lack basic skills in numeracy and literacy, including peer support from union learning representatives.

Those sentiments do not jar with what we are proposing. I say in response to the noble Lord, Lord McKenzie of Luton, an employer must allow union representatives as much paid time off work as is necessary or reasonable to perform their statutory functions and duties, and we are not proposing to change this rule. We simply want to ensure—

Lord McKenzie of Luton: If there is no proposal to change the rule, why not take union reps out of Clause 13, even if there is a wish to leave them in Clause 12 on information gathering?

Baroness Neville-Rolfe: The answer, which I suppose relates mainly to Clause 12, is that we want to ensure that the time that union representatives collectively spend on union duties and activities during working hours, at taxpayers' expense, is justifiable and accountable and represents value for money. Clause 12 enables Ministers to make regulations requiring specified public sector employers to publish information relating to facility time for those representatives.

Equally, if the reserve powers in Clause 13 were ever required, they should logically apply to all types of facility time, whatever legislation the rights are granted under and whatever category they fall into in the public sector. In a sense, no area is more immune to attracting inefficient or unaccountable spend than any other type of facility time. Where facility time is found to be at an acceptable level and adds value to the organisation, we expect it to continue, as I have already said. The way that I see it is that the benefits of transparency and accountability do not vary according to the type of work undertaken by, or designation of, a union representative engaged on facility time.

Lord Deben: Where one found a public service in which the amount of time spent on health and safety was manifestly below what would normally be expected, would not the fact that you had these figures enable people to complain about that, pointing out that this would be dangerous and that the situation ought to be improved?

Baroness Neville-Rolfe: My noble friend makes a very fair point. Transparency will show where money is being spent, and sometimes too little is spent as well as too much.

7.45 pm

Lord Harris of Haringey: Are the Government planning to have a provision that not only sets a cap but sets a floor?

Baroness Neville-Rolfe: That is not the current proposal.

Amendment 87 would require employers to publish an estimate of the cost savings and value of facility time taken under the Health and Safety at Work etc. Act 1974. That would be significantly burdensome for public sector employers to calculate. It would be very much a subjective calculation, and we have already been round this circuit. Should public sector employers believe that they can estimate the information suggested by these amendments, then they may do so, but it would not seem reasonable to require every public sector employer to make this calculation.

Finally, I am very grateful to the noble Baroness, Lady Donaghy, for her interesting comments. I agree with much of what she said about the importance of tackling illness at work, about the days that can be lost through illness, which is bad for productivity and growth, and about what can be achieved by focusing on health and well-being. However, I do not think that that affects what I have said on these amendments and I ask the noble Baroness to withdraw her amendment.

Baroness Hayter of Kentish Town: I thank the Minister and am grateful for the contributions to this debate. The problem is that what the noble Lord, Lord Deben, said flies in the face of what the Government have said. As I said in the debate on the previous group, they stated that the whole idea of this provision is to promote transparency so as to encourage employers to moderate the amount of money spent on facility time. That is the aim. It is not to increase the amount spent; it is to moderate and reduce it. It is impossible to see Clause 12 without looking at Clause 13. Clause 12 is the way into Clause 13. We will come to Clause 13 after the next debate and will have very serious questions to ask about how on earth the man in Whitehall who knows best can lay down a maximum amount of time that can be spent by a health and safety or learning rep in Newcastle working in a care home or whatever. It is beyond belief that that will happen.

Sadly, the point of this transparency is not to show how well these things are being done; it is an introduction to moderating the amount of time available to health and safety and learning reps, and it is a lead-in to the ability to cap that time under Clause 13. We will come back to make that point when we reach Clause 13 later this evening, because we are extremely worried about safety reps being caught by any cap on the amount of time that they can spend on that activity. For the moment, I beg leave to withdraw the amendment.

Amendment 79 withdrawn.

Amendments 80 and 80A not moved.

House resumed. Committee to begin again not before 8.49 pm.

Middle East

Question for Short Debate

7.49 pm

Asked by ***Lord Grade of Yarmouth***

To ask Her Majesty's Government what steps they are taking to increase understanding of the Middle East.

Lord Grade of Yarmouth (Con): My Lords, I first of all thank all noble Lords who have put their name down to speak. I am sorry that the time is so short, but I will thank them all now and hope that that is reciprocated, which might save noble Lords a few precious seconds on their allocated two minutes.

At the outset, let me declare my interest: I am Jewish and I support the right of the State of Israel to live at peace. However, that does not mean that I believe that the country's Governments are beyond criticism; nor do I believe that any critic of Israeli policy is automatically anti-Semitic. That having been said, what I hope this short debate will concentrate on is how we might promote better understanding of one of the most contentious issues of our time.

Let me start, topically, with freedom of speech. Just yesterday, the noble Baroness, Lady Deech, who is in her place this evening, and other noble Lords spoke with eloquence and passion on the intimidating environment in our scholarly communities which is suppressing constructive discussion on the Middle East. The vicious approach to debate, or rather to the stifling of debate, taken by some—for example, those who violently disrupted an Israeli speaker at King's College, London, last month—does nothing to foster greater understanding of the Middle East in the UK; quite the contrary. The KCL Action Palestine society, which spearheaded the disruption of KCL's Israel society event, is a committed supporter of the boycott, divestment and sanctions movement. The BDS movement continually smears the only democratic state in the

[Lord Grade of Yarmouth]
region by comparing Israel to the apartheid South African regime of yesteryear. This is as intellectually bankrupt as it is dishonest: it is almost like comparing BDS to the National Socialist Party in pre-war Germany. Let us be clear that the overarching aim of this particular movement is to quash constructive dialogue and end any hope of a viable two-state solution.

To achieve its ends, in recent years BDS has engineered votes to boycott Israel at some of our top universities, which really should know better. In recent months, students at the School of Oriental and African Studies voted overwhelmingly to boycott Israel, and only last week the co-chair of the Oxford University Labour Club, Alex Chalmers, while lamenting that much of the student left has,

"some kind of problem with Jews",

resigned in the light of the club's decision to support Israel Apartheid Week at the university this week.

Elsewhere, the movement has been particularly successful in galvanising support for BDS against Israel in the UK's influential culture and entertainment sectors, culminating in a letter last year signed by 1,000 artists indicating support for a boycott of Israel. Interestingly, Professor Stephen Hawking publicly boycotted one academic event in Israel. It is perhaps worth noting that his extraordinary speech-generation device's most important component is a silicon chip that was designed in Israel. A leading commentator writing about the professor's decision asked whether the solution to this problem would be for Professor Hawking to boycott himself.

While advocacy for supporting boycotts represents a disturbing trend in any sector, the prominence and success of the movement in areas which should thrive on free expression is particularly distressing. Last year, more than 300 professors committed themselves to boycotting Israel. Campuses should be at the forefront of charting a way towards the peaceful resolution of the Israeli-Palestinian conflict, not spaces to further entrench differences and incite hostility and, dare I say it, bigotry.

Parliament is at the heart of the academic issue. There is a blatant double standard here, which we as legislators have not addressed. There is evidence that we permit the funding of some educational departments by authoritarian states with abhorrent track records on human rights and free expression, yet UK institutions are somehow at the forefront of calls to ban Israeli academics and students on the basis of their nationality and, probably, their religion. The connection between the funding of universities by vehemently anti-Israel regimes, the constraining of free expression and referenda to ban Israelis must be exposed. While we in this place advocate free expression and a two-state solution, elsewhere, we permit the clandestine manipulation of research and teaching on the Middle East to the opposite effect.

Let me now, at last, be more positive. I was especially pleased to learn just last week of the Government's follow-through on their commitment to prevent public authorities, such as local councils and universities, boycotting products from Israel. The statement by Cabinet Office Minister Matt Hancock in Israel was welcome news for all those who cherish free speech.

I am also encouraged to see Israel's linkages with Britain grow with unabated rapidity in recent years. In science and technology, one of the UK's leading country priorities is Israel. The development of the UK Israel Tech Hub, the Britain Israel Research and Academic Exchange Partnership, and a top-level UK-Israel Life Sciences Council bring together millions of pounds in funding and some of the world's brightest minds to collaborate on a number of fronts, including heart disease prevention, regenerative stem cell research and battling multiple sclerosis. UK-Israel partnerships are currently producing world-leading innovations in nanotechnology, agriscience, neuroscience and many other specialist subjects.

In the real commercial world, away from some of the bigoted posturing of academe, trade between Israel and Britain is supporting much-needed manufacturing jobs here at home. For example, Rolls Royce has recently won a contract to supply jet engines to Israel's state airline, El Al—El Al, by the way, is the only airline for which you do not buy a ticket but give a donation. Perhaps some of those academics who parade their prejudices without any sense of responsibility would like to see what the employees of Rolls Royce might say to them about working with Israel. Business and trade is flourishing between Israel and Britain. In the past 10 years, bilateral trade has increased by 60% to over £3 billion per annum. As many as 300 Israeli companies operate in the UK, and it remains a principal destination for capital and market growth opportunities for Israeli entrepreneurs.

Crucially, in the arts sector, last year we celebrated 20 years of the British Israeli Arts Training Scheme. Funded by the British Council and the Government of Israel's Ministry of Foreign Affairs and Ministry of Culture and Sport, the programme provides advice and short-term grants, as well as longer-term programmes.

Fostering connections between Palestinians and Israelis and between Britain and Israel is laying fertile ground from which peace may one day grow. It is in this endeavour that government can be a leading champion. Most important of all, in my view, in the search for peace in the Middle East are the many unreported collaborations where Jews and Arabs are working together on the ground. The Valley of Peace initiative promotes economic co-operation between Israel, Jordan and the Palestinians based in the Arava valley. Regional economic collaborations like this are critically important, as an economically viable Palestine is a necessary condition for a peaceful resolution. I could also highlight the Israeli-Palestinian Science Organization, which facilitates co-operation, dialogue and interaction between Israeli and Palestinian scholars and scientists. Initiatives such as these are where grass-roots activists and professional leaders are doing the lion's share of the work to increase understanding and work towards peace.

However, I feel that in order for us to create a society where co-existence can truly thrive, we need to focus on those who will be the future leaders: the children. How can Israelis and Arabs find common ground if they cannot talk to each other? In Israel, Jewish and Arab children attend separate schools, which creates space for fear, stereotypes and inequalities

to grow. These children, who might even be neighbours, grow up in two parallel worlds that rarely interact. In order to change this reality, parents and community members in Be'er Sheva have played an active role in developing a future based on equality and respect for their children and their community through the founding of the Hagar Association, Jewish-Arab Education for Equality, an organisation dedicated to creating a shared society and co-existence between Jewish and Arab residents of Israel's Negev. It is a centre for joint community initiatives which are completely bilingual in Hebrew and Arabic. There are sport activities that encourage Israeli and Arab children to aspire to be the next Lionel Messi.

We need understanding and discussion, and I hope that this debate will encourage that more than boycotts.

Lord Ashton of Hyde (Con): My Lords, as we have very little time, I remind noble Lords that we have only two minutes for Back-Bench speeches. So I urge—indeed, beg—noble Lords to try to stick to the time limit.

8 pm

Lord Anderson of Swansea (Lab): My Lords, as in a Bond film, two minutes and counting. Who can be against greater understanding of the Middle East? I adopt much of what the noble Lord has said about BDS, about the foolishness of certain academics and, of course, about the remarkable achievements of Israel in science. But I offer some reflections of caution. Ignorance of the Middle East must be seen in the context of a general lack of interest in international affairs and a greater parochialism in this country. Therefore, one might ask: why single out the Middle East? One might argue that certain other regions have more impact on our national interest—for example, the assertive Russia and, indeed, China.

What story will the Government tell about the Middle East? There are competing narratives about Israel and Palestine. Experts will differ. We were wholly naive, of course, about the Arab spring. Who is the target for any government initiative? Is it the general public or specific opinion formers like parliamentarians?

Finally, our democracy is rightly suspicious of government initiatives on information. The Government cannot force the press or, indeed, television to take on particular issues. Coverage of Parliament today is reduced to humorous sketches, and newspapers cut the number of their foreign correspondents. The noble Lord has made some very good points, but if it were only so that we could have greater understanding. He has very laudable aims, and I agree with so much of what he says about Israel. But, alas, I fear that it will be a great task to increase public understanding.

8.02 pm

Lord Palmer of Childs Hill (LD): My Lords, the question put by the noble Lord, Lord Grade, is how to increase understanding of the Middle East. I am just back from an all-party Peers' visit to Israel and the West Bank. We met Prime Minister Netanyahu and President Rivlin, who were far more positive than we had been led to believe. Does the Minister believe that the Israelis are prepared to come to the negotiating table without preconditions?

We also went to Ramallah to lunch with leading Palestinians. I must say that our meeting with them was profoundly disappointing, to the extent that they ended by blaming the British for the lack of a Palestinian state, ignoring completely the fact that prior to 1967 it was well within the powers of Jordan and Egypt, who respectively controlled the West Bank and Gaza, to have created a state of Palestine when there were no Israeli settlers in those areas. Can the Minister say whether the UK Government are making efforts to move the Palestinians out of past gripes and to think positively about what is achievable, and also ask them whether they will come to the negotiating table without preconditions?

We received a frightening presentation on the radicalisation of Palestinian youth in schools and in sport. It must say something when Palestinian sporting events are named after so-called martyrs who killed Israelis. Have the UK Government any views on how to stop this education of hate?

We also visited the town of Sderot and the moshav Netiv HaAsara, right on the border with Gaza. The people there live in and out of bomb shelters, which has saved lives but has caused great trauma particularly for the kids, who know of no life without shelters and safe rooms at home and in school. Have the UK Government views on why this life of trauma receives so little publicity in this country?

8.04 pm

Baroness Deech (CB): My Lords, to my mind, this is a debate centring on disinformation, the deliberate spreading of inaccurate information in order to cover up the truth or to mislead public opinion. Our main sources of information about the Middle East are the media and teaching at universities. Journalists are exceptionally brave purveyors of information, but to a large extent they can go only where it is safe and they can send accurate dispatches only from that region where permitted to do so. Scores of journalists have died or been imprisoned there, and their reports are censored by the majority of countries in the Middle East, without the reader necessarily knowing.

Reporting from the area is bedevilled by the failure to use the right words—for example, not saying the word "terrorist"—and consequent downplaying of the violence. There is disproportionate coverage of Israel, and nothing is ever reported about the Palestinians' way of life or their diaspora, save for victimhood. Opinion is disguised as news—for example, Tim Willcox of the BBC, at a *Charlie Hebdo* rally, saying to a Jewish demonstrator:

> "Many critics of Israel's policy would suggest that the Palestinians suffer hugely at Jewish hands as well".

There is a lack of context; there has never been an East Jerusalem, except during the Jordanian occupation period of 1948-67. There is selective omission—for example, the headlines proclaiming that a Palestinian has been killed, when in fact he was brought down after murdering Israeli civilians in the street. That is why it is so important that complaints about the media inaccuracies are handled by independent arbiters, and the BBC has to reform its complaints system.

Our universities have accepted money from various repressive Arab regimes—money directed almost exclusively at teaching Middle Eastern studies and

[Baroness Deech]
putting in place curricula and professors subscribing to that point of view. An example is the Islamic Centre at Oxford, which has received £75 million from Saudi Arabia and other such regimes. The same is true of nearly every professorial post in this subject. I hope that the Minister will announce an inquiry into the foreign funding of our universities and that university donations are to be made public.

8.06 pm

Lord Empey (UUP): My Lords, Captain Boycott, of course, had his debut in Ireland. The House will be aware that that was not a successful outcome; neither will this present arrangement, as the noble Lord, Lord Grade, indicated. In the western powers, we have an unmitigated and impeccable record of failure to understand the Middle East. We do not get it, not from the 19th century, not the 20th century and not even today. We have supported one dictatorship after another, we have supported regimes that would disgrace anybody, and yet we find ourselves here today; even as recently as after Gulf War 1, we encouraged the Marsh Arabs—remember them?—to stand against Saddam. Then what did we do? We sat back and did nothing, and they were slaughtered, their lands were drained and they were impoverished. But have we learned from that? No. We are doing the same thing again with Assad's people. We said to them that Assad would be finished in a few weeks or months. We encouraged them to rebel. What are we doing now? We are sitting back and watching Putin and Assad slaughter them.

In terms of understanding and spreading understanding, our own Government and the western powers do not have a clue, and yet we are meddling. We have a potentially nightmarish situation with the Turks and the Russians. With all that hardware flying around, sooner or later something is going to go wrong. We do not understand it. We do not have a coherent, justifiable, morally based policy in that area at all. If the noble Lord, Lord Grade, has done nothing else tonight but raise this subject, I sincerely hope that we will go back to basics and start to relearn what we should have learnt many years ago.

8.08 pm

Lord Patten (Con): The lightning conductor and fulcrum of Middle Eastern misunderstanding since the late 1940s has been the state of Israel with its polyglot and talented population. Understanding the Middle East today, almost 70 years on, must begin at home in the United Kingdom, which has a particular historical role as the colonial power in Palestine during the run-up to the creation of Israel in 1948. We have not managed so far, despite best efforts, to be at all successful in eradicating anti-Semitism at home in the United Kingdom and thus cannot be sure of our standing in getting greater understanding of Israel, which feels under deadly threat just as some Palestinians feel the same.

Only this month we had, as my noble friend Lord Grade said in his notable speech, seen a particularly nasty outbreak of anti-Semitism among the members of one particular political club in Oxford, its co-chairman resigning as he thought some of its members had "poisonous" attitudes made intolerant statements and had,

"some kind of problem with Jews".

That 70 years on these attitudes prevail in what should be a bastion of liberalism and tolerance is completely shameful, so robust action must be taken where and when reason is missing. I thus congratulate very warmly the Government on their stand against local authorities who now wish to boycott Israeli goods as their own little contribution to Middle Eastern understanding—nowhere else, just Israeli goods. I want my local authority to deal with flood prevention and potholes rather than developing its own foreign policy in direct contravention of the rules of the World Trade Organization with the sole aim of undermining and delegitimising one state and one state only in the Middle East—the state of Israel.

I say all that not as a Jew but as a Roman Catholic. There are a lot of my lot in Jerusalem and I want them to stay there. I am extremely grateful to the Government of Israel for protecting them and for making it possible for Roman Catholics and other Christians to be in Jerusalem and not to be cleansed and cleared out, as they have been in so many other parts of the Middle East.

8.10 pm

Lord Stone of Blackheath (Lab): The noble Lord, Lord Grade, is right. Peace will come only when individuals on all sides understand the narrative of the other side and open their hearts to their suffering. This is the route to peace between Palestinians and Israelis and here it is in seven stages in two minutes. First, Israel accepts the Palestinian belief that the 1948 declaration of the state of Israel was a Nakba—a disaster—and that the region is their homeland and they want consideration of the right to return. The Palestinians accept that the Jews believe that from biblical times the whole area was their homeland. Yes, the settler issue needs settling. Having understood this historical context and agreeing that they cannot live together comfortably as one state, they agree a confederation of two sovereign states—the state of Israel and the state of Palestine; one homeland, two states.

Secondly, we now have the best international lawyers agreeing to help both sides work on a constitution of the two states. Israel already has a constitutional agreement. Palestine needs one. Also, jointly, they create an overall constitution for the new confederation.

Thirdly, security experts on both sides decide how the separate countries run their own military and police force and how, in addition, there will be a joint military and policing authority working together over the two states.

Fourthly, on trade and investment, and finance and currency, there is already a team of Palestinians, Israelis and investors across the world who have been working on a project called Breaking the Impasse, pledging billions of dollars to invest in the region, particularly in the new Palestinian state, once there is peace.

Fifthly, on the holy sites, we have spoken to rabbis, bishops and Imams about the theocracy of the region and they will work together as they preach, with compassion and within their own golden rule.

Sixthly, the Arab peace initiative, in 2002, was an all-in-one, take-it-or-leave-it offer, and Israel did not respond. A team is now working on a phased implementation of the API. In this way, 22 Arab countries would support the project.

Seventhly and finally, the media, acting responsibly, do not talk up war and killing, but report on the process described here in informed, even-handed, compassionate and positive terms. There we have it. One homeland, two states and peace, in two minutes. I ask the Minister if Her Majesty's Government might consider convening a meeting of leaders and experts with whom we are working from all sides, in each of these seven fields to try to develop this concept.

8.13 pm

Baroness Coussins (CB): My Lords, language is the key to understanding different cultures, so the importance of Arabic and other Middle Eastern languages is obvious. Arabic is the first language of nearly 300 million people, the majority Muslim. A further billion Muslims are not native speakers, but engage with Arabic as the language of the Koran. Its relevance to the UK is cultural, economic and security-related. About 2 million Muslims live here and the next generation needs at least some linguistic and cultural understanding of the Arab and Muslim worlds, and to start young before stereotypes and prejudices take root.

English as a filter can mislead. Many early reports of the Egyptian revolution in 2011 relied on articulate, English-speaking protesters, which suggested that the society was dominated by secular liberals, until Islamist election victories showed otherwise. The right sort of Arabic is important too. After 9/11, the US trained many soldiers in Egyptian Arabic, but then sent them to Iraq. What is right for diplomacy will not be right for religious texts, which will be different again from a regional dialect for the purposes of military operations.

In the UK, many Muslim children attend mosque school and learn the classical Arabic of the Koran. If only they could also learn modern standard Arabic at their mainstream school alongside non-Muslim pupils. Language is a gateway to cultural understanding and hostility is largely bred through ignorance. But only six state schools teach Arabic on the timetable and only 16 of our 130 universities. Proficiency takes time, and three or four years from scratch at university will not produce the level of expertise that we need to assist UK policy on the Middle East. In addition, 15% of British employers want staff with Arabic and an understanding of Arab business behaviour. We need a long-term strategy covering all ages and stages of education. Will the Government work with schools and HE to develop this?

8.15 pm

The Lord Bishop of Worcester: My Lords, the noble Lord, Lord Empey, drew attention to our consistent lack of understanding of the Middle East. In the brief time available to me, I should like to highlight one area of that lack of understanding—the religious dimension. What concerns me is the lack of religious literacy in our society even among opinion formers and decision-makers. By religious literacy I mean, as his grace the most reverend Primate the Archbishop of Canterbury put it recently, not just propositional knowledge but emotional intelligence that enables us to understand the place of faith in other people's lives. Only with that sort of knowledge will we understand the ideological drivers to discord and violence that poison life in the Middle East, and not just between Israelis and Palestinians. How many understand the disenfranchisement and disenchantment felt in Sunni heartlands, for example?

As religion becomes more and more central to questions of peace in our world, religious literacy in this country is decreasing and religious education is in a pretty poor state. I commend initiatives like that of the most reverend Primate the Archbishop of Canterbury, who has engaged consistently with the Al-Azhar University in Cairo to promote understanding between people of faith. What plans do the Government have to promote religious literacy so that it reaches all parts of our society, not least all parts of the Foreign and Commonwealth Office?

We have the expertise necessary; witness the long-standing and excellent interfaith programme of the Faculty of Divinity at Cambridge University or the impressive work of the Woolf Institute in the same university. I suggest that deep religious literacy is a fundamental precursor to understanding the Middle East and more crucial still to winning over the hearts and minds of those committed to violence.

8.17 pm

Lord Risby (Con): My Lords, my noble friend Lord Hague, when he was appointed shadow Foreign Secretary, forecasted that the Middle East would be the epicentre of the world's problems in the future. It was certainly an understatement. But more latterly, I am pleased that this country has restored relationships with the Gulf states—which were previously ignored—participated in the Iran nuclear process and welcomed President al-Sisi to London inter alia. We as a country have a unique and exceptional understanding of the region.

Very recently, the Cabinet Office Minister, Matthew Hancock, was in Israel, where he launched a most welcome cybersecurity engagement. Of course Israel's expertise in this area is unparalleled. As my noble friend Lord Grade observed, he made a clear commitment that public authorities here would be banned from boycotts, which again is most welcome news. All this strengthens our bilateral relationship. However, according to the United Nations, more than 400 Palestinians were displaced in the first six weeks of this year because of Israeli demolitions. There have been horrific attacks on Israeli citizens and counter-attacks by Israeli armed forces. It is a tense and dire situation, but with all the horrors across the region, all eyes have moved away from the Israel/Palestine conflict.

But it is all too circular. As long as illegal settlements are being constructed, Mahmoud Abbas has no credibility to negotiate or accept the open offer by the Israeli Government, and that continues to raise tensions. The problem will fester, but surely this is precisely the time for a bold initiative to break the impasse, as inevitably it will return on the radar screen as a focus of concern. Given that in so many respects we have such an excellent relationship with Israel and are committed generously to a two-state solution, surely this is the

[LORD RISBY]
moment for the British Government to try to promote actively such a dialogue. We do not need any information or analysis from the BBC, the *Economist* or anyone else. We have skilled diplomats to do this for us. I hope that my noble friend the Minister will agree.

8.19 pm

Lord Livermore (Lab): My Lords, I wish to use the short time available to argue for a better understanding of Israel. This task is urgent because we see now a disturbing resurgence of anti-Zionism that is bordering on the anti-Semitic, particularly, I regret to say, in sections of the left in British politics. Israel is not of course above criticism. It is right that where necessary we should be critical of Israeli policy, conduct and behaviour. But too often this legitimate criticism of specific actions taken by Israel obscures the reality of Israel. When this reality is not heard, it creates a space for those with uglier motivations to build support for grotesque analogies between Israel and apartheid South Africa or even Nazi Germany.

I fear that on the left today what is in jeopardy is support not just for the conduct of Israel but for the concept of Israel. We see senior figures praising as friends those who are committed to the violent destruction of the Jewish homeland. Indeed, we now have the perverse situation where people who consider themselves to be progressive oppose Israel in the belief that they are standing up for liberal values and human rights, but in doing so side with totalitarian Islamist regimes that abuse human rights and prohibit basic liberties.

I believe that it is the duty of progressives to stop the slide from opposition to specific policies of Israel towards opposition to the very existence of Israel. I want us to make the progressive case for a country where women have the right to vote, dress as they wish and say what they wish in a region where, too often, they are segregated and subjugated; for a country that is committed to the free practice of religion for all in a region where religious minorities are frequently suppressed and persecuted; for a country where gay people are not discriminated against, tortured, detained or executed, as they are almost everywhere else in the region; and for a country with a free press, freedom of expression, an independent judiciary and strong trade unions, all lacking in almost all neighbouring countries. There is nothing progressive about siding with those who oppose the very values that we as a society strive to represent, and there is nothing progressive about seeking to extinguish a beacon of democracy, modernity and pluralism in the Middle East.

8.21 pm

Baroness Nicholson of Winterbourne (LD): My Lords, developing relationships in the Middle East, as the noble Lord, Lord Grade, knows only too well, depends almost 100% on building relationships. I serve as trade envoy for Iraq, and in that context perhaps I may thank the Minister, the noble Lord, Lord Maude of Horsham, who is on the Government Front Bench for this debate, for his tremendous work in supporting all of us in the trade envoy network. I have benefited dramatically from his support and hard work and from the way in which he has built up the network. Indeed, three noble Lords who are speaking in this short debate focusing on the Middle East can bear evidence to what I say. We know that it is all to do with personal relationships.

Perhaps I may draw your Lordships' attention most particularly to a comment made by my kinsman, the noble Lord, Lord Luce, when he declared in his debate a week ago that the BBC World Service and the British Council are outstanding in communicating our values to the world. It is our values that we communicate when we discuss and collaborate with colleagues and friends all over the Middle East, and it is those values that they commend and benefit from; they are what they want. Nowhere better can we look than at the British Council to see how that can be done. I pay tremendous tribute to the retiring director-general of the British Council, Sir Martin Davidson, who did a magnificent job. His successor, Ciarán Devane, has just taken over.

I am very glad that the Foreign Office has managed to retain the budget of the British Council, but I tell the Minister, as he knows well, that this is not nearly enough. The British Council has a unique outreach in teaching English and Arabic, and in understanding. It is fighting extremism in a very soft and gentle way. It is one of the big architects of peace, not just in the Middle East. Somehow, it has been devastatingly underfunded in recent years. It works not just in the Middle East but here in London. At the recent Syria conference I even found some Bromley schools representing the British Council and communicating with Syrian refugees in Lebanon. That is the British Council's strength globally.

8.24 pm

Lord Bew (CB): My Lords, I declare an interest as chairman of the Anglo Israel Association, in which position I am proud to say I follow on from the noble Lord, Lord Anderson of Swansea, who spoke earlier.

I will address the aftermath of Cabinet Office Minister Matthew Hancock's remarks in Israel on the subject of boycott. Obviously I welcome his remarks, but we are at the beginning of a difficult phase. The Government must accept that there will be a reaction. It is necessary not simply to assert, as the Cabinet Minister did quite rightly in Israel, that trade between Israel and the United Kingdom is at record high levels, but to realise that there will be a strong challenge. It can be dealt with only by insisting that the Government cannot be complicit in the acceptance of a version of the history and conflict of the Middle East that stigmatises one side only.

That is the fundamental problem with the boycott movement. In many respects you can say that it has been singularly ineffectual, but none the less it is based on the idea that it is possible to proceed on the basis that the root of the problem lies with one side of the debate only. For example, I say on behalf of the Anglo Israel Association that I would be very unhappy—I think the noble Lord, Lord Anderson, would be equally unhappy—if any of the groups we encourage to go to Israel were set on a programme where they met only Israelis and not Palestinian speakers, who would put different points of view. That is fundamental to the approach that we adopt. It is very important that we

argue, in the struggle for a two-state solution, that any approach based on the stigmatisation of one group is unacceptable. Make no mistake: in the aftermath of the recent statements made in Israel by Matthew Hancock, we are in for an ideological struggle.

8.26 pm

Baroness Morris of Bolton (Con): My Lords, almost 36 years ago the Conservative Middle East Council came into being. I declare my interests as set out in the register. It was founded after the then nine members of the European Economic Community signed the Venice declaration, which recognised the close ties between Europe and the Middle East, and called for self-determination for Palestinians and for the active participation of Europe in the peace process. Then, Margaret Thatcher thought it imperative that the Conservative Party understood the Middle East and its importance to Britain. Now, with the urgent challenges and complexities facing the region, that understanding amongst parliamentarians of all parties is more important than ever. So it was enormously encouraging during last week's recess to see delegations from all parties and both Houses visiting countries across the region.

At the beginning of last week I was in Qatar with the all-party group and then I travelled on to Kuwait in my role as trade envoy to meet a delegation of British businesses. I, too, pay a great tribute to my noble friend the Minister. We went to Kuwait to meet up with Ministers and to attend Kuwait's first international trade show. Trade, as my noble friend Lord Grade so rightly said, is vital because people who are economically active want to live in peace. In both countries we received a warm welcome and participated in refreshingly open and frank conversations, which would have confounded much of the prejudice against the Arab world. The women in both countries can vote, hold office and dress as they like.

That is why the Prime Minister's key objectives of engagement and commitment to the region, with more visits, more support and more relationship-building, is vital, because it is only when you see it with your own eyes that you truly understand not only the challenges facing the region, but the profound friendships and infinite opportunities that we enjoy with this enchanting part of the world.

8.28 pm

Lord Beecham (Lab): My Lords, I declare my interest as vice-chairman of the New Israel Fund UK and as a former chairman of the Oxford University Labour Club.

When I attended the annual NIF human rights award dinner last November, I was privileged to hear the son of Yitzhak Rabin calling for greater efforts to promote peace, and award winners, who included an Arab-Israeli woman who worked with, among others, Russian Jewish immigrants and a Jewish man who worked with Israeli Arabs who was opposed to the price tag extremists. It occurred to me that, sadly, it was virtually impossible to conceive of any other country in the region for which a human rights award ceremony could be held. The sad loss of life in Gaza has been exceeded more than a hundredfold in Syria, where more people have been displaced than the total population of Israel.

I am not an admirer of the present Israeli Government, though as someone with a particular interest in the position of Israel's Arab citizens I welcome its overdue decision substantially to invest in improving their conditions and opportunities—a view shared by an Arab member of the Knesset I recently met. For all its faults, Israel's democracy is still functioning.

I have asked more than one advocate of BDS whether they were aware that the judge who presided over the trial of a former president of Israel was an Israeli Arab, and whether they could conceive of a Jewish judge performing a similar role in any of Israel's neighbours.

Protest is legitimate, but I reject the moral relativism of those who are loud in their condemnation of Israel but whose protests against the brutality of Hamas, Hezbollah, Assad and his Russian and Iranian backers, or the dictatorial regimes in Saudi Arabia or the Gulf whom we supply with weapons, are rarely audible or visible to the naked eye.

Peace across the region requires a commitment to democracy and human rights in every country and for people of every faith and nationality. The UK's foreign policy, including its arms sales, must reflect that commitment.

8.30 pm

Lord Sacks (CB): My Lords, I thank the noble Lord, Lord Grade, for introducing this debate, to which I wish to add one observation. Democracy is not achieved merely by giving everyone the vote. Freedom is not achieved merely by removing a tyrant. They require a sustained effort of education and a balanced supply of information. Without these, democracy can descend into mob rule and from there to a new tyranny, exactly as Plato thought it would. The results of the Arab spring, four years on, are tragic testimony to this truth.

Democratic freedom is sustained by media that take it as their task to present all sides of a complex issue, and by universities that understand the importance of academic freedom, which means giving a respectful hearing to views different from your own. Today, these values are being undermined. The internet and social media mean that people can go through life without encountering views with which they disagree. Some universities have allowed students effectively to ban the presentation of views with which they disagree. A soundbite culture makes it hard for people to understand the complexities of political conflict.

The human mind finds it hard to handle moral and political complexity and can easily avoid it by dividing the world into the good guys and the demons, and concluding that all you have to do to solve a problem is to first silence, then eliminate, the bad guys. Often in the past they were called the Jews. Today, they are called the State of Israel. That is not good for the future of freedom in the Middle East. I urge the Government to do all they can to ensure that our institutions of education and information honour the principle that justice involves audi alteram partem, which means, let the other side be heard as well.

8.32 pm

Lord Rotherwick (Con): My Lords, I was fortunate to visit Israel last week, where the Israeli Government expressed to our group of Peers a wish for peace and

[LORD ROTHERWICK]
economic prosperity for themselves and their neighbours. The Palestine Liberation Organization gave a somewhat different and muddled view.

During the British mandate of 1920 to 1947, there was much unrest between the Palestinian Arabs and the Jews. Attacks on, and massacres of, Jews occurred in 1921 and 1929. In 1936, during the Great Arab Revolt, thousands of Jews were attacked and killed; some fled the area. Indeed, in 1939—77 years ago—my father served in what was then Palestine with his regiment, the Royal Scots Greys. I discussed our trip with a great friend who has worked as an NGO in Israel and he asked me, "Is it surprising that the Gaza people behave in the way they do when they have an apartheid or separation wall?". "Look at the facts", I said. In 2002, during the second intifada, around 52 Israelis were killed or wounded each week by Palestinian terrorism. After the completion of the security barrier, less than one Israeli was killed or injured a week. Even this figure would not be accepted in the UK. Today, during the recent wave of violence, the odd rocket still keeps falling on Sderot near the Gaza Strip, and Israelis are regularly stabbed, but the suicide and pipe bombers are defeated by the security barriers. These barriers are saving thousands of lives.

Many attempts at a permanent, peaceful solution have been made. Israel has signed up to most but the Palestinians have not. It seems to me, as a Christian, that the Palestinians have no intention of committing to any agreement unless they can have total control of all of Israel.

8.34 pm

Baroness Morgan of Ely (Lab): My Lords, I thank the noble Lord, Lord Grade, for his initiative in securing this debate. Although he was keen to focus on the media and academic interpretation of the Middle East—or, more specifically on the Israel-Palestine conflict—I would like to focus on what the FCO could do to improve its understanding of the wider Middle East. However, I concur that we need to ensure an open debate in our academic institutions, while underlining Labour's commitment to a two-state solution.

First, we must acknowledge that, on the whole, we are not doing very well in relation to our understanding and intervention in the Middle East, as underlined by the noble Lord, Lord Empey. I agree with the right reverend Prelate the Bishop of Worcester that an understanding of religion is central to moving on here. However, we should note, for example, that not a single diplomat recorded on paper their opposition to the Iraq war. Politicians do need to take some advice from the experts. We got Iraq wrong; we made a mess of Libya; Afghanistan is still in trouble; at one point we were determined to see the removal of Assad from Syria but now it is not so clear. We need to have an honest debate about what is going wrong.

The Environment Minister, Rory Stewart, who previously served as an FCO civil servant in the region, has suggested that the entire structure of the Foreign Office—the incentives, the method of promotion, the recruitment—does not help us to ever acknowledge failure, as is the case with our intervention in the Middle East. He went further and suggested that these institutions are designed to trap us in these countries. Does the Minister agree with that analysis? We need to develop in-depth linguistic and cultural expertise. Can the Minister confirm whether more than three out of 16 Middle East ambassadors can speak Arabic, as was the case just a few years ago? Our diplomats need to spend longer in the region and they need to get out and about, but the safety rules with which FCO officials must comply are so stringent that the chances of gaining on-the-ground intelligence reports are extremely limited. Does the Minister have any ideas on how we can marry safety rules with intelligence gathering?

Finally, we must ask who is leading in the Middle East. Is it the FCO or the military? Do we have the balance right? To take an example, the fact is that we spent 13 times more on bombing Libya than we did on rebuilding the country after the conflict. We cannot disengage from the Middle East but we can make better and more informed decisions about what intervention looks like. It does not always have to be militarily led, our diplomats need better training and understanding, and they need to acknowledge when they are wrong—along, of course, with us, the politicians.

8.37 pm

The Minister of State, Department for Business, Innovation and Skills & Foreign and Commonwealth Office (Lord Maude of Horsham) (Con): My Lords, this is by way of being my Dispatch Box swan song, unless I am summoned back here some time before 11 March. It is a great privilege to have the responsibility of winding up this debate. It has been sober, serious and thoughtful and my admiration for this House has been amplified by the skill with which noble Lords have managed to compress their wisdom, insight and knowledge into two minutes each. That is hugely to the benefit of the cause. I am grateful to my noble friend Lord Grade for introducing this debate. The debate has overwhelmingly focused on Israel and Palestine, whereas the Middle East is an arena fraught with conflict and difficulty. Threats such as Daesh have recently emerged, but there is a huge number of issues which confront the stability of the world more widely.

My noble friend Lord Grade makes the case for more understanding. What drives understanding and builds confidence and friendship can be the role played by trade and investment. When people trade with each other, when they invest in each other's jurisdictions, it builds confidence and understanding; people know each other better. We should never underestimate the benefit that flows from that. My noble friend Lord Grade focused on freedom of speech, as did the noble Baroness, Lady Deech, the noble Lords, Lord Livermore and Lord Sacks, and my noble friend Lord Patten. All talked about the need for balance, respect, historical truths and to be even-handed, and the need not to take refuge in ancient grievances and distortions of history. Our higher education institutions—our universities—should be places where liberalism in its best sense and the respect for hearing other points of view are absolutely entrenched. I think all noble Lords who have taken part in this debate have understood that and reflected the importance of anyone who goes to university being willing to accept that they are places where open, honest debate must be allowed free rein.

Whether on campus or elsewhere, British Jews, like all communities, must be able to live their lives free from fear of verbal or physical attack. The best way to tackle anti-Semitism is through effective implementation of strong legislation against racial and religious discrimination. Of course, it is important that people in the Middle East itself should be able to be taught together; that will build understanding as well.

A number of noble Lords talked about boycotts and the BDS movement and commented on the announcement made recently in Israel by my successor as Minister for the Cabinet Office, Matthew Hancock. It is important that the BDS movement should be understood as something negative, for the organisations that seek to implement it in terms of the value for money that they get in spending public money for their institutions, and for the bad message or signal that it sends. Of course, where there is an agreed, legally established sanctions regime, that must be respected, but these kinds of movements are damaging. They divide people, reduce understanding, impede the peace process and make it more difficult to achieve the negotiated two-state solution that we all want to see.

The Middle East peace process is something that many noble Lords focused on in the course of this debate. The noble Lords, Lord Palmer, Lord Empey, Lord Stone and Lord Beecham, and many others have talked about the need for the Middle East process to get a new momentum. I cannot possibly do justice to all the points that have been raised but it is absolutely essential that we ultimately see a negotiated settlement leading to a safe and secure Israel living alongside a viable and sovereign Palestinian state. Of course there will need to be agreed land swaps; of course Jerusalem will need to be a shared capital of both states, with a just and agreed settlement for refugees. We know how much frustration there is; noble Lords on all sides of the Chamber have referred to the lack of progress. We know that the current situation is unacceptable and unsustainable. A just and lasting resolution that ends the occupation and delivers peace for both Israelis and Palestinians is long overdue.

We will continue to press both Israel and the Palestinians strongly on the need to refrain from actions that make peace more difficult. There is the danger that the longer it goes on, the more difficult it will be for that resolution to take place. We believe, obviously, that peace will come only through negotiations between the parties. Britain on its own cannot possibly make that happen.

We have a history in the region. It has not always been an easy one but it has been one of deep involvement. The noble Lord, Lord Empey, referred to our failure to understand. I think that in many ways we do understand it better than some others and we are more even-handed than some others. We can play a role in interpretation and mediation and we should not flinch from doing that. We will always want to judge any proposal on the basis of whether we believe it supports progress towards the two-state solution. International action, involving regional players, the European Union and the quartet, can play a role in supporting progress but we will always assess any moves on the basis of whether they support that progress towards the two-state solution.

A number of noble Lords, including my noble friends Lord Risby and Lord Rotherwick, referred to the upsurge of violence across the region since October. We should be clear that we condemn all acts of violence and we urge all sides to work together to promote peace. We want to see an end to these terrorist attacks. Every terrorist attack sets back the peace process and we want the authorities to take appropriate action against those who commit these crimes—and they are crimes. We call upon Hamas and the other militant groups to end the rocket fire and other attacks on Israel. We condemn the use of racist and hateful language. We deplore incitement on both sides of the conflict, including any comments that could stir up hatred and prejudice in a region that has already seen far too much of both.

To conclude, it is clear—if it was not clear before, this debate has made it absolutely clear—that the region faces numerous and serious challenges, for which there are no quick fixes. We must maintain our resolve to seek solutions. I go back to where I started: increasing trade and investment can enhance understanding and mutual interest and can play a part in leading to the conditions in which a sustainable, permanent solution can be found. Obviously, that change needs to be led principally by the region. I pay tribute to the work done by a number of noble Lords. The noble Baroness, Lady Nicholson, referred to the fact that three participants in this debate act as trade envoys to the Middle East region. The work they do in promoting trade and investment is important and I thank them for their commitment.

Supporting political solutions to end conflict and supporting those whose lives have been shattered by it; tackling the threat of extremism through building countries' resilience and supporting the development of pluralistic and inclusive societies, which offer the people of the Middle East genuine hope and opportunity; and building on peace and stability to increase our mutual prosperity—these are ways, to go back to my noble friend Lord Grade's contention at the outset, of increasing our understanding of the region. In addition, by what we do to promote mutual understanding between the communities and countries of the Middle East, we can hope to play our part, and it can be an important part, in securing a sustainable and permanent solution.

Trade Union Bill

Committee (3rd Day) (Continued)

8.49 pm

Amendment 81

Moved by ***Baroness Hayter of Kentish Town***

81: Clause 12, page 9, leave out lines 9 to 12

Baroness Hayter of Kentish Town (Lab): My Lords, Amendment 81 deals with which organisations will be caught by the facility time provisions, as the Bill is extremely wide on this at present. According to new Section 172A(9) in Clause 12, it is any public authority, including an organisation which,

"has functions of a public nature and is funded wholly or partly from public funds".

[Baroness Hayter of Kentish Town]
That does not just cover the police, health service, universities, schools, libraries, the BBC, dental surgeries and GP surgeries—doctors, nurses, receptionists and everyone—but potentially, despite the letter received yesterday from the Minister, social care and retirement homes, hospices, charities, bus companies and, on this definition, the Royal Mail and the Post Office, despite what was said earlier today. This is what the Bill says. It will include some 21,000 bodies, according to table 11 of the impact assessment, of which all but 1,000 are schools.

How are these bodies to be defined? Yesterday, the Minister wrote to my noble friend Lord Mendelsohn saying that, despite the wording of the Bill, the facility time requirements will cover only bodies defined by the ONS as being public bodies. This would therefore include housing associations, the BBC, schools, universities, the Pensions Regulator, NEST and Magnox. The latter is already caught by the exit cap in the Enterprise Bill, so now not only will employees lose some of their exit payments but they could lose the right to lay and union representation in negotiating redundancy plans and terms.

If the Government really do mean ONS-defined public authorities, how does that tally with the current wording of the Bill? It says:

"The regulations may provide, in relation to a body … that is not a public authority but has functions of a public nature and is funded wholly or partly from public funds, that the person is to be treated as a public authority for the purposes of subsection (2)".

That does not mean just ONS-defined bodies but specifically those which are not a public authority but which have functions "of a public nature" and are funded "wholly or partly" from public funds. That is clearly ONS-plus.

I am afraid the Minister's response on 2 February to the noble Baroness, Lady Fookes, the chair of the Delegated Powers and Regulatory Reform Committee—that,

"it has never been the Government's intention to capture private or voluntary sector providers of contracted out public services or charitable organisations"—

simply does not hold water. That is not what the clause says, despite the Government having had plenty of time to amend the wording. Hence we have tabled Amendment 82A to be absolutely certain that charities cannot be included. Amendment 82B, in the name of my noble friend Lord Stevenson, would exclude cultural bodies, which are anyway only partially publicly funded.

In her letter, the Minister confirmed that free schools and academies—which, yes, were meant to have been promised the freedom to run themselves—would be included in this new bit of government regulation. Local authority and maintained schools of course are already required, as we heard earlier, to publish information on facility time, so I will ask her the same question that my noble friend Lord Watson asked. Can we therefore assume that the Government are now proposing that the proprietors of academies and free schools will be subject to the same level of disclosure and scrutiny, not just on facility time but on other areas of expenditure? If not, it is extraordinary that the only thing they would have to go public on is the amount of facility time, rather than any other decision they take. Or is that the only bit of transparency that the Government are going to ask academies to face?

Amendment 81 would remove new Section 172A(9), which is undoubtedly a catch-all and a dangerous power which has no place in the Bill, extending as it does government interference into independent, non-government organisations. Amendment 82 makes a similar point because, by including in the Bill organisations which are only partly funded by public money, the Government are laying extra rules on the activities of independent, privately funded bodies with their own governance structures. That goes well beyond public bodies or public authorities in the sense of local authorities and health authorities.

Indeed, we are mystified as to what organisations the provision covers and what "partly" means. Does it mean a grant covering perhaps 5% of an organisation's funding, even if it is not defined as a public authority by the ONS? Perhaps the Minister could detail some examples of what organisations might be covered which are only partially funded by public money. It is unacceptable for the Government potentially to cap facility time in a body that they only partially fund, so we seek to exclude those bodies altogether.

The important question is: what on earth does this cover? It is no good just having some earlier minor amendments from the Government that mean that we can now put different categories into statutory instruments, when we are not clear whether the definition is just ONS-defined public authorities, public authorities or what it says in the Bill—any other organisation carrying out a public function which receives some or all of its money from public funds. I beg to move.

The Deputy Chairman of Committees (Baroness Fookes) (Con): My Lords, I point out that if Amendment 81 were to be agreed, I could not call Amendments 82 to 82B inclusive by reason of pre-emption.

Lord Balfe (Con): I, too, think that we need a slightly better definition of what is a body that is not a public authority that is "wholly or partly" publicly funded. The example that comes to mind is my local Tesco, which includes a pharmacy and a post office, both of which are of course in receipt of some public money. I wonder whether my noble friend will be revisiting her past by asking the local Tesco to conform. Seriously, this is a reach beyond where I think we should be going. It is becoming all encompassing, and I would like us to row back from going quite as far as the clause appears to be taking us.

Lord Tyler (LD): I speak as a member of the Delegated Powers and Regulatory Reform Committee. This is precisely the sort of area which is inappropriate to be left to regulation, at least without clear guidance to your Lordships' House at this stage.

Does the Minister appreciate that she is establishing a precedent here if she allows this sort of public authority creep to extend this far? The noble Baroness, Lady Hayter, mentioned transparency. I am particularly concerned at present at the way in which the Government are rowing back on freedom of information. If the

Government are not to be totally inconsistent in this area, they will have to extend freedom of information to these organisations.

You cannot treat an organisation that happens to be taking public money as automatically becoming a public authority in the terms of new subsection (9) without recognising the implications. If you are asking it in one respect to be treated as a public authority in terms of facility time, why not in terms of freedom of information? I beg the Minister to recognise the point that has just been made from behind her that this is a dangerous area to leave to secondary legislation. We are already in some difficulty with the relationship between primary and secondary legislation; this is precisely the sort of area which should not be left to secondary legislation. I hope very much that she will be able to give your Lordships a clear assurance that new subsection (9) is to be reviewed in toto, not just tweaked, otherwise it establishes a considerable new extension of the designation of public authority. If they are not prepared to do that, I warn the Government that, on many sides of this House, we will see this as an opportunity to extend the requirements of freedom of information legislation.

9 pm

Lord Lea of Crondall (Lab): My Lords, it is getting late in the evening and I do not know whether we will get anywhere near the debate on check-off, but there are some similarities and some dissimilarities from this sort of question in a later clause. The Minister sent us a very courteous letter today about listing the bodies which will definitely be classed as within the public-sector umbrella on check-off. We have two timescales in which to give more thought to this; one is the longer-term timescale, naturally, between now and Report. Between now and Thursday, the go-ahead for some standardisation of which body is in which category in the public sector raises the question of terminology. The point has been made already, but I would like to put it slightly differently —that this is a game not of definitions but of looking at the Government's criteria for their own judgment of which bodies they want to fall within scope.

Lord Balfe: The noble Lord mentioned a letter, and I understand that a letter has been placed in the Library. Could the Minister follow the good example of the noble Lord, Lord Bates? When he circulated letters, he did so directly to all the people who were involved in the debate on the Immigration Bill. When I discover that letters are in the Library, it is not exactly much help. But I thank the noble Lord for mentioning it.

Lord Lea of Crondall: I suspect that I got one because I have an amendment down in the group on check-off—I do not know. These procedural points arise, and I suspect that the problem of reaching beyond the public sector is one that really cannot be looked at without any crossover, with regard to facilities. On the other hand, it would be much better to have the debate on check-off on Thursday; then we can all have time to think about the jigsaw between them.

Lord Stevenson of Balmacara (Lab): My Lords, I shall speak briefly to Amendment 82B, in my name. I am following the general trend of the comments here that this is really a debate around the drafting implications of what is in the Bill and in the correspondence that has been circulated. I want to do that in relation to my amendment with respect to the arts and cultural sector, because considerable concern is being expressed in those bodies about how the Bill would bite.

I came thinking that I would speak in terms of what I did not want to see in the Bill, and I was rather taken by the comments of the noble Lord, Lord Tyler, that the Bill is rather short of detail compared to where he thought it ought to be in terms of regulatory power.

I fundamentally disagree with him, but I know what he is trying to say. I think we are both saying the same thing, which is that whether it is here or in secondary legislation, this drafting does not work. If its unintended consequences are going to include bodies which by any stretch of the imagination should not be included, clearly we hope that there will be some consideration between now and later stages of the Bill.

My amendment is specifically about art and cultural bodies. I have already said that I am puzzled by why it is necessary to have any powers in the Bill that apply to them. This information could be obtained quite easily using existing powers in legislation because all the bodies that we are talking about presumably receive funds—in the case of arts and culture, largely from DCMS. Therefore, as the Minister is in DCMS she is in a very strong position to suggest that the next time the grant-in-aid letters are issued, they include a phrase which simply says, "Please will you also let us have by return the quantity of time spent by your trade union officials on facility work?". I received similar letters in my capacity as director of BFI when I was serving there, and I know exactly how easy it is for Ministers to do that with a slip of the pen. I do not quite see the point of having to do it through cumbersome primary legislation or even extensive secondary legislation. It seems to me and to others who have spoken in this debate that these clauses are otiose—simply a rather crude grandstanding game.

I put it to the Minister that, as she must know from her role as a patron of the arts, an attender of many functions and from talking to the management—she often tweets about how she is going around the country enjoying our cultural splendours—that these bodies do not operate a classical management operation. I am not in any sense intending to be sceptical but the nature of cultural management is not the same as it might be at a major supermarket chain. We are talking about collaborative bodies working together for entertainment and professional productions which are not going to be subject to quite the same arrangements. Of course there will be health and safety and educational work by trade union officials, but the actual nature of the operations are very different across the theatres, galleries, museums and creative sector that we all want to support. In that sense, I wonder whether the Minister could find some time to meet us to talk about this sector because I know she shares an interest in it. I think there could be ways in which we could reach an accommodation on the matter she wants to see made more transparent. I do not think it is necessary to do it in the Bill. If she would agree to such a meeting I would be very grateful.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe) (Con): I thank noble Lords for these amendments, which allow me to try to clarify on which public sector employers the regulations could impose publication requirements by virtue of Clause 12. As I mentioned, the purpose of the government amendment we agreed earlier was to provide the clarification the amendments seek. The government amendments I outlined I think go further than the concerns reflected in these opposition amendments. They also respond to the concerns voiced in the other place regarding the importance of public authorities knowing whether they will be required to publish information. I had hoped that sending a letter would help, but I am not sure it has, so let me try to respond. I say in advance that I will look at the issue again in the light of the comments that have been made this evening and the point that the noble Lord, Lord Tyler, made about delegated powers.

The first point is that since the debate in the other place the facility time regulations will now apply only to public sector employers with 50 or more employees to make sure that any burden is not placed on small employers. That will include smaller heritage institutions. In fact, this will reduce the number of employers who will be affected from the estimate which we set out in the impact assessment for this clause. Whereas some categories of public sector employer have a set definition, such as government departments, which are listed clearly on GOV.UK, there are public sector employers for which there is no such readily available definition or list.

The noble Baroness, Lady Hayter, asked who will be included in the list of public-sector employers. When determining which bodies will be required to publish information, regard was given to those bodies, as I think she said, classified by the Office for National Statistics as public sector bodies within the national accounts. We ran into the ONS, of course, when we debated the Enterprise Bill in relation to the Green Investment Bank.

We propose to include within the regulations those bodies that are funded wholly or partially from public funds, that provide functions or services of a public nature, that have more than 49 employees, as I have said, and that have at least one trade union official. I agree that,

"funded wholly or partially from public funds",

probably needs to be the subject of my review.

An example is the definition of "public authority", which I understand has a commonly understood meaning, but where the precise boundaries are is not clear. There are employers whose functions are of a public nature, and which are publicly funded, that may not be considered to be a public authority for other purposes. In that respect I cannot agree with the proposed use of the term in Amendment 81, as it would not capture the appropriate range of public-sector employees or provide the clarity that we need.

Amendment 82 expresses the concern that regulations would be applied to, for example, private companies receiving a small amount of public funding and, in turn, the reserve power to cap facility time in Clause 13 could then be applied to those organisations. That is not and never has been our intention, as my letter explained.

The noble Baroness, Lady Hayter, queried the position of academies. Academies are established in different ways from other publicly funded schools, but they are still publicly funded so it is right that they are accountable for how the money is spent.

Lord Kerslake (CB): I would like to raise a question that is relevant to this debate. In doing so, I declare my interest as chair of Peabody. Peabody is a housing association that the Minister will know was classified, along with other housing associations, as a public body. The Government have rightly recognised that that was inappropriate and wrong, and are taking steps to deregulate for housing associations in order to take them away from being classified as public bodies.

I am unclear where that leaves this regulation. Would we see them as "in", and therefore regarded for the purposes of this Bill as public bodies? In another Bill that is being taken through at the same time, we are trying very hard to get them out of public-body status.

Baroness Neville-Rolfe: I thank the noble Lord for his comments. As part of my checking up on this, I will look at that point, but my recollection is that, as he says, we are trying to get housing associations out of being public bodies, so they should not be covered for the reasons that I have already stated.

Baroness Hayter of Kentish Town: They could still be covered. New Clause 172A(9) talked about something that is not a public body by whatever definition but nevertheless is,

"funded wholly or partly from public funds",

and,

"has functions of a public nature".

If, as an ALMO, the housing association has taken over social housing and receives public funds, the housing association could escape. However, if that happens—of course we still do not know for sure that they will come out from the ONS, but let us assume that they do—it still fulfils the other criterion, so the housing association would still be covered.

Baroness Neville-Rolfe: It is late and I do not want to dispute the noble Baroness's very clear logic. As I have already said, I will go away and look at this point and write. I thank the noble Lord, Lord Balfe, for his suggestion about letters. The letter was certainly meant to be sent to people who would be interested, and I can only apologise that it did not get to him today. I shall ensure that he sees it and that the follow-up letter that I have promised reaches all the appropriate nooks and crannies of the Chamber.

Amendments 82A and 82B seek to exclude charities and cultural and artistic institutions. Unfortunately, these are not terms that have definitively clear boundaries. Some publicly funded schools may have charitable status. This does not mean that the facility time of their employees is not being funded by the taxpayer, in just the same way as a school that is not classified as a charity. Equally, the Government fund institutions such

as those that the noble Lord, Lord Stevenson, mentioned —arts institutions, the Tate, the British Library and the British Museum—and we are proud to do so. In such bigger examples, facility time is of course funded by the taxpayer as it is in the NHS or the Civil Service. It should therefore be held to the same level of accountability. However, I am quite happy to have a meeting to discuss it to see if we can find a way through that, although I need to establish the broad principles, as I sought to do in my letter.

Amendments 81, 82, 82A and 82B all reflect similar concerns as to the sort of employers who could be covered by the regulations. I hope that noble Lords will be reassured that we are trying to capture those employers who should be accountable and leave out those who should not. However, I am conscious that we will need to come back to this, I hope in a letter or in a meeting. In the mean time, I ask the noble Baroness to withdraw the amendment.

9.15 pm

Baroness Hayter of Kentish Town: I thank the Minister and I hope that I heard correctly that she will review this, particularly new subsection (9). At the moment it is an absolute muddle. All that the amendments she put forward earlier do is pick and mix, but again, it would come only by statutory instrument—we would not be able to say whether we agreed with that. However, pharmacies would be covered under this, because the more than 50 employees would not be in each particular pharmacy but would be conglomerate, and they undoubtedly get public money. I still do not understand how a retail post office would not be covered by this. I am delighted that public schools might be covered; they are charities and get some public money in odd areas—this could be the first bit of regulation on that. The Minister said that it was not the intention to cover private companies and charities, but that is what the Bill says. A retirement home which is almost wholly funded by public money, albeit with top-up from some fee-paying residents, and which is completely independent, either run by a social care company or by a charity, would be covered by this. Therefore it is important that we have absolute clarity. I will be very happy to have a dialogue before Report; ideally, the Government could perhaps bring forward their own amendment to meet the points we are raising. However, for the moment, I beg leave to withdraw the amendment.

Amendment 81 withdrawn.

Amendments 82 to 87 not moved.

Clause 12, as amended, agreed.

Amendment 87A not moved.

Amendment 87B

Moved by ***Lord Kerslake***

87B: After Clause 12, insert the following new Clause—

"Review: cost of facility time

(1) The Secretary of State must conduct a review of the cost of facility time to public sector employers.

(2) The review shall include but not be limited to—

(a) recording and publishing time taken for facilities provided by union representatives;

(b) the amount of money used for facility time, including paid time away from work;

(c) the amount of hours union representatives spend carrying out representative work outside of their working hours;

(d) the percentage of money spent on facility time taken up with different trade union activities;

(e) whether the facility time provided is sufficient for union representatives to perform their functions;

(f) the benefits which may accrue to the taxpayer and wider public from supporting the work of trade union representatives in the public sector;

(g) a comprehensive cost-benefit analysis of the role of union representatives in the public sector;

(h) the costs to a public sector employer of monitoring and publishing data on facility time; and

(i) analysis and comparisons of employment tribunal cases, dismissal rates, voluntary exit rates and workplace related injuries within unionised and non-unionised workplaces."

Lord Kerslake: I will say a few very brief words; I apologise for detaining the House. I tabled this amendment because I feel that we are conducting the debate about the Bill in a fact-free and certainly analysis-free zone. It felt to me that before action is taken we should have a proper analysis, not just of the costs but the benefits of trade union facilities, if nothing else to properly inform decisions that might be taken under delegated powers. It is very hard to see how government can make those decisions without this proper analysis of costs, benefits and their relationship. That is why I have suggested what I hope is a reasonable amendment, that a piece of work be conducted by the Government on this issue. I beg to move.

Lord Harris of Haringey (Lab): My Lords, this is a helpful and useful amendment. It would be even more helpful had the noble Lord, Lord Kerslake, suggested that Clause 13—and possibly Clause 12 as well—could not come into force until such time as this review had been completed. The whole issue about having proper information and a proper background to what we are talking about here is clearly critical. The noble Lord, Lord King, who has just rejoined us, and the noble Lord, Lord Deben, spoke movingly about the importance of facility time, both as regards health and safety but more generally as regards good industrial relations. The implication from their speeches was that it was fine to have transparency on those issues but, by implication, it would be wrong to try to impose a limit if an agreement had been reached locally.

The information proposed in the amendment, which would probably be of the nature of academic research, would provide your Lordships with a proper background against which to consider these matters. Obviously it might take longer to compile than between now and Report, or indeed between now and Third Reading, but if these two clauses were removed from the Bill, the Government could bring them back in a year's time having had the benefit of this research.

Baroness Neville-Rolfe: This amendment, which I received late last night from the noble Lord, Lord Kerslake, seeks to require a Secretary of State to conduct a

[Baroness Neville-Rolfe]
review of facility time, involving the collection of a significant amount of additional data and estimation. The list is long and includes a cost-benefit analysis of facility time, as well as data around tribunal cases, dismissal cases, voluntary exit rates and workplace injuries. Some of the information in the noble Lord's list would be available through the transparency requirements proposed in the Bill but much of it would not. My concern is that the collection of this long list of data would create a significant burden on both employers and government departments.

Of course, the Government would consider several of these elements—for example, the total cost and total hours used for facility time—if the reserve powers were ever required, although it is by no means certain that they ever would be. We would consider all relevant—

Lord Mendelsohn (Lab): I am grateful to the Minister for giving way. This is an interesting point and it is important to look at the costs and benefits. Great store has been set on the benefits attributable to opening up transparency in this measure. The impact assessment talks about the figures, which have been much paraded, relating to the benefits for the Civil Service of transparency on facilities. It explicitly says:

"While it is not possible to prove how much of this fall of 0.19 percentage points of the Civil Service pay bill … is directly attributable to the increased transparency resulting from reporting time spent, this increased transparency is likely to be a key factor accounting for at least some of the reduction".

If there is no clear evidence that there are significant benefits, I think that that speaks ever more clearly for the point that the noble Lord, Lord Kerslake, makes in his amendment. I do not think that it has been established that there are clear benefits to it.

Baroness Neville-Rolfe: The noble Lord makes a fair point. As I have said, we would consider all relevant factors before using the reserve powers, and our impact assessment addresses some of those. If you are looking to use a reserve power, you obviously look at both sides of the argument.

I have not had time to do much about this amendment and I am not promising a concession but I would be very happy to meet the noble Lord and other interested noble Lords to discuss further the concerns around the amendment. In the mean time, I ask the noble Lord to withdraw the amendment.

Lord Kerslake: I apologise for the lateness in tabling this amendment and therefore for the short amount of time that the Minister has had to consider it. I would be very happy to take up her offer of a meeting to discuss it.

There is indeed a cost attached to the amendment but, for me, it is a cost of good government: when decisions are made on issues of this importance, the information, the facts, the analysis and the benefits should be available. In effect we are going to be taking decisions with only a partial picture of the impact, and what is proposed in the amendment would be a way of properly securing a full picture.

Baroness Neville-Rolfe: I would just add that a lot of the provisions in the Bill reflect clear manifesto commitments. We have sought to make an assessment, although it is not perfect in every respect. I am obviously very happy to debate this matter further—that is what Committee stage is always about—but I think that some of the provisions that we have put forward have merit. You cannot always do every bit of cost-benefit analysis, although everybody in the Committee knows that I am probably keener on that than any other Minister in the Government.

Lord Kerslake: I thank the Minister and beg leave to withdraw the amendment.

Amendment 87B withdrawn.

Clause 13: Reserve powers

Amendment 88

Moved by ***Baroness Hayter of Kentish Town***

88: Clause 13, page 9, line 37, at end insert—

"(2A) No regulation may be made under subsection (1) which has the effect of altering, in respect of any of the matters to which the reserve powers may be directed, any provision of a contract of employment or a collective agreement, or of limiting an employer's discretion as to the contents of contracts of employment or collective agreements to which the employer is a party."

Baroness Hayter of Kentish Town: My Lords, this amendment, tabled in my name and that of my noble friends Lord Mendelsohn and Lord Collins, comes to the crunch that we have been leading up to in our discussions on Clause 12. Clause 13 possibly undermines the rights of working people to be represented at work via a reserve power that allows Ministers—not employers, but government Ministers—to cap the amount of time that union reps can spend on employer-funded trade union work, regardless of the needs of the organisation, existing collective agreements, individual contracts of employment or even the wishes of the employing organisation. So not only does Clause 13 give Ministers a blank cheque, as there is no indication of whether they would cap facility time at one day, 52 days or 104 days a year, but there is no clarity as to what circumstances would give rise to the introduction of this power. Would it be because a general election was coming up? Would it be because a new Secretary of State wanted to burnish their credentials? It is absolutely unclear what would trigger it.

Despite the earlier government amendments, we have no indication of whether if a whole category of employers was to be covered—such as post offices, hospices or care homes—this would involve the Minister making a specific case for each of those sectors. Would the provision be time-limited? Would it be for ever or just to the end of the Parliament? Would it follow any consultation, either with the relevant employers or, indeed, with their trade unions? It would simply allow—and I have to use the word—dictatorial government with a sweep of the pen, given that we are told we must not vote against statutory instruments in this House, to interfere with hundreds of workplaces at the whim of a Minister, limiting lay officials' facilities in an arm's-length or, possibly, independent organisation. I do not think anyone accepts that this will do.

The Equality and Human Rights Commission has considered Clause 13's open-ended powers to make this wide-ranging amendment to primary legislation and said that it could,

"be used to introduce disproportionate interference to freedom of association rights under Article 11",

of the ECHR. It continued:

"The power to impose contractual changes could also amount to an unjustified and disproportionate restriction of the right to respect for possessions under Article 1, Protocol 1".

Imposing these new restrictions on rights for union reps is effectively rewriting collective agreements and contracts of employment which have been voluntarily agreed by unions and employers, and is in contradiction of other legislative rights. It undermines Section 168 of the Trade Union and Labour Relations (Consolidation) Act 1992—I am not sure whether that was one from the noble Lord, Lord King—which allows for learning reps. It also undermines Section 10 of the Employment Relations Act 1999, which gives individuals the right to be accompanied—nearly always, of course, by lay reps—in grievance and disciplinary hearings. Furthermore, it appears to break health and safety duties, as we have heard already, under regulations under Section 2 of the Health and Safety at Work etc. Act 1974.

Clause 13 allows the Government to use as yet unseen secondary legislation to put through restrictions or, indeed, to repeal rights contained in primary legislation. The cap could also conflict with EU law, which protects the rights of health and safety reps to paid time off for their training, as well as their duties, and the rights of trade union reps during consultation on collective redundancies and outsourcing under TUPE rights, and information and consultation rights. Furthermore, as I have said, by introducing such a cap, the Government would be breaking existing voluntary agreements between employers and their workforce. In the case of schools, many local facility agreements have been negotiated on the basis of the Burgundy Book agreement on facilities for reps of recognised teachers' associations. Surely, any proposed changes to facility time agreements, including the funding of them, would have to be the subject of negotiations between the employer and unions. It is really not something for an outside Minister to decide.

9.30 pm

The Joint Committee on Human Rights of the House of Lords and the House of Commons also has serious concerns, noting that the clause would have retrospective effect, although the Secretary of State undertook that any regulations under Clause 13 would apply only prospectively and be a power of last resort. However, neither we nor the Joint Committee know what would trigger the use of such a power of last resort. We do not know how many it would affect or its impact either on employers' costs or on harmonious industrial relations. No case for this power has been made, despite the fanciful figure of more than £100 million a year being saved from reduced facility costs.

In any case, that assumes that the work done by lay reps would somehow suddenly cease or be undertaken by some full-time employees of the trade unions—despite the fact that such extra union officials, hanging around waiting to be called in to deal with every little query and emergency, simply do not exist. So lay reps will still have to do the work; I presume it will just not be labelled as facility time so as not to breach the cap. Disciplined employees will still have the right to be represented; agreements will still need to be negotiated; and there is a legal entitlement to reasonable paid time off work for union reps—unless the Government are out to end every single right of employees, which I did not understand to be their aim. Furthermore, that £100 million figure is based on a Parliamentary Answer by a Minister back in 2011, which estimated—with little supporting evidence—that 0.14% of the annual pay bill in the public sector is spent on facility time. Can the Minister spell out in more detail where exactly the figure came from and what is behind it?

Employers report good working relationships with trade union reps, and there is a clear feeling among employers and unions that the Bill will do little to improve industrial relations. We have already heard that research by the Chartered Institute of Personnel and Development shows that employer relationships with unions are good, and it has therefore urged the Government and organisations to build a better dialogue with their workforce and consider alternative approaches. We have heard from the health service very direct testimony of the value of this. South Tees Hospitals NHS Foundation Trust received an award which involved a senior Royal College of Nursing officer, who was part of the integrated management and proactive care for the vulnerable and elderly team and helped smooth a radical restructure of community services. This happens when there is big restructuring, and it is often union reps on the ground who participate in this. Similarly, University College London Hospitals is worried that elements of the Bill would,

"confine trade unions' ability to engage with us",

and undermine the relationship that it already has with its lay reps. Nottingham University Hospitals NHS Trust said much the same, as did the West Suffolk NHS Foundation Trust. We have already heard about the worries that the Royal College of Nursing has about this provision, and the other sectors that will be covered have all expressed similar views. Why do the Government want a Minister to be able to come in and break existing agreements? On evidence that we do not yet know, what bar would be put in place after which the cap would be introduced, so that suddenly facility time could be cut? The Royal College of Nursing called for Clause 13 to be left out of the Bill.

I will make one rather obvious point, which was made, in a sense, by my noble friend Lord Collins earlier: union members themselves have views on this. It may not be their subs that pay for time off for their reps, but it is nevertheless the members who elect and choose to be represented by these people. If they thought that reps were wasting everyone's time withdrawing from their place of work, often leaving the work to be handled by someone else for no good reason, union members would not be slow to make their views known. It is not in their interests to have union reps supposedly acting on their behalf when in fact they are swinging the lead. This Government seem to have such a low opinion of working people that they ignore the role of fellow workers in how their health, safety, learning or union reps operate. I find that condescending, arrogant but, most of all, mistaken.

[Baroness Hayter of Kentish Town]

No case has been made that facility time needs to be trimmed. No evidence has been submitted that there is a call for this power. The net is drawn extremely wide, but there is no detail, as we said on the earlier group of amendments, as to who will be covered or to the circumstances that would bring in this power. Clause 13 has to go. I beg to move.

Lord Beecham (Lab): My Lords, I will speak to Amendment 90A in my name and that of my noble friend Lord Harris, and to the amendment moved by my noble friend Lady Hayter. I will not reiterate anything in relation to Amendment 90A that I have already referred to in the previous amendments to which I spoke about the position of local authorities, the GLA and the NHS, except to say this. Why are the Government seeking powers to explicitly control one area of local authority expenditure—and by definition a very small percentage, whatever view one takes of it—out of all the functions of local government? What is it that has so concerned the Government that they are taking this quite exceptional course? I cannot see any evidence of such a serious issue. When one thinks of other areas of public policy where things occasionally go wrong, in local government or, indeed, in central government or the health service, where is the equivalent penal exercise that this provision seeks to impose?

Having said that, I revert to the provisions of Clause 13 itself, and I entirely endorse what my noble friend said about the clause. It strikes me as extraordinary that the Government should seek to intervene in this way. The Explanatory Notes, for example, refer to the fact that:

> "The reserve powers may be exercised so as to limit the paid time off taken by … trade union representatives … to a percentage of the representatives' working time. For example, if a public sector employer employs a number of trade union representatives who spend 100% of their working time on facility time, the cap may limit the time spent by such trade union representatives to 50% of the working time".

What criteria would the Government apply in those circumstances? Would it be related to the number of employees involved and the number of trade union representatives? Suppose there is only one trade union representative in a particular place? I referred to the fact that Newcastle schools employed 1.6 people, but it may be one full-time representative. Will the Government say in that situation that only 50% would be permitted for that one person? Or will they say that 50% of the total can be found, but that means that no individual can spend 100% of his time? Two people could spend 50% of their time, or will that not be permitted?

What are the Government so concerned about in this particular area of public policy that they feel they have to take the power to prescribe in such detail as opposed to almost anything else either in the employment field of local government or the policy field? An extraordinary amount of attention is being paid to what, while it is certainly not an unimportant service, is one that still involves few people and a very small amount of money. That is what feeds the suspicion of some of us that the Government are bent on doing more than just ensuring an economical approach to the matter; there is a different agenda here to which Members of the Committee have referred many times today.

I hope the noble Baroness can give us a better clarification of the objectives here and a better reason for interfering in the rights of bodies which, I repeat, are accountable anyway. They are accountable to their electorates and are overseen by audit committees, and very often the local media will be keen to investigate any alleged difficulties. Why is it that Whitehall assumes that it should be prescriptive about the activities of hundreds of local authorities which have as legitimate an electoral mandate, if not more, than those that seek to oppose these restrictions?

Lord Kerslake: My Lords, I shall speak in support of Amendment 90A. If Clause 12 was about transparency, for which I have a great deal of sympathy, Clause 13 is essentially about compulsion—top-down "Whitehall knows best" micro-management. That is what it adds up to. If transparency has the desired effect, which the Government argue it will have, it is difficult to conceive of why there is a need for Clause 13. If this was seen as such an unacceptable expenditure in Sheffield, Doncaster or Brighton, the electorates would be able to make their decisions accordingly.

Let us take first the example we have just heard about from the noble Lord, Lord Beecham. There are arguments in favour of full-time trade union officials and arguments in favour of part-time ones. I have worked in different organisations with different models. What I would never presume to know is which one is right for any particular organisation, and I cannot conceive of circumstances in which the Government would know the right model. The second point I would like to make is that the requirements in relation to facility time would not vary just between organisation and organisation; they will vary in time as well. If a local authority is going through a major restructuring, it is perfectly reasonable—I have done this—to agree to extra time for trade unions in order to enable them to play their part fully in that change. If a cap is introduced, flexibility in the process is taken away.

It is not clear whether Clause 13 will apply to individual public bodies, individual local authorities or groups of local authorities. It seems to allow for all possibilities, so it would be interesting to hear from the Minister which she thinks it would be. But if we are talking about groups of local authorities, you will almost certainly get it wrong in either direction. If the cap is set high then people will not unreasonably take it as being the marker that the Government think is appropriate. If the cap is set too low, you will undermine the effectiveness of negotiations and the proper running of affairs in a local authority. All of this adds up in my mind to an example of centrist government at its very worst and I think that it should be dropped from the Bill. At the very least, local authorities should be given the flexibility to make this decision for themselves. If we believe that they are capable of leading economic development, running social care and being responsible for developing new housing supply, we must surely think that they are capable of deciding what the right level of trade union facilities is for them.

Lord Harris of Haringey: My Lords, we have already spent some time during the course of today's Committee looking at the value of facility time and I do not

intend to rehearse any of those arguments. However, when we were talking about the so-called transparency clause, the Minister told us that this is about a reserve power which she assumed or hoped would never be needed. So the question is this: why are we writing into this Bill now something for which there is so far a complete lack of an evidence base and a complete lack of clarity as regards its extent or how it would be applied? We have no information on how discerning it is. Will the Minister be sitting in her office, deciding whether the time-off arrangements for facility time in the Newcastle parks department should be this number of employees for this number of hours, as opposed to those working on social care in Newcastle, or those who might be doing similar functions in the London Borough of Haringey? How exactly is this supposed to be done? If it is not the Minister, in whom we have absolute faith, how can her officials make those discernment judgments between the different local authorities or organisations concerned?

9.45 pm

The question is: how would this work? How long might it be before Ministers decide that they want to use these reserve powers? If it is the intention not to use them and that the power of transparency will make it work, then we do not need Clause 13 now. We could come back in a year or two when there will perhaps be an evidence base, with more detail as to how exactly it might work.

The fundamental issue is that local government and the Mayor of London are publicly accountable, as my noble friend Lord Beecham said. So Ministers will second-guess the judgment of the locally elected officials who are closer to the implications and practical questions that have to be resolved, because, somehow, Ministers remotely—hundreds of miles away potentially—know best. I thought that the Government believed in localism; they always claim that they do. The principle of local government is that local people elect local councillors to determine and to provide local services, and to do so in the most effective way. As my noble friend Lord Beecham said, there are all sorts of safeguards in place to ensure that that is done efficiently and effectively. This provision will undermine that localism. It will second-guess local officials, local people and local management, who are closer to what is happening, on something for which there is no evidence base. It does not need to be in the Bill now. It can come back if there is evidence, at some stage, of a serious problem, but none of that has been presented.

I understood that this is a Government who believe in evidence-based policy-making. We all understand the process by which manifestos are written; it is not necessarily evidence-based. But as Mario Cuomo argued, you campaign in poetry—I do not think that this is poetry—but govern in prose. Part of governing in prose is that you assess the evidence of the policy you set out and implement it only when it makes sense. This does not make sense.

Lord Balfe: May I add to the general misery of the Minister? This clause really is far too sweeping. Whatever Bill it appears in, to my mind it extends the power of Ministers against the parliamentary officials by a far wider margin than can possibly be justified. The clause contains the words:

"If a Minister of the Crown considers it appropriate to do so".

You can consider all sorts of things "appropriate" and then produce an SI that cannot be voted down in this House. It gives far too much power.

We already gave, in the previous clause, quite extensive powers of publication—probably more than many people would say were necessary, but there are certainly wide powers. The meaning of the clause is now, "If the Minister doesn't like the information they've got, they can then proceed in detail to intervene in any public body". That is just not good and acceptable public administration. I am not speaking now about localism or anything: it is not the way you should run a public administration.

The way the clause develops gives the Minister carte blanche to do virtually anything. They can ensure that,

"in each period specified by the regulations, the percentage of the working time of any relevant union official"—

they can say, "Let's have a list of your union officials"; which ones are relevant?—

"of an employer that is taken as paid facility time does not exceed a percentage".

Is the decision made in Whitehall? The noble Lord has already made the point about Newcastle and the parks department. This intervention is way beyond what is appropriate, acceptable or sensible. If you try to implement the regulations, you will immediately find that there are all sorts of extenuating circumstances. Given the need for publication, public bodies will not just sit down and roll over when the Government come along and say that elected or appointed officials in the health service or in local government cannot run a single unit of staff. This really goes far further than is sensible. I seriously urge the Minister to talk to her friends about withdrawing this unnecessary and, frankly, provocative clause.

Lord Oates (LD): My Lords, I fully agree with every word that the noble Lord, Lord Balfe, said. On reading Clause 13, I became worried about the Conservative Party—probably for the first time in my life—and about what has happened to the people in the Conservative Party, certainly since we were in coalition with them. I remember that they then believed that regulations were in general anathema and they decried state interest. Indeed, they believed in that to such an extent that at an early point in the coalition I remember that Conservative special advisers insisted that we removed a regulation relating to a requirement for children's nightwear to be fire resistant, so appalled were they by the burden of state regulation that that put upon manufacturers. What has happened to that stance and to the belief in localism and pushing power from Whitehall down to towns, cities, schools and hospitals? With every clause in the Bill that we discuss, we see regulation upon regulation and overburdensome bureaucracy upon bureaucracy.

This clause is most extraordinary. The Government's arrogance is breath-taking—a Government who, as the noble Lord, Lord Beecham, pointed out, would assume

[Lord Oates]
to themselves the power to determine these matters in relation to the parks department in Newcastle and to local authorities up and down the land. It is extraordinary that a Minister of the Crown can, according to new subsection (2)(b), make regulations,

"containing any provision that the Minister considers appropriate for one or both of the following purposes".

This includes determining that,

"the working time of any relevant union official of an employer that is taken as paid facility time does not exceed a percentage that is so specified".

It is simply extraordinary that any Government should suggest doing such a thing.

In our previous discussion on Clause 12, the Minister said that the intention of gathering all this information on facility time was not at all in order to use the reserve powers in Clause 13 to cap and restrict it. I have no reason to doubt the Minister's sincerity but I am afraid that the political architects of this Bill in the Treasury—because that is where they are—have no such reticence. That is exactly why this clause is in the Bill, because the whole purpose of the Bill is to stamp down on trade unions and the opposition Labour Party. That is what it is all about. We know that from our time in the coalition because they tried to push this on us at least two or three times at that point.

This sort of clause should be the dream of every bureaucrat and state centralist and the nightmare of every Conservative and democrat. I hope that the Minister and the Government will think again.

Lord MacKenzie of Culkein (Lab): My Lords, given the lateness of the hour, I will not say all the things I was going to. Most of them have already been said, perhaps more expertly than I could. I want to speak about the health service, and about Amendment 90A. I know a little bit about the health service. I started life as a nurse, involved in my local branch. I eventually became a senior official and general secretary of a health service union. Many years ago, in a new district general hospital, where we formed a branch of over 300 members—largely nurses—we were first regarded by management as some sort of devil incarnate. That mood changed very quickly when they realised that they needed staff support to get a transition from the old healthcare into the brand new DGH. Very quickly, long before it became fashionable, one of our branch officials was given facility time. It was not me: I was a theatre nurse and it was not suitable for me to have that time, but I did plenty when I was off duty.

Given my experience over the years, it is difficult to see where the Government are now going with Clause 13. There is no evidence whatever to back up the contention that the taxpayer is lying awake at night worrying about Staff Nurse Smith from Unison or the RCN or Dietician Jones from the British Dietetic Association having some facility time. Sometimes I think that things have not moved on very far. Recently, a nurse told me that she spoke to a manager about her concerns with an issue bordering on bullying. That manager was quite clear. He said, "I do not like clypes". Clypes is not a word in my vocabulary, but I gather it is Lowland Scots vernacular for a teller of tales, a sneak or an informer. Clearly, one manager north of the border has not had the post Mid Staffordshire situation imprinted on his mind. That is why we still need unions and why we need people to undertake union duties: to represent a nurse who is now afraid of repercussions and who will, in all probability, not dare to speak out unsupported again. That is why we need sensible facility time.

The reality is that, in the health service, we all support high-quality patient care, but we need that to be cost effective. We need to find ways to increase productivity and, at the same time, improve outcomes. That is a lot of horses to ride at the same time. Most human resources people working in healthcare would acknowledge that if they are to take staff with them on the road ahead, whatever the future holds for the service, the staff have to be willing and engaged. All the health service unions invest a lot of money in training union stewards and representatives. We invest in quality training in health and safety skills, which is extremely important in the multiple practice environments of hospitals. As we heard a number of times today, we invest in training learning representatives. All of that helps to have a more confident staff.

Does the Minister—or the Government—really think that nurses and other staff representatives to whom we have given high-quality training are sitting around planning strikes and mayhem? Of course the Minister does not believe that. So will she acknowledge what really happens: that staff sides in NHS trusts try very hard to have sensible working relationships with management? One only has to look at the series of reports from the Social Partnership Forum to see what good work goes on. I can commend to her those from Guy's and St Thomas', University Hospital Birmingham NHS Trust and many others, not least those many dealing with the outcomes of the Francis report into Mid Staffordshire. Why do the Government want to damage that? Why do they need to take powers to limit trade union facility time? Is it really going to be a position—as has been suggested—where a Minister looks at figures supplied by a health trust or another employer, about which he or she has no detailed knowledge, and instructs that authority to cap facility time to some fraction of its pay bill? If so, we are going to make life much more difficult for the health service than it needs to be. Research has shown that, far from the costs alleged in the impact assessment, there are actual savings to be made by having union representatives in the workplace.

10 pm

The Royal College of Nursing's recent research mirrors that of the DTI some years ago, showing that where there is union representation there is much lower staff turnover, lower dismissal rates and far fewer industrial tribunals. It is perfectly obvious that that must mean real cost savings to the National Health Service. So I hope the Minister will acknowledge that she will look carefully at that research as well as that produced by ACAS showing how trade union representatives play such an important role in improving workplace morale.

I know from personal experience that facility time, properly agreed between staff, unions and management, leads to productive partnership working. Of course,

in the nature of things there will be disagreements from time to time, but we have to live in the real world. For the NHS, that real world at the moment has a number of very difficult issues, including constrained finance, unresolved issues of workforce planning, issues of student nurse education, continuing pay restraint and, not least, the continuing saga of safe staffing levels on hospital wards.

We have the review by my noble friend Lord Carter of Coles, which has suggested ways to save up to £20 million over the next four years. We have the National Audit Office report complaining about not getting the right staff in the right place at the right time. And so it goes on. It always has gone on; there have always been major problems to be dealt with. But with this particularly troublesome pot bubbling away not very far under the surface, do we really want to do anything to demotivate health service staff any further than they already are?

I say to the Minister with the greatest respect: the Government should leave well alone, particularly in the National Health Service. Leave it to managers and unions to do as they do at present, which is, by and large, to work sensibly and constructively together. Let us drop Clause 13 from the Bill.

Lord King of Bridgwater (Con): My Lords, as I said in the debate on Clause 12, I have my concerns about Clause 13. I am grateful to the noble Baroness, Lady Hayter, and, once again, to the noble Lord, Lord Harris, for making part of the case that I want to make, which is that there are all sorts of reasons why it would be mad to use this power.

The noble Lord, Lord Beecham, made the point very well. We have made it clear in Clause 12 that what we really believe in is transparency. We are not frightened of transparency, and we are not frightened of standing up for what we believe is right in this respect and what we believe is good for union relations. In that circumstance, it would be a defeat for transparency if we found that the powers in Clause 13 needed to be used. But then I think: could I conceive that it could never happen? Those of us who have been around in some of these industrial and other areas know that a relationship that has been established over a long time—perhaps between a chairman and a local trade union—can incite very real criticism when it is in the public domain but people feel incapable of moving on it. It may be in the interests of that organisation, whichever of the publicly funded bodies it may be, for someone to resolve the issue.

What nobody has mentioned is that it is not—if I may say so, with great respect to the noble Lord, Lord Kerslake—about whether Whitehall knows best. It will be, in the end, about whether Parliament knows best. The most important part of this clause is that for a Minister to try to impose this power, he must carry an affirmative order in each House. Just consider yourself as a Minister, deciding whether you will act in some area that will excite all the criticisms so well made from the opposition Benches, and consider why it would be so unwise.

As anyone who has had to deal with the business managers will know—and I am standing not very far away from the Captain of the Gentlemen-at-Arms—the business managers say, "We have more than enough business anyway in both Houses and why on earth do you want to bring this order?". It is not just the Opposition who oppose half the business that the Government or individual Ministers want to bring forward; it is very often the business managers on your own side who say, "We are far too busy. This can't be the most important thing. Can't it be sorted out in any other way?".

I agree with everything that has been said. The noble Lord, Lord Beecham, talked about local government. If you get transparency on this issue in local government, which already exists, as we know, it is not going to be applied against an individual local authority. I cannot see that ever being applied. But there could be another public body that becomes a public embarrassment, where it is known publicly, as we do know, that in certain areas significant public money can be wasted, and then people will turn to the Government and to Parliament and say, "What are you going to do about this? Are you powerless to prevent this situation continuing?".

In those circumstances, I can see a case for Clause 13 but, if I may say so—not terribly helpfully to my noble friend the Minister—I find it completely unreadable. That was always one of the problems with the parliamentary draftsmen. I understand what the point is but somebody ought to have a jolly good look and see whether we can deal with one or two of the points that have been picked out by the Opposition, absolutely rightly—the odd little details where some draftsman has got carried away with what the individual details are. That needs to be looked at. That is a singularly unhelpful comment and will put Report stage back, I expect. There is a case for Clause 13 but, as I say, the chances of it actually being used, for all the reasons that have been given, are pretty minuscule. However, I would not rule out the need for it and on that basis I would support it.

Lord Beecham: Can I take it that the noble Lord is in favour of the House retaining its right to vote on affirmative resolutions?

Lord King of Bridgwater: Yes, that is exactly what Clause 13(13) says.

Lord Kerslake: If we are going to give powers to a Minister for every inconceivable or almost inconceivable circumstance that might just possibly happen, we will give a huge amount of power to Ministers in the future.

Lord King of Bridgwater: I am so sorry, could the noble Lord repeat that comment?

Lord Kerslake: The noble Lord's suggestion is that we should keep this clause in because it is very unlikely that it will ever need to be used, but not impossible. If that is the principle on which we put things into Bills, we will have some very big Bills in the future. Surely if we were in that situation, it would be open to the Government, as has already been said, to come forward with new legislation.

Lord King of Bridgwater: I am afraid that I have to keep my back to the noble Lord; I am not allowed to turn around and address him, but I say to him that absolutely, in these circumstances—and if I may say so, he is a greatly distinguished public servant—this is a very important role for Parliament. Parliament has to pass this and no Minister is going to stand up and look a fool in front of either House by going through the procedure of making the case for what is an exceptional power, which would be exceptionally used in some extreme case. But in the end for the Minister to say, "I'm terribly sorry, it's an outrage, it's an abuse of public money but there is no way we can do anything about it" would be quite unacceptable.

Baroness Neville-Rolfe: My Lords, I know this has been an emotional debate but I believe strongly that the power of sunlight needs to be introduced to facility time in the wider public sector. On the back of important manifesto promises, this and the back-up power that we debated in the previous group of amendments was of course accepted without amendment in the other place, despite the modest increase in regulation they represent. As my noble friend Lord King said, to use the power, we would have to carry an affirmative order in both Houses.

I set out in the debate on the previous clauses the reasons why the Bill introduces requirements on public sector employers to publish information on facility time. It will be for public sector employers, not the Government, to manage the amount of time, if efficiencies exist, having had regard to the information that is published under Clause 12. However, it is only fair to the taxpayer that a reserve power exists should employers choose not to limit facility time to a reasonable amount.

Contrary to much of what we have heard, Clause 13 does not seek to ban facility time. That is a misconception that has been repeated, perhaps outside the Chamber, but it is not our intention. I say on the record that it is very much a power of last resort. Only if publication and the proper monitoring and recording that follow do not achieve the aim of having reasonable levels of facility time will it be necessary to consider the imposition of a cap.

Lord Mendelsohn: I am just troubled by this notion of reasonable time. I have one particular question, although the Minister will probably not be in a position to answer at this stage and may have to go away and look at it. The Sentencing Council's *Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline* establishes a very high level of fines for breaches of it, which apply to the public sector as well. Removing facility time which would remove any health and safety cover which currently exists would put any such offence into the high culpability level. That would engender fines for any organisation with a turnover of over £50 million up to a level of £6 million; for anything over £1 billion, it would be substantially more, now that we have had case law from the Supreme Court. By introducing this power over facility time, have the Government not considered that they are risking a huge amount for other public bodies, and even causing difficulties for Ministers themselves? By imposing restrictions on the health and safety cover or arrangements that have previously been available, are they not changing the terms here? Have the Government taken advice on how this will affect the application of these relatively new sentencing guidelines, and would she consider doing that if she has not already?

Baroness Neville-Rolfe: I will certainly look at the sentencing guidelines. However, we looked at health and safety under the last amendment and noted that health and safety duties applied notwithstanding what we are discussing here.

It is particularly important to monitor the cost of time taken for trade union activities, for which there is no legal right to paid time off work, unlike union duties, for which reasonable paid time off is a statutory right. I think I already said, in response to the noble Lord, Lord Kerslake, that we will look very carefully before using the back-up power. Points were of course made about what cap might be appropriate and indeed the point was made, I think by the noble Lord, Lord Harris, about the lapse of time before the power might be used.

The noble Baroness, Lady Hayter, argued that the cap was open-ended and could interfere, I think, with the freedom of association rights under Article 11. If the need arose to use the reserve power, it would be exercised in a way that took full account of Article 11 and relevant ILO conventions. It is an entirely legitimate aim for the interests of trade unions and their representatives to be balanced against those of taxpayers, who ultimately fund the use of facility time. In addition, regulations under this power can be made subject to exceptions where necessary—for example, we sometimes do that to ensure compliance with EU obligations—and these regulations are subject, as has been said, to affirmative resolution.

The noble Baroness also mentioned the power to impose contractual changes. I think she was concerned about the right to respect for possessions under A1P1. Any impact on existing contractual entitlements will apply only prospectively; that is, from the date when any regulations are brought into force under the clause. We respectfully suggest that A1P1 has no application here. It protects existing possessions; it does not extend to a right to a guaranteed income in future.

The noble Baroness also asked about the impact assessment and the basis of the £100 million figure. As she may know, the figures are based on the Civil Service experience, where these transparency measures reduced the expenditure on facility time to 0.07% of the pay bill from a previous figure of 0.26%. The National Audit Office reports that the annual pay bill for the public sector, excluding the Civil Service, is £153 billion, so a reduction similar to that seen in the Civil Service would provide savings of more than £100 million. Of course, this can only be an estimate, and we are introducing the publication requirement precisely because there is no up-to-date information—I accept the noble Baroness's point—on the cost to the taxpayer of facility time subsidies.

Amendment 90A would remove local authorities in England, the GLA and the NHS from the scope of the reserve powers. More transparency from those bodies has revealed that some local authorities spend twice the percentage of their pay bill on facility time as others,

and where such discrepancies are revealed, taxpayers deserve that, ultimately, there should be a power in place for such spending to be managed.

10.15 pm

Lord Oates: Pursuant to that point, can the Minister tell us, specifically with regard to local authorities, why she believes that it is for the Government in Whitehall to interfere in the decisions made by democratically elected local authorities? As the noble Lord, Lord King, pointed out, if we have transparency, that will presumably bring pressure to bear. It is for local authorities, which are, in my experience, much more responsive than central government, to react to it. On what basis would this extraordinary power be used against a local authority?

Baroness Neville-Rolfe: I agree with the noble Lord that the changes we propose promote transparency and that the power of transparency should lead to good decisions, be it at national or local organisational level. That is common ground. We believe that a back-up power, even if it is never used—I remember debating this very issue in respect of other Bills before the House with those on the Benches opposite—is necessary in this area. It is a power of last resort. It applies to local authorities, where there may be an example of the sort that my noble friend Lord King talked about, in the same way as in other areas.

The situation is similar in the NHS, and I was so glad to hear about the NHS from the noble Lord, Lord MacKenzie of Culkein. It is a public sector employer, so obviously the taxpayer funds facility time. It is the largest employer group in the public sector in the UK. I gather that it is now number five in the world: it has sunk beneath the US and the Chinese military, Walmart and McDonald's. Obviously, it is a very large and important organisation. Like the Royal College of Nursing, we recognise the value of facility time in the NHS and do not for a moment suggest that it is simply a drain on the public purse. We do not seek to ban it, but where inefficiencies are revealed in part of the NHS, for example, the reserve power should be there in the same way as for a school or a local council.

Lord Harris of Haringey: I thought that within the NHS there were all these bodies, such as Monitor, precisely to make sure that things like this work. Why is an additional power needed? While I am interrupting the Minister, why have this Government in a number of other areas said that it is not appropriate for Ministers to be able to intervene? I think, for example—it is the presence of the Government Chief Whip that makes me think of this—of police and crime commissioners, where the very suggestion that the Home Office could do anything to interfere with them was rejected on the basis that they were democratically accountable. Local authorities are democratically accountable, so why have a power in this very narrow area? In case she has forgotten this point, surely there are other bodies in the health service that can intervene, so this power is unnecessary.

Baroness Neville-Rolfe: I know what the noble Lord has said. I think that I have probably said as much as I can on this issue this evening. I shall not seek to weary the House with further detail on the final amendments. The logic is that the cap should apply to all types of facility time, whatever legislation the rights are granted under and whatever category under which they fall. In the public sector, where the employer pays for their employee to take time off to undertake facility time, it is in no way less of a cost to the taxpayer however the facility time is categorised and however important it is.

We have had a good discussion today, but I am not persuaded by the tenor of the argument. I ask the noble Baroness to withdraw her amendment this evening.

Baroness Hayter of Kentish Town: Let us just get one thing straight: this is not a taxpayer subsidy. The taxpayer pays for holiday pay as well. Are we going to have a government Minister talking about that with regard to all those organisations, not just local government—we have already agreed that it may be charities or all sorts of other functions? They decide their own holiday pay, and the taxpayer pays for that, but facility time is somehow really different.

I shall not go through all the contributions, but I want to say three things. First, on the affirmative procedure, Parliament knows best—I think it was the noble Lord, Lord King, who mentioned that. But the problem is, as the Minister says, that this legislation went through the Commons without any difficulty, which is how an affirmative resolution would go through the Commons. When the legislation comes here, the only place where we can say stop, we have the noble Lord, Lord Strathclyde, saying that we must not overturn a statutory instrument—"I'll do another report, we'll clip your wings or we'll put in another 100 Tory Peers". What was the other thing he was going to do? Oh yes, he might suspend us, give us a permanent holiday. The idea that our safeguard is that we can overturn a statutory instrument here is no safeguard.

The Minister has said that this is a provision of last resort, but she has still not explained the criteria on which that last resort could be taken. The example given by the noble Lord, Lord King, is really frightening—if one thing has gone bad in one place, which could be a care home, or something, we will have the Dangerous Dogs Act again. Because something is really bad in one place and the public have got to know about it, therefore we will have a Minister saying that we have to do something about it so let us have a statutory instrument quickly, and a whole category will be caught because of one example of something going wrong. The real issue is whether it is about, as the noble Lord, Lord King, says, one or two or three examples of where this is going wrong, or is it some other reason that we have not heard from the Minister? What criteria would bring in this power of last resort? This is a question for management and local authorities, or whoever the employer will be—Magnox, or all those other organisations that we have been through. It is really not for Ministers. We will return to this one, but in the mean time I beg leave to withdraw the amendment.

Amendment 88 withdrawn.

Amendments 89 to 89B not moved.

Amendment 89C

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

89C: Clause 13, page 10, leave out lines 27 to 32 and insert—

"( ) make provision in relation to any or all of the employers in relation to which the reserve powers are exercisable;

"( ) make different provision for different employers or different categories of employer;"

Amendment 89C agreed.

Amendments 90 and 90A not moved.

Clause 13, as amended, agreed.

Amendment 91 not moved.

House resumed.

House adjourned at 10.25 pm.

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