Vol. 769
No. 114

Thursday
25 February 2016

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

£4·00

Lords wishing to be supplied with these Daily Reports should give notice to this effect to the Printed Paper Office.

No proofs of Daily Reports are provided. Corrections for the bound volume which Lords wish to suggest to the report of their speeches should be clearly indicated in a copy of the Daily Report, which, with the column numbers concerned shown on the front cover, should be sent to the Editor of Debates, House of Lords, within 14 days of the date of the Daily Report.

This issue of the Official Report is also available on the Internet at
www.publications.parliament.uk/pa/ld201516/ldhansrd/index/160225.html

PRICES AND SUBSCRIPTION RATES

DAILY PARTS

Single copies:
Commons, £5; Lords £4

Annual subscriptions:
Commons, £865; Lords £600

LORDS VOLUME INDEX obtainable on standing order only.
Details available on request.

BOUND VOLUMES OF DEBATES are issued periodically during the session.

Single copies:
Commons, £65 (£105 for a two-volume edition); Lords, £60 (£100 for a two-volume edition).
Standing orders will be accepted.

THE INDEX to each Bound Volume of House of Commons Debates is published separately at £9·00 and can be supplied to standing order.

All prices are inclusive of postage.

The first time a Member speaks to a new piece of parliamentary business, the following abbreviations are used to show their party affiliation:

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

No party affiliation is given for Members serving the House in a formal capacity, the Lords spiritual, Members on leave of absence or Members who are otherwise disqualified from sitting in the House.

© Parliamentary Copyright House of Lords 2016,
this publication may be reproduced under the terms of the Open Parliament licence, which is published at www.parliament.uk/site-information/copyright/.

House of Lords

Thursday 25 February 2016

11 am

Prayers—read by the Lord Bishop of Bristol.

Tax Treaties: Developing Countries

Question

11.06 am

Asked by ***Lord McConnell of Glenscorrodale***

To ask Her Majesty's Government how many tax treaties with developing countries are currently under negotiation, and what principles underpin the United Kingdom approach to those negotiations.

Lord Ashton of Hyde (Con): My Lords, the UK is currently at various stages of discussions with six countries classified by the United Nations as developing countries. The UK's starting point in negotiations is based closely on the OECD model double taxation convention. Some developing countries prefer to follow the United Nations model, the provisions of which differ in some areas from the OECD model. The UK has agreed to adopt some of those provisions in its treaties.

Lord McConnell of Glenscorrodale (Lab): My Lords, we agree in this Chamber regularly on the need to improve economic activity and tax collection in the developing world, yet tax treaties can regularly count against that objective. A new report this week by ActionAid shows that Britain has some of the most restrictive tax treaties around the world, in particular that with Malawi. That treaty was signed in 1955 by Sir Gilbert Rennie, the then governor of Northern Rhodesia and Nyasaland, and Rab Butler, the then Chancellor of the Exchequer. It is surely now time to revise that treaty, improve tax collection in Malawi and therefore improve its own economic governance.

Lord Ashton of Hyde: The noble Lord is right. We want to achieve the same thing—to help those developing countries where we can. There has been a broadly bipartisan approach to this across the years. As for Malawi, this matter was addressed way back in 2010. Our aim is to have new double taxation agreements with developing countries where we can. There have been particular problems with Malawi that are not concerned with the detail of the treaty but with some of the more diplomatic issues. It is largely completed now but, as I say, there are some Foreign Office issues.

In general, it is our policy to conclude treaties with developing countries, and all new treaties that we manage to sign—these are bilateral treaties, so it takes two to tango—will include anti-abuse measures, exchange-of-information arrangements and assistance with the collection of taxes in both countries.

Lord Wallace of Saltaire (LD): My Lords, given that we are preparing for the anti-corruption summit that the Prime Minister will chair in London in May, are we feeding the question of updating our tax treaties with developing countries into preparations for that? A lot of the loss to developing countries in terms of tax avoidance is filtered out through various corrupt practices. At the same time, are we considering in our relations with our own Overseas Territories pushing for greater transparency in the money that goes through the Overseas Territories, which is also closely related to this issue?

Lord Ashton of Hyde: Of course, we are trying to increase transparency. As the noble Lord will know, in our presidency of the G8, we led on international anti-tax evasion measures and we continue to work with the OECD. We were the first to sign the agreement for international exchange of information. As far as the anti-corruption summit is concerned, that is certainly something we will do. One of the problems, however, is that just increasing taxes in developing countries is not a silver bullet because of corruption: the tax that is raised has to go to the right places.

Lord Collins of Highbury (Lab): My Lords, if there is one area that requires joined-up government, it is this. Of course, the Department for International Development, with its 0.7% budget, should be involved in these discussions because, as in the case of Malawi, you could be taking away with one hand and putting in with the other. Has DfID been involved in all these negotiations and will they be linked to the delivery of the sustainable development goals? Never mind the Rhodes statue—surely it is time that the Malawi agreement came falling down.

Lord Ashton of Hyde: DfID is involved in the consultations that the Treasury has every year on which countries should be involved and on new taxation agreements to be brought forward. It holds discussions on which goals should be taken forward, but the department is not involved in the individual negotiation of tax treaties, which is for the experts on taxation in the Treasury. It also helps to pay for tax education in developing countries, and the Government have doubled the amount that they are prepared to spend on this through DfID. We think development aid should be controlled and administered through DfID, subject to proper governance arrangements in keeping with our development strategy.

Lord Judd (Lab): My Lords, the Government rightly take considerable pride in having stood by their 0.7% target, and I am sure we all applaud that. We may have arguments about how it is spent, but we applaud it. However, does the Minister accept that there is real urgency about this matter because it is impossible for developing countries to make a success of their economies, and thus provide the context in which that 0.7% can be well spent, unless the strategic fiscal and financial matters are given priority?

Lord Ashton of Hyde: I completely agree with the noble Lord and that is why we are actively seeking to update our tax treaties, particularly with developing countries. All modern tax treaties include anti-abuse measures and provide for an exchange of information so that we can bring them up to date and thus enable

[Lord Ashton of Hyde]
those countries to increase their tax rate, but it must be remembered that individual developing countries are also aware of the effects on investment of changing their local tax rates.

Lord Foulkes of Cumnock (Lab): My Lords, does the Minister agree that it is particularly embarrassing that companies such as Google are using places such as Bermuda to avoid paying tax on sales in the United Kingdom, particularly since Bermuda is one of our overseas territories and not an independent country? What are the Treasury and Her Majesty's Government doing to stop this disgraceful tax avoidance?

Lord Ashton of Hyde: The Government are leading on making sure that there is international agreement on this. The noble Lord may shake his head, but we used the presidency of the G8 in 2013 to initiate the G20 and OECD Base Erosion and Profit Shifting project, which will better align the taxation of profits. As the IFS has said, it is literally impossible for one Government to do something by themselves. That is why we need international agreement to determine where tax should be paid, and we agree that it should be paid fairly in the countries where it is due.

Government Contracts: Steel Industry

Question

11.14 am

Asked by ***Lord Hoyle***

To ask Her Majesty's Government whether, when steel is required for a government contract, they will specify that it be British.

The Parliamentary Secretary, Cabinet Office (Lord Bridges of Headley) (Con): My Lords, the Government are committed to implementing measures that will address any barriers that prevent UK suppliers of steel from competing effectively for public sector contracts in line with EU legislation. All departments are now required to implement the new guidelines on how government buyers should source steel for major projects so that the true value of UK steel is taken into account in major procurement decisions.

Lord Hoyle (Lab): Can the Minister explain why we did not support the proposal of the European Commission to raise the tax on imported Chinese steel to 66%, which not only would have put it in line with the United States but would have brought stability to the British steel industry and security for British steelworkers?

Lord Bridges of Headley: The initiative that the noble Lord referred to is one that we welcomed in the sense that it wished to modernise tariff proposals, but we could not accept the removal of the lesser duty rule, which ensures that unfair trade practices are addressed without imposing disproportionate costs. We have also supported other EU initiatives on wire rod, seamless pipes and tubes, and rebar, as regards Chinese dumping.

Lord Forsyth of Drumlean (Con): My Lords, will my noble friend confirm that far more steel is imported from other EU countries than from China, and that if the Government were to do what the noble Lord, Lord Hoyle, wishes them to do, we would have to leave the European Union?

Lord Bridges of Headley: Blow me down with a feather: my noble friend is wanting to leave the European Union. That is a surprise at quarter past 11. I am sure that he is right about his facts. The challenge at the moment is obviously Chinese steel. Chinese excess steel capacity is estimated to be roughly double the EU's annual steel demand and 25 times the UK's steel production. That is the real challenge we face.

Lord Morris of Aberavon (Lab): My Lords, on the assumption that the Government made speedy and early representations to the European Commission regarding the dumping of Chinese steel, are they satisfied that the Commission has acted effectively and promptly to protect the British steel industry?

Lord Bridges of Headley: My Lords, there is always more that we can look towards the EU to do. For example, we are pleased that the European Commission is investigating where there is evidence that state support for steel industries is not compliant, as regards Italy and Belgium. My right honourable friend the Secretary of State for Trade and Industry was one of the signatories to the letter to the European Commission only a few weeks ago that called for further action.

Lord Razzall (LD): My Lords, I shall follow up the remarks made by the noble Lord, Lord Forsyth—without sharing his conclusion. Will the Minister accept that some of our continental country friends seem to be better at protecting their steel industries than we are? I take the point made by other noble Lords on dumping of Chinese steel. Will he also indicate what the Government are prepared to do to meet the requests from the steel industry on energy costs?

Lord Bridges of Headley: I shall take the final point first. The Government are addressing the request for energy costs in one of the five prongs of their action to help the steel industry, which we all wish to do. As regards the EU, the noble Lord makes a valid point. I just add that, despite the widely held view that UK public procurement is more open than that of other EU member states, European Commission studies show that UK firms win more than 95% of UK contracts advertised EU-wide.

Lord Stevenson of Balmacara (Lab): My Lords, does this Question not have wider resonance? The Government and public authorities in this country control about 40% of GDP spending. If the Government really wanted to back British industry—including British steel, which we would support—and help British workers, why will they not also ensure that our SMEs have a proper chance to bid for government contracts and require companies that are awarded government contracts to employ high-quality apprentices, as we did for the Olympics?

Lord Bridges of Headley: Those are valid observations. The public policy procurement note, which I have in front of me, makes the point that private companies should advertise through the supply chain when those contracts are available and make sure that British SMEs are able to bid for them. The contribution that companies make to apprenticeships is also highlighted in that public policy procurement note.

Lord Lawson of Blaby (Con): My Lords, is the noble Lord, Lord Razzall, not absolutely right: is it not the case that the masochistic energy policy pursued by the British Government at present leads to a carbon price floor five times the size of the carbon price in the rest of the European Union? Is that not crazy? What are the Government going to do about it?

Lord Bridges of Headley: That is slightly going beyond my ken, my Lords. As regards the energy costs that the steel industry is looking for, £100 million will be saved over the financial year and £400 million by the end of this Parliament, thanks to the action that the Government are taking to give the industry relief.

Lord Watts (Lab): If the Chinese are found to have been dumping steel in the UK, what action will the Government take to penalise them for doing so?

Lord Bridges of Headley: Let us wait and see. These investigations are obviously under way as we speak.

Lord Berkeley (Lab): My Lords, the Government recently announced that the Chinese were going to invest in Hinkley Point power station. Will a condition of that be that Chinese steel and other products are used in its construction?

Lord Bridges of Headley: That is a very good point, my Lords. Responsibility for the construction of Hinkley Point C rests with EDF rather than the Government. The project will require hundreds of thousands of tonnes of steel and EDF has made it clear that it expects a large proportion of that to come from UK companies. The construction and operation of Hinkley are expected to create 25,000 employment opportunities and aim to create 1,000 apprenticeships.

Armed Forces: Future Force 2020

Question

11.22 am

Asked by ***Lord Touhig***

To ask Her Majesty's Government what specialist skills have been recruited into the Armed Forces as a result of the Future Force 2020 programme.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, Future Force 2020 has delivered a wide range of specialist skills and capabilities to the Armed Forces. In the Army, this includes the creation of 1st Intelligence, Surveillance and Reconnaissance Brigade and 77th Brigade, comprising integrated regular and reserve units capable of delivering specialist capabilities such as cyber, linguists and cultural experts. We continue to recruit the individuals we need with specialist skills and, through our world-class training programmes, train both new and existing service personnel to meet military requirements.

Lord Touhig (Lab): As ever, the noble Earl comes to the House displaying a sense of calm and confidence, for which he is greatly admired and respected.

Noble Lords: But?

Lord Touhig: Truthfully. But I have to tell him that the Government have admitted that there is a skills shortage in Britain's Armed Forces. Indeed, they spelled out their preferred solution for solving the problem. In a debate on the Defence Reform Bill in 2013, the then Defence Secretary, Mr Hammond, said that the recruitment of reserves was intended to add specialist skills to our Armed Forces because they were easier to recruit from among the civilian workforce. Can the Minister name another country in the world that depends on civilian trained reservists to fill the skills gap in our Regular Armed Forces? Is it still the Government's intention to pursue this policy? If it is, how is it going?

Earl Howe: My Lords, it makes absolute sense to look to our reserves to house some of the deep specialties that the Armed Forces are looking for. It makes sense because the reserves can deliver capabilities that can be safely held at lower readiness, which provides access to skills that are best developed and maintained in the civil sector or are not practical or too costly to retain in full-time military service. A good example of that is cyber, although there are others, such as language intelligence analysts. We are seeing the success of that policy. Indeed, on recruiting reservists more generally, we are on track to achieve our targets.

Lord Dannatt (CB): My Lords, now that the recent period of high operational deployment has concluded—at least perhaps temporarily—will the Minister reassure the House that, within Future Force 2020, progress is being made towards recruiting sufficient regular and perhaps reserve medical specialists in order that the Defence Medical Services can meet their obligations in the future, and in particular that we are recruiting sufficient mental health specialists so that our serving soldiers, sailors, airmen and marines have 24/7 mental health cover?

Earl Howe: My Lords, there are a number of pinch points in the armed services, but, broadly speaking, they are in areas where there are skills shortages in the wider economy. Medical expertise is one of those skills, but there are also areas specific to military organisations, such as logistics and intelligence. We are taking a multifaceted approach to tackling those shortages—for example, financial retention incentives, extensions and continuance of service, targeted recruitment incentives and a direct entry scheme—but there is no single bullet. I am aware that medical services represent a challenge, but one that I think we are slowly winning.

Lord Reid of Cardowan (Lab): My Lords, it no doubt makes sense to leverage the private sector, especially in a fast-changing environment such as cyber, as the

[Lord Reid of Cardowan]
Minister said, but it raises a question, does it not? If we are relying on reservists, who by definition are not always available, to provide essential skills, who is providing the skills for the skills gap when they are not available?

Earl Howe: My Lords, as I am sure the noble Lord will know, the Royal Navy and the Royal Marines have an approach whereby they tend to train those already in regular service, but there is also a reliance on reserves. It is a question of getting the balance right in each discipline.

Earl Attlee (Con): My Lords, surely the answer to the Question from the noble Lord, Lord Touhig—about which country is making use of specialist reserves—is the United States. The National Guard makes very great use of reserves—far greater than we do.

Earl Howe: I am grateful to my noble friend. Of course, at the moment we have a much more flexible set of arrangements to integrate regulars and reserves than we did in the past. We can call up reservists at very short notice. Cyber is, once again, a good example. It is a discipline that often allows lateral entry at a more senior rank than would be the norm for general applicants on first joining. Indeed, the Royal Marines have a cyber specialisation to provide the maritime element of the joint cyber unit. That specialisation is formed from qualified practitioners recruited from industry and academia.

Baroness Jolly (LD): My Lords, we all recognise that cyber poses a great threat to our security. Will the noble Lord tell the House how many cyber experts and trainees have been recruited to the Reserve and Regular Forces, and whether their recruitment is on target?

Earl Howe: I am afraid that I cannot give the noble Baroness the precise figures. Broadly, recruitment to the reserves is on target, but I will have to get back to her on the specific numbers associated with cyber.

Lord Harrison (Lab): My Lords—

Lord Boyce (CB): My Lords—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, I think that the House is signalling that it wants to hear from the Cross-Benchers.

Lord Boyce: My Lords, a skill set for which there is an ever growing need is, of course, engineering, especially nuclear engineering. Will the Minister say what progress has been made with industry to ensure a flow of that talent between industry and the services, particularly for those who have left the services and joined industry and then been brought back into the services to help out?

Earl Howe: The noble and gallant Lord is absolutely right. On nuclear engineers, we have adopted what we call an enterprise approach, which essentially means working with the wider defence industry to better share experience and best practice and to develop career management, manning and access to the key skills that we need to create a more attractive career path for nuclear engineers. There are other elements as well. We need to have proper staged financial incentives, and we have retention incentives for those already working for the Royal Navy. There is no single answer, but I think that this is the way ahead—in particular, working closely with university and technical colleges to support the development of those skilled individuals.

Lord Harrison: My Lords, will the Minister write to the House about the recruitment of people with desperately needed modern language skills—linguistic skills—which he mentioned in his first reply? This area is neglected, but it is important that we improve our language skills in our engagement.

Earl Howe: The noble Lord is absolutely right. It is one of the areas that has been significantly developed since the SDSR 2010, but we know that we have to do more. I would be glad to write to the noble Lord on where we are.

Public Bodies: Israel Boycotts

Question

11.30 am

Asked by ***Baroness Tonge***

To ask Her Majesty's Government what advice they have given to local authorities and other public bodies concerning boycotts of goods and services from the Israeli settlements in the West Bank.

The Parliamentary Secretary, Cabinet Office (Lord Bridges of Headley) (Con): My Lords, on 17 February, the Government published procurement guidance for public authorities on existing policy that has been in place for many years under successive Governments. The guidance makes it clear that boycotts in public procurement are inappropriate, outside where formal legal sanctions, embargos and restrictions have been put in place by the UK Government. It is not an Israel-specific policy.

Baroness Tonge (Ind LD): Knock me down with a feather, my Lords, if I was not expecting that reply. Is the Minister aware that the Foreign Office advice of July 2015 on overseas business risks in the Occupied Palestinian Territories said:

"EU citizens and businesses should … be aware of the potential reputational implications of getting involved in economic and financial activities in … settlements"—

in the Occupied Territories, and—

"should seek … legal advice before proceeding"?

How does that equate with the advice that we received last week?

Lord Bridges of Headley: I can easily tell the noble Baroness. Paragraph 2.4 of the advice says:

"The UK Government is deeply committed to promoting our trade and business ties with Israel and strongly opposes boycotts."

This is the Foreign Office advice, and the Cabinet Office advice sits alongside that.

Lord Grocott (Lab): Has the Minister had a chance to check what the Prime Minister said yesterday in answer to a Question about settlements? He said that,

"the first time I visited Jerusalem … and saw what has happened with the effective encirclement of East Jerusalem—occupied East Jerusalem—I found it genuinely shocking".—[*Official Report*, Commons, 24/2/16; col. 297.]

Did the Prime Minister not speak for many Members of both Houses and indeed of all parties when he said this? Is it not time that we move beyond general expressions of dissatisfaction with Israeli settlement activity and took more concerted international action?

Lord Bridges of Headley: The noble Lord makes a perfectly valid point, but this is about the role of local authorities. I would gently say to him, with due respect, that local authorities should not pursue their own municipal foreign policy which contravenes international trade agreements. They should instead focus on local issues. The clue is in the name as regards local authorities.

Lord Palmer of Childs Hill (LD): In the light of local government guidance, could the Minister say what action the boycott movement has taken with regard to the Russian invasion of Crimea—I apologise for asking this of a Cabinet Office Minister—the Chinese occupation of Tibet, Turkey's occupation of Northern Cyprus and the Moroccan occupation of Western Sahara?

Lord Bridges of Headley: The noble Lord raises lots of issues, but this is about boycotts being conducted by local authorities, which I would argue are counterproductive. They widen gaps in understanding, poison and polarise debate, and block opportunities for co-operation and collaboration.

Lord Hamilton of Epsom (Con): My Lords, I was in Israel last week as a guest of the Israeli Government when my right honourable friend Matt Hancock announced this guidance that he was giving to local authorities. As both Israel and the United Kingdom are members of the WTO, surely it is illegal to impose these boycotts. They would actually be against the law.

Lord Bridges of Headley: My noble friend is absolutely right. Such boycotts would be open to judicial review.

Lord Wright of Richmond (CB): Hearing what the Minister has said about boycotts, can he reassure the House on behalf of his Foreign and Commonwealth Office colleagues that we and our European partners lose no opportunity to draw the attention of the Israeli Government to the illegality of their settlement policy and the damage which it is doing to the prospect of a two-state solution, which is surely in the interests of both Israel and Palestine?

Lord Bridges of Headley: Yes, my Lords, and let me reassure the noble Lord that the Government remain completely committed to a two-state resolution to secure lasting peace in the Middle East. The best way to achieve that is by diplomacy and negotiation.

Baroness Corston (Lab): My Lords, given that the noble Baroness, Lady Anelay of St John's, has repeatedly said at that Dispatch Box that the settlements are a contravention of international law, that we deplore them and that they should not be there, how does it follow that it is illegal or impossible for a local authority to take action in response to those repeated statements by refusing to trade with those very settlements?

Lord Bridges of Headley: My Lords, to repeat what I said at the start, the guidance merely clarifies and reminds contracting authorities of their obligations under the WTO government procurement agreement, to which the EU is a signatory, which has been in place since 1996 and which the Labour Government and the coalition Government both upheld.

Baroness Eaton (Con): My Lords—

Lord Lester of Herne Hill (LD): My Lords—

Lord Livermore (Lab): My Lords—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, I think that the House wishes to hear from my noble friend Lady Eaton.

Baroness Eaton: Thank you. Three-quarters of Palestinian exports are destined for Israel and Israeli goods account for two-thirds of the West Bank's imports. Does the Minister agree that a boycott of West Bank goods would be detrimental to the Palestinian economy?

Lord Bridges of Headley: My Lords, I just wish to repeat what I am saying all along: this guidance is not about Israel per se. While what my noble friend says may have validity, I would say that boycotts are counter-productive and should not be taken by local authorities unless there is already a government action in place.

Privileges and Conduct Committee

Motion to Agree

11.37 am

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

That the 4th Report from the Select Committee (Investigations and members leaving the House or taking leave of absence; Guidance on participation in proceedings) (HL Paper 95) be agreed to.

The Chairman of Committees (Lord Laming): My Lords, in moving the first Motion standing in my name on the Order Paper, I will also speak to the second Motion. The first part of the report of the Committee for Privileges and Conduct clarifies the position on investigating alleged breaches of the Code of Conduct. The code does not apply to former Members; nevertheless, it has been unclear whether a former Member could be investigated for an alleged breach committed when he or she was a Member of this House.

[LORD LAMING]

The recommendation is to make it clear in the guide to the code that such an investigation may not take place because there would be little point to it. Even if such an investigation resulted in a finding of a breach of the code, however, there would be no suitable sanctions available to the House—the reasons being that the strongest sanctions of suspension and expulsion could not be imposed on someone who was no longer a Member of the House. But colleagues will understand that the status of Members on leave of absence is different from that of former Members, because those on leave of absence may return to the House. The committee therefore recommends amending the guide to make it clear that an investigation may take place on a Member on, or seeking, leave of absence if the alleged conduct occurred when the Member was not on leave of absence.

The second part of the report relates to guidance on when a Member may participate in proceedings in which that Member has a financial interest. The current text has resulted in some uncertainty. This has sometimes meant that Members with significant expertise on a subject have been unable to participate in business in which their expertise would benefit the House or a Select Committee. The Committee for Privileges and Conduct proposes replacing this guidance with a clear statement that Members may participate in business in which they have a financial interest, but in doing so they should of course ensure that their personal interests do not conflict with their public interests. A similar change is recommended in respect of participation in Select Committee work. I beg to move.

Lord Foulkes of Cumnock (Lab): My Lords, I am grateful to the Chairman of Committees for introducing this. It is important that, whenever we get reports from committees, there is an introduction and an explanation of why the recommendations are being made and how the issue has been considered by the committee. So much of what happens in this place is considered by committees and put through here on the nod, so that, with respect, I must say that probably the vast majority of Members know nothing about it. They do not know why it is being recommended and do not know about the initiative, motivation or background behind it. That is why it is very important not only that such things should be introduced—as this has been—but that we can have a debate and ask questions.

I have specific questions. On whose initiative was the first matter put on the agenda of the Privileges and Conduct Committee? What was the motivation behind it? Were any matters—any instances or examples—brought to the attention of the committee that made this a matter that it should have to consider?

I have similar questions in relation to the second matter. Have any matters arisen? Have there been any complaints or suggestions of problems? Have any Members with particular interests said that they are unable to participate in a debate because of their interests? We need to know why this is before us. I am not saying I disagree with it, but we need to know on whose initiative and with what motivation these matters were considered by the committee and then recommended to us today.

Lord Cormack (Con): I would just ask for a very small clarification from the Chairman of Committees. I may be wrong, but as I understood it, he said that if a Member on leave of absence was being investigated, it would have to be for something that he or she had done while they were not on leave of absence. But it seems to me that if a Member is on leave of absence, he or she remains a Member of your Lordships' House. Therefore, if something that was done while that person was on leave of absence needs investigating, surely it should be open to investigation.

Lord McConnell of Glenscorrodale (Lab): My Lords, I am deeply concerned by the recommendation in paragraph 7 and the explanation given for that recommendation. It seems to me that this would be a very strong incentive for Members to avoid investigation by simply retiring from your Lordships' House. The committee should have considered instead—it will be interesting to see whether it has—either a procedure which would have introduced potential sanctions on former Members who were found to have been engaged in fraudulent or other activities, or suspension of any retirement or any right to retirement for those under investigation. I think that any member of the public reading this document would be astonished that we give people a "get out of jail free" card simply because it is more convenient for us to reduce the size of the House than to maintain the standards that we set.

The Chairman of Committees: My Lords, I am most grateful for the opportunity to respond to these questions and will do my best. The first question asked by the noble Lord, Lord Foulkes, was about where this came from. It came from within the committee. The committee has been extremely exercised about a number of what are perceived to be gaps or misunderstandings in the current arrangements.

Lord Foulkes of Cumnock: The noble Lord says it came from within the committee. Was it from a Member or Members on the committee—if so which Members—or from the officers?

The Chairman of Committees: My goodness me, my memory fails me. It came from Members; they have been looking at this whole area to see whether there are any misunderstandings or gaps. We have been much exercised—the committee has been together on this, addressing it in a serious and thorough way.

On whether there have been examples of Members who could contribute very well to the work of this House, I am advised that since the start of this Parliament, 30 Members have questioned whether their interests in the register bar them from contributing to the work of the House or one of the Select Committees. This report makes it plain that we all operate on our honour and have to ensure that, when we participate, our personal interests do not conflict with our public interests.

Lord Campbell-Savours (Lab): The Chairman of Committees refers to 30 cases. This reform slightly dilutes the current arrangements. Surely from now on it should be insufficient to say, "I wish to declare my interests as registered". Perhaps in future when

there is some ambiguity in their position, Members should be more specific and say precisely what their interests are.

The Chairman of Committees: My Lords, Members' interests have to be declared other than at Question Time. It is not sufficient on other occasions simply to refer gaily to them. The noble Lord raises an interesting point, and it illustrates one of the committee's concerns: if we try to specify what is on one side of the line and what is on the other, we get into difficulty because everyone's circumstances are different and the subject matter is different. The report says that there is no guidance that will weaken our honour in these matters other than advising that we must ensure that our personal interests do not conflict with our public duties in this House. We have a duty to uphold that and, frankly, to be subject to scrutiny should there be questions about that in the future. Most noble Lords will recognise that in many ways this strengthens our position because it makes all of us have to fulfil our duties in this place.

The noble Lord, Lord McConnell, made a point about suspension, I think, and the difference when someone is on leave of absence.

Lord McConnell of Glenscorrodale: My point was not so much about the difference in approach as about the specific approach recommended in paragraph 7. In the justification, it is explained that Members will not be investigated if they choose to retire from the House, allowing everybody in your Lordships' House a "get out of jail free" card should they be subject to investigation.

The Chairman of Committees: That is absolutely right. I am very grateful for the question because further thought is being given to that precise point and I hope that it will be possible to produce a report on that matter in the very near future.

Lord Cormack: It may be unnecessary to say this, but the inference I drew from the comment of the Chairman of Committees was that, if somebody who was on leave of absence was suspected of an infringement, he or she could not be investigated if it happened while that person was on leave of absence, because a Member on leave of absence remains a Member of your Lordships' House and can come back at any time. I should like clarification on that point.

The Chairman of Committees: This is an interesting area. The code relates only to parliamentary conduct, and that would have to be dealt with if a Member of the House wished to return.

Baroness Miller of Chilthorne Domer (LD): I hope that the Chairman of Committees will forgive me for speaking at this stage, but I have been mulling over his comments about the difficult line between personal and financial interests, and when it is appropriate to be considered an expert. Mulling over my experience of local authority guidance on the matter—an experience I know that many Members share—in local authorities, if you have a financial interest, no matter how much expertise you have, you may not take part in proceedings. I wonder why there is such a big difference between the rules we apply to ourselves here and those imposed on local authorities.

The Chairman of Committees: Local authorities are dealing with immediate local planning matters, and things of that kind. Here, the House is dealing, generally speaking, particularly in its committees, with very broad, general topics that deal with national or international matters. If you interpret the register in a particular way, many Members would be excluded from a whole range of activities of the House. The committee has decided that a better way to proceed is to make it plain that we operate on our honour and that, when there are issues of the kind to which the noble Baroness referred, the individual has to decide whether those issues are of such a general nature as not to be an impediment or whether there is a personal advantage to be gained. It is the issue of a personal advantage that will be the touchstone on all these matters, if the House adopts the report. I commend the Motion.

Motion agreed.

Code of Conduct

Motion to Resolve

11.51 am

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

That the Code of Conduct for Members of the House of Lords be amended as follows:

In paragraph 15, leave out the second sentence and insert "In participating in such proceedings they should ensure that there is no conflict between their declared interests and the public interest."

Motion agreed.

Trade Union Bill

Committee (4th Day)

11.52 am

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

Clause 14: Prohibition on deduction of union subscriptions from wages in public sector

Amendment 92

Moved by ***Baroness Wheeler***

92: Clause 14, page 11, line 8, leave out from beginning to end of line 8 on page 12 and insert—

"116B Deduction of union subscriptions from wages in public sector

(1) The Advisory, Conciliation and Arbitration Service shall publish a Code of Practice for the purposes of public sector employers making trade union subscription deductions from wages payable to workers to promote the need for openness and transparency.

(2) The Code of Practice shall include but shall not be limited to including—

(a) provision that all payroll deduction schemes shall give members the option to pay their subscriptions by other means;

(b) reporting on the costs to employers of administering trade union subscriptions at the end of each financial year, including the percentage this represents of the employer's total outgoing administrative and human resources costs;

(c) guidance on the principles and operation of payroll deductions schemes and the administrative costs that should be charged to trade unions where payroll deduction schemes have been agreed."

Baroness Wheeler (Lab): My Lords, I speak to the seven amendments in the group and the clause stand part Motion from the Labour and Liberal Democrat Front Benches. It is a large and important group, so I hope noble Lords will bear with me, as there are a lot of issues to address, including matters arising from the Minister's last-minute publication on Monday of the skeleton regulations on facility time and check-off, and Tuesday's debate on those and on which public sector organisations are covered by the Bill.

Our Amendment 92 is an important one with which to start this debate, because it is aimed at probing exactly what problem the Government are trying to address by implementing an arbitrary and blanket ban on public sector employers reaching voluntary agreements with trade unions to deduct union subscriptions from staff pay, often preventing the staff themselves freely and openly choosing this option for paying their subs. Ministers must be clear and concise about their concerns over the current system. What is so wrong with it that it has to be abandoned in this draconian way, and what evidence is there that justifies an established system, currently well supported and valued by employers, trade unions and their members, and recognised as forming a crucial part of local industrial relations, partnerships and frameworks, just being dropped? Unless the Government can come up with solid evidence and the objective justification called for by the Joint Committee on Human Rights, and unless they frame their arguments and comments in the context of displaying a far better understanding of the role and work of trade unions in a modern society than was so blatantly evident from Ministers throughout the Bill's progress in the Commons, the only conclusion that can be drawn is that the main purpose of getting rid of check-off is to undermine trade unions, prevent them being able to organise in the workplace and represent their members, and attack and seriously weaken their finances. In other words, as my noble friend Lord Collins said at Second Reading, it is pure vindictiveness.

Amendment 92 is also aimed at ensuring that the check-off system remains central to partnership and staff engagement agreements between employers and unions in the public sector. It underlines the need for an ACAS code of practice to promote openness, transparency and consistency in check-off agreements. Central to the code is members having clear options on payment methods and employer costs in administering the schemes being clear and consistent across employing authorities and open to report and scrutiny. Our amendment would also make clear the open and agreed principles and criteria for assessing the admin costs of the check-off system, and for the costs to be regularly reported on and expressed as a percentage of the employer's overall admin and HR costs.

The Government have three broad contentions for their proposals to ban check-off in the public sector. They say that check-off deductions are not modern and that everyone has a bank account, so what is the problem? They say that the relationship should be between the trade unions and the member and not involve the employer, and that the system and admin costs of deduction are a burden and should not be borne by employers or the taxpayer. If Clause 14 stands, private and voluntary sector employers will be able to continue to operate check-off, but public sector employers will not have this choice and will have their hands tied by central government—this from a Government who herald their commitments to localism and empowerment of local employers so that decisions can be made locally in the light of local circumstances and needs. We know from the debates on the earlier clauses that the Government have got themselves into a mess over this Bill in relation to the devolved national Governments. We will hear still more evidence of the mismatch between the Government's rhetoric on this brave new world of devolution and the proposals in this Bill in the debate on Amendment 97, from my noble friends Lord Harris and Lord Beecham.

In the Cities and Local Government Devolution Bill, the noble Baroness, Lady Williams, made many bold statements about how central Government have to stop interfering in local decision-making. I quote just one of the typical examples, when she said:

"Through the decentralisation that the Bill will enable, each city will be empowered to forge its own path, to play to its own strengths and to find its own creative solutions to the particular challenges that they face".—[*Official Report*, 8/6/15; cols. 652-53.]

But they do not seem to have the autonomy to decide locally and continue tried and tested industrial relations agreements and partnerships, of which check-off is a key element, which underpin the positive, everyday working relationships between employers and trade unions. No wonder not a single public sector employer has spoken up to support the Government's check-off ban. It is very pertinent that key councils at the forefront of devolution—for example, Manchester and Sheffield—are among the many that have expressed dismay and concern. Can the Minister explain how Devo Manc is to be delivered in Manchester, for example, including closer integration between NHS and social care, at the same time as long-standing partnerships and agreements with trade unions are being dismantled, while local reps scuttle around thousands of workplaces to talk to members and get them re-signed up so that they can carry on representing them?

One thing that we keep coming back to in this Bill is the question of fairness, which is no less relevant to the proposals for banning check-off. How can it be right to single out the public sector when the private and voluntary sectors can choose to continue the schemes? Why is it right to exempt some organisations that the Government favour, such as the police and crime commissioners and chief constables, who will be allowed to decide whether they want to operate check-off,

although the choice will be allowed only for police officers and not for police staff?

The impact assessment fails dismally to provide any evidence or justification for the Government's proposed ban. It assesses just two options: do nothing, or get rid of check-off. There is nothing in between the pros or cons of the current system, how it could be improved and made consistent across employing authorities, or ensuring that trade union members continue to have choice on paying their subscriptions by the method that best suits them, in the light of their work, circumstances and financial situation, be it by check-off, direct debit or a cash-based system. Will the Minister explain why a middle way was not even considered? The impact assessment dismisses this option in two sentences on the grounds that if trade unions paid the admin the policy objectives would not be delivered. Why did the policy objectives not include all the options?

Noon

Let us also address head-on the Government's contentions about modern employer/trade union relationships in the workplace. It is nonsense to say that check-off should not be part of a modern industrial relations partnership and framework. Check-off arrangements are not only practical; they are a demonstration by employers that they recognise trade unions and are willing to undertake collective bargaining, and demonstrate that employees, employers and trade union representatives are all working together to deliver quality services to the public. That is also true in the private sector. Private employers such as E.ON and United Utilities, the retailer Tesco and many other large companies facilitate check-off because they find that it is beneficial to positive industrial relations.

Check-off systems enable employers and unions to know their workers and to match and verify information for ballots and other arrangements. They create a transparent relationship between the employer and the union. The Government's approach is blinkered and embedded in false assumptions and ignorance about the day-to-day work that trade unions do in the workplace. Of course, there is a deafening silence about what sanctions will be imposed on employing authorities if the Government's ban is not carried out for whatever reason. Where is the fairness in ceasing to offer public sector members the choice that private and voluntary sector employers will have in having union subscriptions deducted from pay? Time and time again, the underlying, and false, impression put across by Ministers is that union members are shanghaied into paying via payroll. In the words of the Minister Nick Boles, they are "locked into check-off". It is not so. They currently have the choice of payment methods, but my amendment recognises that this choice needs to be underlined and enshrined in a code of practice applicable to all partnership and check-off agreements.

Check-off is trusted by trade union members and helps them manage their finances. For unions, the starting point is not, "How can we get as many members as possible on to check-off?". Instead, particularly for the hundreds and thousands of members in low-paid jobs, the starting point is, "What is the best system for members to enable them to maintain their membership eligibility and entitlement to key benefits?". Bearing in mind the high percentage of low-paid trade union members across the public sector, it is a real fear that, under a direct debit or cash-only system, they will lose their eligibility for representation, key legal benefits and workplace indemnity insurance.

Public sector employees are paid through bank accounts but many members have current or savings accounts that support only cash withdrawals, not direct debits. They fear they will be overdrawn if their pay is paid in late, resulting in the direct debit being refused and bounced back or a bank charge being incurred. This is the world of the low paid, particularly those in part-time work or who have to do two jobs. They are living from day to day and week to week, but the impact assessment does not seem to be aware of them. If you are on a low income, you do not manage your bank account as easily as some of the throw-away remarks by some Ministers seem to imply. More direct debits just add to the worry about and fear of being overdrawn and not able to pay your bills. Why was no work undertaken in the impact assessment on assessing groups particularly vulnerable to the changes, such as people with disabilities and low-paid women in particular?

I referred earlier to the Joint Committee on Human Rights' call for the Government to provide objective justification for their differential treatment in removing the contractual right of public sector workers to check-off. On the first day in Committee, the noble Lord, Lord Pannick, argued strongly that if the Government do not compromise on some of the Bill's proposals, including check-off, they will be at much greater risk of a human rights complaint being taken seriously by the European court. I look forward to the Government's response on that.

It is all pretty differential, unfair and arbitrary. Charities and other voluntary organisations and private sector businesses will be able to continue to operate check-off. Indeed, major charities such as the Stroke Association and Macmillan underline that give as you earn or salary sacrifice pay-deduction schemes are the easiest and simplest to use. The nonsense and unfairness of the Government's position is underlined by Amendment 97ZA, tabled by the noble Lord, Lord Kerslake. He sets out a possible system of deduction at source for trade unions parallel to that currently operated for charities. If deduction at source is okay for charities—and, of course, we think it is—then why is a similar system not acceptable for trade union members?

There is also a list as long as your arm of deductions from pay that are currently operated by councils and authorities and other public authorities, presumably destined to continue. These are either promoted by the Government, such as pension opt-ins and the payment of additional voluntary contributions or student loan repayments, or operated by employers to help staff to manage their finances, from deductions for professional fees, council tax, credit unions, childcare, rail season ticket loans through to the repayment of bicycle loans and staff benevolent fund contributions. Trade unions are the largest voluntary organisations in this country. Where is the fairness and justification for singling out public sector trade unions?

[Baroness Wheeler]

We strongly support Amendment 94 from my noble friend Lord Lea and Amendment 95A from my noble friend Lady Donaghy, which confront the Government's attempts to keep extending the scope of the Bill in terms of the number of public bodies covered by the check-off ban through the issue of future regulations, and to make unilateral changes to contracts of employment or collective agreements. This is not an appropriate use of secondary legislation.

Noble Lords will know that there was an extensive debate on Tuesday on the,

"funded wholly or partly from public funds",

wording in the Bill and the so-called skeleton regulations published the day before, covering the facility time and check-off publication requirement clauses and check-off Clause 14. Both drafts were obviously hastily cobbled-together last-minute work and caused even more confusion. They extend the check-off ban even more widely than was previously thought, fail to provide clear guidance on the types of organisations that will be covered and do not help us in our role in scrutinising Clause 14 or, for that matter, Clauses 12 and 13. The Minister promised to review this whole issue and clarify it by letter and consultation. I ask her to confirm that new Section 116B(2) and (3) in Clause 14 are included in this review. Will we get another, not so skeletal draft of the regulations before Report?

Lastly, I shall deal with the third area of concern for the Government, the so-called admin burden of check-off for employers. Our amendment underlines the importance of costs being clearly identified, recorded and published, honestly and openly. No one tries to hide the cost of current agreements. Trade unions made it clear in the Commons Bill Committee that they agree that the taxpayer should not have to bear the cost, in response to an amendment from Conservative MP Jeremy Lefroy, which the Minister, Nick Boles, promised to consider further. I am grateful to the noble Lord, Lord Balfe, for his work on this issue and for bringing forward Amendment 93, which I hope the Government will accept in principle today along with our amendment. There are further considerations on who should be the body responsible for drawing up a code of practice or judging the costs judged by employers to be reasonable, but these can be further discussed before Report. The point is that if the openness and transparency of costs issue is dealt with and trade unions pay reasonable admin charges so that check-off is cost-neutral to employers and the taxpayer, what is the problem?

Before closing, I have some further comments on the impact assessment. If the Government were hoping that it would provide the evidence and balanced and reasoned arguments to meet the JCHR challenge of objective justification and the widespread criticism and concerns over this clause, they hoped in vain. How can a balanced view of risks and costs be arrived at when only two start options are considered—do nothing or end check-off? Little evidence is provided to substantiate the actual costs of the so-called admin burden on employers, which are completely exaggerated when the systems are essentially electronic data-based payroll exchanges between employer and trade unions, with usually annual electronic exchanges of amendments and updates.

The reference to there being "some" resulting loss of good will with employees and trade unions through the measures is a huge understatement. Of course there will be, as current agreements and arrangements are thrown up in the air and abandoned. Some 90% of public sector unions currently provide check-off, and millions of trade union members in thousands of workplaces will be involved in the changes to payroll systems in the rewriting of their existing collective agreements.

As the final part of this group, we support my noble friend Lady Donaghy's Amendments 123A and 124A calling for Clause 14 to come into effect five years after the passing of the Act. This is the period of implementation that we have argued for changes to the political fund. This and check-off present huge organisational and resource challenges to trade unions to seek agreement from members for alternative pay methods and arrangements. It is a nonsense for the Government to imply that they are being generous and conciliatory by extending the implementation period from six months to a year. UNISON alone, for example, will have to reassign 80,000 members to direct debit in thousands of large and very small workplaces.

Finally, I, my noble friend Lord Collins, the noble Lord, Lord Stoneham, and the noble Baroness, Lady Burt, oppose that Clause 14 stand part of the Bill. We do not accept this clause. The debate will highlight the fundamental flaws and problems and the unfairness and injustice of singling out the public sector, its employers, trade unions and trade union members for actions which will not apply in the private and voluntary sectors. Clause 14 threatens the partnership arrangements at every level of public services in England, Scotland and Wales, including local government, emergency services, education and the NHS, undermining the positive industrial relationships built up over years between the bulk of employers across the public sector. Amendment 92 in my name and Amendment 93 in the name of the noble Lord, Lord Balfe, address stated government concerns about transparency and openness; about public sector employers having the choice of operating check-off systems and trade union members having the choice as to which method they choose to pay their subs by; and about ensuring that unions meet any reasonable admin costs for the operation of check-off so that there is no admin burden to the employer or the taxpayer. So, as I said before, what is the problem?

Lord Balfe (Con): My Lords, I will speak in particular to Amendment 93, which is in my name, but will also make a general contribution to this debate. I start fundamentally from a belief that this is a matter for local decision. Any Government with a localism agenda should not be promoting this amendment, because it has nothing at all to do with localism.

I began my life, as I suspect many people who have a long history of trade union involvement did, as a sub-collector—someone who went round collecting subscriptions from members. I was in a monthly-paid Civil Service job and on the first two days of each

month I used to go round and collect subscriptions. It was a very pleasant experience as it meant that I had about an hour and a half off on each of those days, and because we had a branch rule that you could not take money home, I also had half an hour off at the end of each day when I went over to the treasurer in another building and handed over the small amount of money I had collected. Management decided that this was not a very efficient way for its employees to behave, and in the course of the 1960s, management decided that it would be a lot easier if it had a system called check-off. I was in a very odd union branch: the chairman was a member of the Communist Party of Great Britain and the secretary was a member of the Socialist Party of Great Britain. I became the vice-chairman because the two parties could not agree on anyone, so they decided that someone young should do the job. However, our branch rigorously opposed check-off because it would break the link with members. What we meant was that it would obviate our ability to wander round the office on what in those days was known as foot patrol, because many of the members in our office had recently had experience of the Army. I notice that part of the impact assessment says that this will foster a more direct relationship with members. If you want to have people wandering around the office, fine, but I put that in by way of background because this was not fought for by the unions, but was largely asked for by management and accepted by the unions, because of course sub-collecting was a very random experience.

Let us move forward, to a tale of two unions. When I became the TU envoy for my party, we went to all the unions. Many of them were very helpful but some of the big ones were not, particularly Unite and the GMB. However, two of them were; the Minister will be very familiar with one, USDAW, whose general secretary John Hannett not only came to meet the party leader David Cameron but made it quite clear that he and USDAW did not support the Conservative Party. However, he also made it very clear that he wanted a constructive relationship with any party that might become the Government. He did not come to meet the Conservative Government; he came to meet the Conservative Opposition to benefit his members with a direct relationship. He sought a constructive attitude, which we associate with USDAW. That union is not affected by this measure because it has had some very good people looking after its personnel in the past and it has very good industrial relations.

12.15 pm

The second union that I want to talk about is UNISON, which represents many lower-paid workers in the public sector. When we approached UNISON, it, too, made it clear that it had its political perspective—that it wished to safeguard its members. All senior members of the UNISON union met their opposite numbers in the Conservative Party prior to the election and they all came with the same message: that, whatever their political attitude, they wanted a constructive relationship with whoever were the Government of the day. There must have been a dozen meetings between UNISON and a whole raft of opposition spokespeople, as they then were. UNISON co-operated with the Government, and I think it is with great sadness that it views this clause as it is today.

If you are a member of one of the more professional unions, such as BALPA, with which I am associated, or the British Dietetic Association, you are generally in the upper ranges of the pay scale. You have direct debits and bank accounts, and you have a fundamentally middle-class lifestyle. If you are in UNISON, you are quite likely to be a lollipop lady or a swimming baths attendant or doing one of a whole range of quite underpaid jobs, struggling to manage financially from one month to the next. Your union dues are deducted at source and that genuinely helps.

Let us just look at the benefits afforded to all UNISON members. They include death and accident benefits, with an accident payment of up to £8,600; advice and support at work; a helpline that is open every weekday and until 4 pm on Saturdays; employment tribunal fees paid by the union if you have a good case to take forward; a legal assistance helpline; a debt advice helpline; and access to an approved credit union network. There is also free legal help to pursue compensation for accidents and injuries at work without a deduction of fees, which is an important point—this is a real no win, no fee arrangement. There are other things, including professional indemnity insurance for health and social care staff up to a limit of £1 million. All that comes with your union membership. It is a valuable addition and something that we should try to safeguard.

Under this provision, obviously some people would drop out. Who would drop out? They would probably be the people at the margins—ironically, probably the people least likely to vote for a strike and most likely not to return their ballot forms. So you could say that maybe the Government are doing this to promote strike action. It will make it easier to call a strike because the very members who will disappear will be those who have various difficulties.

The noble Baroness who moved the amendment gave us part of the list of deductions, but if this is about modernising relationships, I ask the Minister why it is not an amendment to the Banking Act to deal with all direct deductions. I have not recently received a letter from the Conservative Party about my monthly contribution to the Conservative Christian Fellowship. Perhaps that should be reviewed; perhaps that should be part of a "modern relationship". But no, I have a list here, covering almost a sheet of A4 paper, of the sort of things that are deducted as salary sacrifice, including charitable donations; rail ticket loans; childcare vouchers; staff association subscriptions for staff and social sports clubs; the branch lottery, which is still, apparently, going to be allowed; the company creche; childcare holiday pay schemes; additional voluntary contributions; and, of course, student loan repayments. Perhaps student loans should no longer be deducted at source and we should modernise that relationship and let people decide whether or not they wish to repay their loan. There is a whole list, and that will stay in place.

But does it cost much? That is the next question. The answer is that it does not cost a huge amount. I have a letter from our friend the Conservative leader

[LORD BALFE]
of the North Yorkshire County Council, of great fame having been quoted earlier this week. What does he say? He says that from North Yorkshire County Council's position,

"the changes outlined in the legislation are not needed by us and certainly some of them are … not helpful to us locally. Clearly other authorities may not have our positive industrial relations and good working relationships and may feel the proposals are of benefit".

Moving on to the subject at hand, in other words check-off, he says:

"The deduction … from employees via the payroll is not a process problem for us at North Yorkshire County Council. It is simply treated in the same way as payroll services provided to other organisations i.e. it is a charge for service. As you know Unison pays £7k a year which more than covers the cost and work involved in a straightforward payroll deduction managed by our payroll system with minimal effort from payroll staff … a standard feature of payroll systems and requires no development, adaptation or extra cost … provides us as an employer with valuable information on trade union membership numbers and density across our workforce".

He goes on to say that that is of value when planning changes. It also enables the council to know with ease whether a staff group are union members. He is saying that this is no problem.

I have quoted a Conservative council leader because they may have a bit more influence with this Government than Labour council leaders in this House, but this is a common view. I have not had a single letter from an employers' association or from a council to say that they support this—not one, not even from a Conservative counsellor. I spoke to one Conservative council leader and asked him what he thought. His response was, "Oh, anything that makes life difficult for the unions I am in favour of". That is how he saw this: it makes life difficult for the unions. He did not see it as modernising the relationship in the workplace.

We need to look at this again. This is going to affect the poorest in society. This is not compassionate conservatism. This is going to affect the lollipop lady and the swimming baths attendant—the person at the bottom of the trade union pile; the person for whom unions, above all, were set up to help. It is a very sad day when this clause appears as part of a Bill. It does nothing whatever to improve union relations. I could be very rude about it, but I will sit down, having made my point. This is one area where, if there is a Division, I will be voting in the Lobby against my own party.

Lord Kerslake (CB): My Lords, I support the amendments in this group, particularly those in the names of the noble Lords, Lord Balfe and Lord Beecham, to which I have added my name. I will also speak to my own Amendment 97ZA.

With all the troubles that we have in the world today, I wonder—and I suspect the Minister may be in the same place—why on a cold Thursday in February we are seriously debating the removal of check-off from public sector employees. Just as it is very hard for any rational person to comprehend why we would not allow secure electronic and workplace balloting for industrial disputes, it is impossible to see why any fair person would want to remove this very basic service provided to public service employees.

I start with the cost, as the noble Lord, Lord Balfe, did. There is virtually no cost: that is very important to say. When my then Secretary of State Eric Pickles was keen to pursue this issue, he asked me to go away and find out what the cost was. I, in turn, asked my head of HR. The first response that I received was "zero"—it was literally too small to calculate. Now, as noble Lords will understand, that was not the right answer, so we looked again and came back with what was still, in the scheme of things, a very small, in fact nugatory, sum. Even if there is a cost, as we have already heard, the trade unions have signalled loud and clear that they are more than willing to cover it; indeed, arrangements exist. The cost issue simply does not stand as an argument.

The second argument is that it is outmoded in this age of direct payments. In reality, check-off is just one method of payment—one choice alongside others. I cannot understand why this Government are not in favour of giving people choice. We would not ban people from paying by cash for services if that is what they wanted to do, simply because it was outmoded in this electronic age. If the argument is that it is outmoded, why do we allow—indeed, encourage—payroll deductions for charitable purposes? My amendment today illustrates that point. We encourage it in one situation, as the noble Lord, Lord Balfe, says, but we say that it is outmoded in another. As far as I am aware, and the Minister may want to confirm this, the Government have no plans to remove payroll deductions for charitable purposes.

The third reason that has been suggested is connectivity with your employer—that this is too connected to the employer. Let us be clear that there is no connection, any more than there is a connection for a payroll deduction for other purposes. It is simply a convenient mechanism of allowing people to pay. Even if a Minister in a particular department were persuaded of the case for this change, it makes absolutely no sense whatever to dictate the same policy across the whole of the public sector. For me, that is just the Government exporting their own irrationality.

The reason why we have this proposal is, in reality, an unspoken one. The Government do not like the public sector unions and they want to make life more difficult for them. Let us be clear: this will make it harder for the unions. But as the noble Lord, Lord Balfe, said, it will make it a lot harder for their members. They will be the real losers as a result of this change. It will not be the senior civil servants in the FDA, those I dealt with, who will be inconvenienced; it will be low-paid, widely distributed staff such as cleaners. They are the ones who will lose out.

I will confess to noble Lords that in the heat of a difficult industrial dispute, the question of removing check-off is often raised by managers. My response when this was raised with me would be, "Let's sleep on it", and in the cold light of day it looked like what it was: petty and vindictive. It was about punishment because they had upset us, and it demeaned us as public sector leaders to think of doing it. That is how we felt about it. Whatever frustrations the trade unions brought, they were playing their legitimate role of representing their members. It seems that the Government

are not doing the same thing: they have not reflected on this proposal in the cold light of day. Just as it would have demeaned us if we had moved this forward as public sector leaders in local government, so this genuinely demeans the Government. It is a malevolent absurdity: malevolent because it wilfully sets out to cause harm, and absurd because the Government repeatedly seek to defend it with arguments that simply do not bear serious examination.

In the end this is about balanced and fair government, something we should all feel incredibly passionate about. Yesterday we heard a lot about mothers and dress codes. I shall say this to the Minister: I am wearing a suit, my tie is straight and I will be more than happy to sing the national anthem, or at least the first verse, if the Government will think again about this proposal.

12.30 pm

Baroness Burt of Solihull (LD): My Lords, I concur completely with the comments made by the noble Lords, Lord Kerslake and Lord Balfe. I personally see this as a cynical attempt on the part of the Government to cause maximum damage, difficulty and disruption to trade unions. They are seeking to take away powers from public bodies when they should be devolving more of them, and to make Great Britain a less harmonious place in which to live and work. Every ostensible reason for restricting check-off, as the noble Lord, Lord Kerslake, has already indicated, cannot be substantiated.

The issue of cost has been mooted, but as the noble Lord, Lord Balfe, said, many trade unions already cover the administrative costs of check-off. His Amendment 93 would resolve the situation as regards any which do not at the moment, certainly with regard to cost. In any case, many deductions are used as bargaining chips in negotiations between employers and employees within the whole package of benefits. It is part of the fabric of the relationship between employer, employee and trade union. So we have the irony whereby employers make deductions at source for any number of things, and we have heard about many of them already—they include charity subscriptions, bike schemes, season tickets and so on—but they will not be able to make a deduction for the most central thing in the working life of an employee.

The other fig leaf being used by the Government as an excuse is modernisation. Of course we can sign standing orders and direct debits, but is the removal of this benefit justifiable in terms of forcing trade union members to be modern? I suggest that there is a whole other reason. It stands up to scrutiny about as well as not allowing electronic voting in respect of industrial action, which is hardly an ethos of embracing modernity. It seems that we can be modern as long as it suits the Government's purposes and damages the trade union.

Then there are the administration costs. The Government are supposed to be committed to reducing administrative costs for organisations—unless, of course, you are a trade union, when you will have to spend a huge amount of time re-signing up your members and changing the payments system all over again. As I said at Second Reading, the TaxPayers' Alliance—not normally renowned for defending trade unions—has estimated the cost to trade unions of removing check-off at £6 million. Clearly, this will weaken trade unions and the Labour Party in their pockets. If there is one thing that the Conservative Party knows about, it is the importance of having money to spend on campaigning. Indeed, I am testament to how effective Conservative spending is, otherwise I might have been delivering this speech from green Benches, instead of red ones. I am sure that we on this side of the Chamber await with great interest the Select Committee report examining the financial implications of the Bill for democracy in this country.

Then there is the huge number of complaints that I and many colleagues from across the House have received from local authorities that are furious at having this power taken away from them. Public bodies of all kinds rely on the ability to be flexible in their negotiations with trade unions. It is part of building up good industrial relations, which are vital for the avoidance of industrial action when things get sticky. The Bill will harm good industrial relations and enhance the likelihood of industrial action. Indeed, if they were trying actively to provoke industrial action, the Government could not be doing a better job in the Bill. What happened to commitments to devolution? I thought that the idea was to give more power to local areas to run themselves, rather than take it away.

To try to see the other side of the argument, I believe that it is reasonable that members of trade unions should opt in to paying a political levy, but, with their having opted in, there is no excuse for any employer who chooses to not to be able to make deductions for their employees on anything they both mutually agree on. This is a cynical, vindictive clause, and I and my colleagues on these Benches will oppose it at the appropriate time.

Lord Lea of Crondall (Lab): My Lords, before I come to the specifics of Amendment 94, it is fair to say that these Benches echo the basic analysis of the noble Lords, Lord Balfe and Lord Kerslake, and of the noble Baroness, Lady Burt, echoing, as they do in turn, the basic analysis of my noble friend Lady Wheeler. That is what we have heard in the last three-quarters of an hour.

We are reaching a position where we can only express amazement at the sudden rush to the head of some people in the Conservative Party of an ideological position that this whole tradition, which I thought in my generation of trade unionism had become mainstream in this country, summed up in the term "social partnership", has gone out of fashion big time. Perhaps it is not held by all members of the Conservative Party—we have heard a very distinguished exception—but it is the controlling ideology of the Conservative Party.

The Government seem to want to do everything they can to reduce trade union membership per se—thereby cutting the legs off part of the social partnership structure—by reducing their income and making their role in the workplace next to invisible, even on such questions as health and safety and training and pensions, let alone collective bargaining on pay and conditions, grievance procedures, disputes procedures and all the rest of it; in other words, everything that

[Lord Lea of Crondall]
makes up the quality of the contract of employment. For the last 30 years we have worked to improve not just pay but the quality of the contract of employment. I put on record our thanks to the Government for stopping just short of describing us as enemies of the people.

The Government's impact assessment implies that there is no cost to the unions in removing check-off. It is not obvious to the Government that there will be any impact on trade union income and membership. I do not know who they have talked to. Perhaps the Minister can tell us that. They do not seem to have made any inquiries. We have heard that they do not seem to have made inquiries of local authorities, much less publish them. They do not seem to have made any inquiries of any employers—not that I can find—or of trade unionists. From my own inquiries, I conclude that one might expect in the sector affected a 20% reduction—that order of magnitude—in trade union membership, and a 20% reduction in trade union income as a consequence. As has been said, this will result from all the extra administrative hurdles over which trade unions will have to jump. Trade union members will receive a form through the post. There are few things more irritating than postal forms asking you to provide bank details and so on.

I should spell out what a 20% hit will mean in figures because we have been talking about peanuts for much of the discussion on the Trade Union Bill. You do not need to be Einstein to figure out that a 20% hit will mean that a union in this sector with 100,000 members will wind up with 80,000 members. If today it has an income of £10 million a year, it will be left with one of £8 million a year. Perhaps some of the Minister's colleagues in the Government will shed crocodile tears on hearing that, but no doubt will also greet with a look of glee this further tearing up of the social fabric. I do not know too much about crocodiles, but some other animals have long memories.

The Government are struggling to find a justification for their claim that the impact on trade unions will be minimal. They have found and incorporated into the impact assessment—no doubt after some searching—a somewhat quixotic quote from a PCS spokesman, saying that the union could end up stronger as a result of this measure. However, if you look at the PCS website, you will find that this is among scores of other quotes saying pretty much the exact opposite.

The Government claim that the check-off arrangements are an outdated practice. I will not repeat everything that has been said, but it perhaps needs underlining in a couple of sentences. As the noble Lord, Lord Balfe, and my noble friend Lady Wheeler pointed out—independent observers will surely acknowledge its validity—deductions from the payroll are an increasingly common way by which employers help their employees manage their finances. Payments for childcare, travel, charity donations, computers, the rent of bicycles—or whatever—are often made through payroll deductions.

12.45 pm

Lord Tebbit (Con): Where does the noble Lord get his 20% figure from? What surveys has he done? Why does he think that 20%—one in five—of trade unionists would think, "Oh well, I'm not going to bother carrying on paying into the union", if the union is giving them a valuable service?

Lord Lea of Crondall: I have talked to many unions in the public sector, and that is the sort of feedback I get. It is for the two reasons I have given, but perhaps the noble Lord needs to be reminded of what I have only just said. The first reason is the extra administrative hurdles over which the trade unions would have to jump. It does not happen by magic. It will place a huge administrative burden and cost on trade union officials, who have other things to do, such as helping with day-to-day issues. To crank all this into action, whether in the Civil Service or elsewhere, will be a huge administrative burden. As the noble Lord, Lord Kerslake, pointed out, people within the system see this as a ridiculous extra administrative burden. Secondly, people are not too keen on forms and might even blame the union for troubling them with another piece of paper or form to fill in. If I am wrong, I will naturally be relieved, but I might be wrong the wrong way round: it might be a bigger hit than 20%.

Lord Brooke of Alverthorpe (Lab): I might be able to help the noble Lord, Lord Tebbit. If he checks with the Prison Officers' Association, he will find that it had facilities withdrawn from check-off, and it has real troubles, as I mentioned on Second Reading.

Lord Lea of Crondall: The Government imply, without ever spelling out anybody specifically, that they have support for this radical change, but the *Financial Times*—hardly a Labour newspaper—has reported that,

"human resources directors in the National Health Service"—

the largest employer in the country, as we know—

"including those in some of the biggest hospitals, have written to Matthew Hancock, cabinet office minister, questioning … plans to scrap the … system".

Another letter from human resources directors reported on in the *Financial Times* is to the effect that the five-year plan to improve performance would actually be set back by the changes set out, on the basis that close working between managers and union representatives had been,

"recognised by health ministers as fundamental",

to its delivery. So why go around stirring up trouble? Perhaps the noble Lord, Lord Tebbit, has a good answer.

As Dave Prentis from UNISON pointed out in oral evidence to the Commons Public Bill Committee, the unions often pay for check-off deductions by arrangement. As has been said by everyone who has touched on this topic so far, it is perhaps peanuts in the bigger scheme of things, but if that is an issue at all, the amendment which could deal with that would be one that the Government, I am sure, would now wish to support. In summarising this financial question, on the one hand we have huge costs to the trade unions, relatively speaking, both in gross loss of income and through loss of members; on the other hand, there is the huge administrative burden. If unions are offering to make payments, this is the right time to reach a consensus on that point at least. However, I might add that it is monumentally unhelpful, given the time constraints

on the requirement to sign up to direct debit payments, to be faced simultaneously—and we were discussing this two days ago—with the loss of facility time at the very point of explaining these untoward changes. Inside the Government, does the left hand know what the right hand is doing?

In response, therefore, either today or in the next couple of weeks, will the Government take the opportunity to meet the employers which have a degree of independence? There is a whole range of bodies, including those whose reputation suggests that they have a considerable degree of independence—the BBC, the British Museum and so on are listed. They are not organisations, I am sure, that the Minister would wish to say should be subject to any degree of intimidation to fall into line.

I now turn to the widening of the ban to privatised companies, which is the subject of the amendment in my name and that of my noble friend Lord Monks and others. As with facility time, with the banning of check-off the Government are again giving us the spectacle of extending the net to enterprises that are not in the public sector. I draw attention to the extraordinary scope of subsection (3) of Clause 14, which inserts new Section 116B into the 1992 Act. It is there on page 11 of the Bill. You can hardly believe it, but there it is. It allows a Minister to provide by regulation that a private sector employer can be deemed to be carrying out,

"functions of a public nature"—

I do not know what the Supreme Court lawyers would make of that—and it can be caught by Clause 14. What sort of legal drafting is that? Many distinguished jurists must be turning in their graves. One is inescapably reminded of the dictum, well known to the noble Lord, Lord Cormack, of Humpty Dumpty:

"When I use a word, it means just what I choose it to mean—neither more nor less".

That is the only way I can describe this extraordinary interpretation that public sector means private sector where the Government say it does.

As regards which companies this will apply to, by the way, we do not have a complete list. It may be wishful thinking to think that the ones we have heard specified are it. We do not know. Ministers may be having second thoughts. We do not know. Perhaps they just want to leave it all dangling there, blowing in the wind. We could be talking about air traffic control or about any of these companies. I repeat: why go about stirring up trouble and uncertainty? We could be talking about the field of nuclear decommissioning and companies such as Magnox Ltd and Sellafield Ltd. The letter from the Minister dated 22 February is not clear as to its scope: whether it is the definitive list or only a list of people within the public sector. One can only therefore assume that the examples given are not exhaustive. How do we find this out? Where can workers and unions find clarity—by guesswork? It is not exactly a model of transparency, and employers would have to err on the side of caution.

To take the example of nuclear decommissioning one stage further, this sector may have a bigger hit—

Lord Cormack (Con): Does the noble Lord realise that he has now spoken for 18 minutes and we are still waiting for him to come to the point?

Lord Lea of Crondall: With great respect to the noble Lord, Lord Cormack, I think that many of my colleagues will think that I have made some very pertinent points. I am now on my final two or three sentences.

In the case of the nuclear decommissioning industry, because of the extra difficulty of trying to get to the members—perhaps the noble Lord, Lord Cormack, could pay some attention to this point—they are inhibited further than normal by the fact that nuclear sites are licensed with restricted access. When the noble Lord, Lord Tebbit, finishes his private conversation, he might be interested in this, but he does not tend to listen to what people are saying, and that is not new. Has that extra difficulty been thought out of adding access to people on nuclear sites, which are licensed with restricted access?

There may be agreement that my final sentence is a good point to finish this on. I hope that the Minister will comment separately on this whole exercise of defining parts of the private sector as being in the public sector, as otherwise I can describe it only as the most outlandish idea, which seems to have won first prize—as the daftest one of all—at some well-lubricated jamboree organised by the Young Conservatives equivalent of the Militant Tendency.

Lord Forsyth of Drumlean (Con): My Lords, perhaps I could be allowed a brief intervention—I was not making a particular point about being brief; I mean it will be brief for me. I apologise that I have not been able to take part either at Second Reading or in Committee. The Scotland Bill and the Economic Affairs Finance Bill Sub-Committee have taken me away. I wanted to make a contribution and am sorry that I was not able to in respect of Clause 10, but I support Amendment 92, in the name of the noble Baroness, Lady Wheeler, as it seems to provide a perfectly sensible way forward for the Government.

If we had a Labour Government who brought forward a Bill suggesting that employers should no longer be able to deduct private health insurance payments from people's salaries, I wonder how we would react on these Benches. We would go absolutely mental. We would say that it was a gross intrusion and a politically motivated thing, which interfered in the relationship between employers and their employees.

The noble Lord, Lord Lea, seemed to think that there was some ideology here. I can probably be identified with ideology in the Conservative Party more closely than most. I am a strong Thatcherite and very much supported my noble friend Lord Tebbit, who is no longer in his place, in his trade union reforms, which have stood the test of time. Those reforms were about ending the closed shop, giving the trade unions back to their members and taking the trade union movement away from the extremist militants within it who had led that movement, with its very proud history, into an abyss. That is what they were about.

Although I understand the main purpose of the Bill is to ensure that minorities do not dominate the decisions of trade unions, and support that core purpose, on

[Lord Forsyth of Drumlean]
both check-off and the question of opting in and out of the political levy I believe the Government are going far too far.

1 pm

Lord Deben (Con): I am sure my noble friend will agree that I could not be characterised in quite the way in which he characterised himself, but I entirely support what he is saying. I do not think that this is a proper way to behave. We ought to make it easy and simple for people to belong to a trade union, and if it is best done this way, they should be allowed to do it this way.

Lord Forsyth of Drumlean: There we are: we have the entire spectrum of the Conservative Party in agreement on this matter. I will not make any comments about Europe, so that we may maintain that position.

As the noble Lord, Lord Kerslake, pointed out, we allow charitable deductions, and as Conservatives surely we believe in reducing the power of the state, not increasing it. What business is it of the Government or the state to decide what arrangements are made between free trade union movements and employers?

I have looked in vain to find this great cohort of employers that are against check-off. It seems to me—this is a central point that has been made in the debate—that you do not want to create a situation where there is tension between employers and trade unions, and where you perhaps end up back where we were before the 1980s, with militant people going round the workplace to collect subscriptions and to encourage people to do things which we on this side of the Chamber would not be very enthusiastic about.

I am also very concerned about another thing. We have had a debate on my noble friend Lord Strathclyde's report on the use of secondary legislation, but here we have, in new Section 116B(3), in Clause 14:

"A Minister of the Crown may by regulations provide, 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"—

that is quite a wide gang—

"that the body or other person is to be treated as a public authority for the purposes of this section".

So the Government are taking unto themselves powers to be even broader in respect of something about which, as far as I can see, they have not yet made their case.

I do not want to take up much more of the Committee's time, but will just give notice to my noble friend that, should this matter come to a Division, I will certainly not be supporting it. I suggest to my noble friend that she looks very carefully at the amendment from the noble Baroness, Lady Wheeler, and the noble Lord, Lord Collins of Highbury, which seems to me to do everything that the Government could possibly want, if there is a genuine and sincere reason for making this change. It would provide for a proper code of practice, which means that people will be aware of what they are doing.

I suppose I should have declared my interest as a director of a bank, but the point has also been made about people who do not have bank accounts. I dare say we could find noble Lords on this side of the House who have not paid their subscription to the Conservative Party because they forgot to renew it and did not have a direct debit or something of that kind—my noble friend Lord King is indicating alarm at that. It is a very simple system, which is tried and tested and about which there are no complaints.

The costs are absolutely negligible. If it is a cost argument that is driving the Government, employers could charge the cost to the trade union, as the amendment in the name of the noble Lord, Lord Balfe, who I thought made an excellent speech, suggests. But to my mind the costs to the employer are considerably less than those of having people coming round the workplace collecting subscriptions. If anything, what is being proposed will add to the burden of employers, and I thought that as Conservatives we were against adding to the burden of employers and in favour of making life as simple as possible for them.

This looks to me like something that seemed a good idea at the time, which has now got into legislation, perhaps not with the best of motives. It would be wise of the Government to take the good advice which is coming from all sides of the Chamber and drop it.

Lord Beecham (Lab): My Lords, it is quite an exceptional pleasure to follow the speeches of two distinguished Members of this House on the Conservative Benches and the intervention by the noble Lord, Lord Deben, which was pithy but very striking, if I may say so. I declare my local government interest and my interest as an unpaid consultant at a firm which, for many years, has acted for trade unions. In that capacity, I am very well aware of the help and support they give to individual members across a huge range of concerns, from employment tribunals to accident cases, and of their support for members in the workplace.

I start by referring to the other check-off—Anton Chekhov—who wrote in one of his stories:

"To advise is not to compel … You must trust and believe in people or life becomes impossible".

That seems to me a good description of the world of industrial relations. When it comes to check-off, many councils, including Newcastle, of which I remain a member of course, charge for the service. Newcastle actually makes a profit of around £20,000, which goes into the council's budget. To put it another way, it could be said that it reduces the cost of facility time, which we touched on in an earlier debate. Many other councils do the same. It would be quite reasonable for the Government to require unions to pay the cost of check-off—Unison has made it very clear that is has absolutely no problem with that—but it should be a matter for individual councils and public bodies, as it is for private sector companies, to decide whether or not to operate a check-off scheme.

Unison reports that it is involved with 9,334 agreements about check-off, 7,242 of them in the public sector, with the rest in the private sector and, I suppose, the voluntary sector. Interestingly, some major companies, such as E.ON and United Utilities to name but two, are perfectly happy to operate such a scheme. The proposals were not in the Tory manifesto, and appeared at the last minute as the Bill was going through in the House of Commons. It would appear that there was

no consultation with employers, let alone, of course, the unions themselves. Indeed, the director of human resources at Leeds Teaching Hospitals NHS Trust—a very major trust—has written:

"Ending trade union deductions through payroll in the public sector came out of the blue"—

I do not think he is making a political reference there. He went on:

"From what I can tell there has been no consultation with employers, no engagement with trade unions, no assessment of what it may mean for employee relations or, more importantly, recent progress in partnership with trade unions … My anxiety—which I know is shared by others—is about the unintended (but in this case entirely foreseeable) consequences. Check-off… is a light touch management activity, but it does give employers a sense of their union density, particularly when dealing with multiple trade unions"—

a point made effectively by the noble Lord, Lord Balfe. He continued:

"When balloting does take place, check-off allows employers to undertake the SBET (standard British eyeball test)",

which I had never heard of before. Quite what it means, I confess I do not know, but I assume that it means that the employer can check on the validity of a ballot in relation to union membership. Mr Royles goes on:

"Should we challenge it? All this will be more difficult if payments are made by direct debit".

That is a big employer, of a major service, making a very telling point.

The Government suggest that payments be made by direct debit from the employee's bank, as we have heard. Other noble Lords have said there is really no difficulty in this, and, just as much to the point, most Unison members have expressed a preference for check-off. As long as there is no cost to the employer, why should their wishes not be respected? Many employers in local government have voiced their views, including the north-eastern councils, which have collectively backed check-off. I think the Dorset police and crime commissioner—who I suspect is probably not a Labour member—has done likewise. As we have heard, the Government are reserving the position in relation to the functions of police and crime commissioners.

On Second Reading, I quoted Margaret Thatcher, who famously said that,

"for over 100 years … it has been the belief of the Conservative Party that the law should not only permit, but that it should assist, the trades unions to carry out their legitimate function of protecting their members".

It could be argued that she rather departed from that view, although the noble Lord, Lord Forsyth, disagrees, during her period in office as Prime Minister, when she spoke of "the enemy within". The latter view, sadly, appears to have shaped the provisions of the Bill. It is time for the Government to treat the unions as partners in the provision of public service, not as enemies, and to treat public sector and council employers as reasonable decision-makers, not subordinates requiring constant interference with, and control of, their role as managers of public services.

There is also the issue of potential legal challenge. The noble Lord, Lord Pannick, who is not in his place, wrote in the *Times* recently that the second area where the Bill is vulnerable to legal challenge—he had identified another issue—is Clause 14. He wrote, "It is very difficult to see the justification for such a restriction which has a very damaging effect on the efficacy of trade unions". There must be the possibility of a legal challenge.

I suspect that there will be a broad consensus in this Committee about many of these provisions, particularly this one. I hope that the Minister will take these views back to the Government and that they will think again. An amendment was moved in the Commons by a Conservative Back-Bencher which would effectively remove the element of compulsion and leave it to employers, providing that the cost was met.

I began my speech by referring to a quotation from Chekhov. I offer three titles of his short stories which might well be applied to this Bill: "Gone Astray", "Overdoing It" and "A Blunder".

Lord Cormack: It is certainly no cherry orchard, is it, my Lords? I am delighted to support my noble friend Lord Balfe in particular. He made a very telling, powerful and compelling speech, and I agreed with every word. Although I have concentrated my contributions to the debates on this Bill on Clauses 10 and 11, about which I remain acutely concerned—my noble friends on the Front Bench know my intentions if the debate does not move in the right way—I share the views and intentions of my noble friend Lord Balfe when it comes to this clause.

If the Conservative Party stands for anything, it stands for choice. This clause is an unnecessary, meddlesome, bureaucratic abolition of choice, and it is not worthy of the Conservative Party. Although she is engaged in conversation, I hope that my noble friend the Minister can hear what I am saying. She has a very good track record in the field of industrial relations. She cannot, surely, believe that the deprivation of choice is something that she can champion, and I hope that she will not.

It is only about a week since an eminent world leader rebuked an aspiring world leader by telling him, effectively, that those who wish to demonstrate their credentials should build bridges rather than walls. In this clause, we are building an unnecessary wall. It is inimical to the true one-nation Conservative tradition and it is not something that any Conservative can wholeheartedly support. The speech of my noble friend Lord Forsyth of Drumlean was intervened on in a very pithy and apposite way by my noble friend Lord Deben, who said that they spanned the whole range of the Conservative Party. I stand somewhere between them on a range of issues, so I think that we pretty well span the range of opinion in the Conservative Party. If my noble friend the Minister thinks that by giving way on this clause she will be conceding to the Opposition, she will not be—she will be marching in the spirit of true one-nation, pro-choice conservatism.

I hope that when we come to Report, we will have from my noble friend a suitable amendment that will encapsulate the essence of the amendments proposed today, in particular the amendment so splendidly spoken to by my noble friend Lord Balfe, and that we will therefore be able to take away from this Bill an aspect of petty vindictiveness and spite that does nobody any favours and is wholly unnecessary. What is the point of this? The answer is that there is no point.

1.15 pm

Baroness Donaghy (Lab): My Lords, I have three amendments in this group and I give my full support to the amendment of my noble friend Lady Wheeler. I believe that Clause 14 is authoritarian and represents the Government's belief that public sector employers cannot be trusted. I shall concentrate on my Amendment 95A and try, for the sake of time, not to cover ground that has already been covered.

Clause 14 creates regulations that may,

"make consequential provision amending or otherwise modifying contracts of employment or collective agreements".

We do not know what the finished product will look like when this Bill becomes an Act. We do not know to what extent the regulations will cover important issues of policy—this has already been referred to by the noble Lord, Lord Forsyth—or just explanatory detail, but having a clause of this kind allows the Government to change individual employment contracts and to set aside collective bargaining agreements.

These seem to be Henry VIII powers which not only cut across employer/employee relationships and agreements but reduce the public sector to an employment agency for the Government. What lies behind this proposal and how significant is it from the Minister's point of view? Is she able to argue that this is not a highly centralist proposal? Finally, what does the Minister have in mind when it comes to the phrase,

"amending or otherwise modifying contracts of employment"?

I notice that paragraph 3 of the draft skeleton regulations—it does not get more vague than that—on the prohibition of check-off states that check-off is,

"void in so far as it purports to require the relevant public sector employer to make trade union subscription deductions from wages payable to workers".

As has been said many times, check-off is a voluntary arrangement entered into by the employer and the employee. What is meant by "purports to require", as I am not aware of any employer who is required to do this? I am reluctant to help the Government on this, but perhaps the phrasing in the Explanatory Note would be more accurate, as it talks about purporting,

"to give the right to have such deductions made".

My Amendments 123A and 124A seek to delay implementation for five years. I sincerely hope that this draconian measure about check-off will not go through at all, but if it does, it will take a huge amount of time for trade unions to put their house in order. Those points have been covered very well by other noble Lords, so I will not cover them again.

However, there will be a disproportionate impact on low-paid employees and part-timers, particularly women. I fear that it is taken for granted by the Government that everyone can create monthly direct debits or standing order arrangements with their banks. As has been said, this is not the case. Banks will not be accommodating if someone has a chequered payment history or if pay is intermittent. I refer back to facility time: some members will be able to pay only by cash or cheque, and there will need to be time for trade union representatives to do the physical collection—a point I made at Second Reading. All those problems will take time to solve, which is what I am asking for.

Finally, I ask a question on the implementation of the ban on check-off. There appears to be confusion in the skeleton regulations about the implementation of the ban. In her covering letter of 22 February, the Minister refers to the ban not coming into force,

"until at least 12 months following Royal Assent of the Bill".

However, the draft regulations suggest that the ban will come into force,

"no sooner than 12 months of being laid in draft form in both Houses".

Although the final regulations could be laid at the same time as Royal Assent, that is not guaranteed, so the dates could be quite different. Nick Boles has previously talked about implementation,

"from commencement of the provisions on check-off".—[*Official Report*, Commons, Trade Union Bill Committee, 27/10/15; col. 413.]

Will the Government clarify which date they currently support? My amendment asks for a five-year period for trade unions, their members and employers to be able to implement this without detriment. There will still be detriment to employers, of course, because they will not know who the trade union members are. That is still a vital point, even for those who think that trade unions are anathema.

In conclusion, I hope that the Government will back down. They have a marvellous opportunity, in the shape of my noble friend's amendment, to do that with dignity.

Lord Stoneham of Droxford: My Lords, I am fearful of keeping noble Lords from their lunch, but I have several points that have not already been made in the debate. I agree absolutely with what the noble Lords, Lord Balfe and Lord Kerslake, said about how the Bill, particularly this clause, is designed principally to make life difficult for the unions. It is not about modernising industrial relations.

I challenge the Minister to explain some of the statements made in the impact assessment. It is extraordinary that it states:

"Removing the check off provision is not expected to have a negative impact on industrial relations"—

we have heard arguments to the contrary in this debate. It also states:

"The impact of transition on the trade unions will be minimal".

How can that be? It further states that:

"We assume that the amount of time taken to become familiar with the proposals will be small as changes introduced in the Bill are straightforward".

We have heard in the debate that these are complex and difficult procedures that the unions will be inveigled into if the proposals are passed.

I accept that we have moved on a long way from when union dues were collected in cash. I remember in the sector in which I worked, staff had for years been paid in cash and the father of chapel used to go around collecting dues regularly. The only problem was that he was also acting as a bookie's runner in the plant, so the union was very grateful when the management agreed to accept check-off.

We have moved on from that, but we want union representatives to concentrate on improving industrial relations. We know that, whatever happens, there will

be a huge muddle and administrative problem. No one has mentioned that we now have ballots for strikes and industrial action. The complication of not having agreed lists of who can vote in those ballots will be much more difficult in the public sector without check-off. No one has mentioned that there is a huge problem with people not cancelling direct debits when, in this case, they move jobs to different sectors and may even need to join another union. We know that those direct debits are often not cancelled.

Lord Balfe: My Lords, I point out that Baroness Williams, who has just departed from us, continued to pay dues to the Labour Party for 10 years after she had joined the Social Democratic Party, because she failed to cancel her direct debit?

Lord Stoneham of Droxford: I think it needs such sources of money at the moment.

Another issue that has not been raised is that a good employer wants representative unions. As someone who has been involved as a manager—I know that the unions may be suspicious of this—I liked to know who was in the union, because I wanted to know how representative the leadership of the union was in negotiations, how serious they were and how I should respond to them. That is an important point.

Another point that the Conservatives have overlooked is that, if you get unions down to a core so that they are unrepresentative, you will face very difficult decisions. I always remember Vic Feather saying, "I always look to the faces of the people at the back of a room, not the voices of the activists at the front". If you want representative unions, you want the highest number of your employees to be members of that union. Not to upset my Labour friends, but if you go down this route, you will be handing the trade unions to the Corbynites, the less representative groups. You will have more trouble in the trade unions as a result, particularly in the public sector, than if you recognise that the rank and file—the people involved in high-turnover sectors, the cleaners—have good judgment when they have to face the decision whether to lose wages and take industrial action. Those people provide the solid support for trade unions, and you should be encouraging them. If you do not, you will end up with worse industrial relations.

I support Amendment 92. It is a good way forward, and the Government should look carefully at it. The amendments of the noble Lords, Lord Kerslake and Lord Balfe, help in the debate. We must address the fact that, once again, the Government speak devolution and then do absolutely the opposite—as in local government. The Bill, and these provisions, do not help us to modernise industrial relations.

Lord Monks (Lab): Perhaps I can help the Minister to join the consensus on how awful the clause is by stressing one point that the noble Lord, Lord Cormack, touched on. It is about choice. There is sometimes confusion in audiences that I address about check-off. People wonder, "Is it to do with the closed shop? Is it compulsory that union subs are deducted by the employer and sent to the union?". The answer is no: the closed shop is history, it has gone. There is no compulsion, it is voluntary. There is also sometimes confusion with the political contribution, the political levy, where there is an opt-out. If there is any inertia selling, it tends to be on the side of the opt-out system.

This is a matter of choice. When my daughter got a job in the Minister's former company, Tesco, as a Saturday girl, she got a form in the recruitment pack that said, "Do you want to be a member of the union? If so sign here. Do you agree to have your subscription deducted from the payroll? If so sign here". That was the system. If it is good enough for Tesco, why can it not be good enough for Manchester City Council or all the other public bodies that will be covered by this provision? Why manufacture a series of disputes about union contributions and how they are collected in a vast range of British places of employment? It is a step far too far, and I hope that the Minister will listen carefully to what is said on all sides of the House.

1.30 pm

Lord Campbell-Savours (Lab): I put to the Minister a question that she might consider before she comes to the Box. She will have a prepared speech, and she has obviously amended her notes. But what has come out during this debate is an inconsistency in the position of those to whom the noble Lord, Lord Forsyth, referred as wishing to contribute to Bupa, and all the other organisations referred to by the noble Lord, Lord Balfe. In her reply, the Minister must address that difference in treatment, because it goes to the heart of the case. When people outside the House judge the ministerial response, they will have to do so on the basis of whether trade unions are being penalised when other organisations are not being penalised. That is what I shall look for in her contribution. If she does not address it, she will be pressed on by interventions during her wind-up.

Lord Sawyer (Lab): I thank the noble Lords, Lord Balfe and Lord Kerslake, for their contributions and particularly what they said about part-time, low-paid workers in the public services—the National Health Service and local government. Throughout my lifetime I represented those workers and I know what it is like for people on those kinds of wages and in that kind of situation to handle bank accounts, standing orders and direct debits. It is very difficult, and it was heartening for me to hear noble Lords' understanding and kind words in relation to those often forgotten and underappreciated workers.

The climate of employer relations in the public services in the 1970s was very immature and undeveloped. I was a trade union official and I would ask a local authority whether I could take a road worker to a meeting to talk about pay and conditions, but it was very difficult to get the authority to release a person to go to a meeting. When it did, the road worker would turn up with dirty hands. When I asked him why he had not washed them, he would say, "The management will give me time to come to the meeting but they will not give me time to wash my hands". I used to take school meals women or school cleaners to meetings, and the management would be dressed appropriately, as we expect managers to dress, but the women were always required to go to meetings without time to take

[LORD SAWYER]
their overalls off and put a dress on. They would have to take part in the meetings wearing the overalls that they went to work in.

I give noble Lords those examples only to show how backward employer relations were in the 1970s. I agree with the noble Lord, Lord Forsyth, that some of the Conservative legislation helped with that, but other things happened as well in public services. The two big things that made the change were having facility time and deduction at source; they changed the landscape dramatically, because people did not have to worry about getting time off to go to a meeting or about scurrying around all the time collecting subscriptions. They started to concentrate on what the taxpayer and consumer wanted them to do—that is, improving the quality of the service through good employer relations. Today we have a fantastic employer relations situation in the public services. There is partnership and we deal with thousands of problems every day. Management and unions work together; they do not have to look over their shoulder about facility time or think about check-off—they can get on with the job of solving the many problems that have to be resolved, building good employer relations and doing the things that the taxpayers and consumers want them to do. I hope the Minister will take that point on board, listen to the excellent speeches that have been made this morning and think again about this clause.

Lord Leigh of Hurley (Con): My Lords, I approach this from a slightly different angle. I looked at the Bill for the first time with a particular interest in Clauses 10 and 11 and learned about check-off only from reading Clause 14 later. Frankly, I was surprised to see check-off still taking place, as it does not sit comfortably with many people. My noble friend Lord Balfe's story of its history is very illuminating and extremely interesting; it explains to us why it came about, as opposed to the cash collection that predated it. Clearly, no one starting today would use a check-off system; the way everyone is moving is towards direct debit.

I have spent time trying to understand why check-off is not appropriate. One reason I discovered is that apparently in 1998 legislation came out that did not require changes in the amount paid under check-off to receive notice—whereas, of course, direct debit under the direct debit guarantee requires 10 days' notice. So people are assured that any change to the amount paid by direct debit gets 10 days' notice. It seems to me that unions are moving in the direction of direct debit. The Public and Commercial Services Union briefed its members on that subject, stating in its own material:

"Trade unions in general are no stranger to Direct Debit. POA members currently pay via this method after the previous Tory Government attacked their trade union rights and forced them to halt 'check off'. The following Labour Government offered to reinstate it for them, but the POA chose to stick with Direct Debit. Many other large trade unions collect subscriptions in this way … such as Unite and GMB".

Indeed, Unite offers incentives to people to move to direct debit; currently, it offers an incentive of £25.

Lord Forsyth of Drumlean: Does my noble friend appreciate that some people on some very low incomes may not have bank accounts at all? If they do have bank accounts and set up direct debits, if there is not enough money in their account, they get an enormous bill from the bank because the direct debit has been disallowed. Therefore, they are very reluctant to sign up to direct debit.

Lord Leigh of Hurley: I would be very interested to know the number of those people. Clearly, the numbers have changed dramatically since check-off was brought in, as the noble Lord, Lord Balfe, explained.

Lord Cormack: Yes, but we are concerned about every individual. Even if it is only a few hundred people, surely that in itself is justification for what is being argued by almost everybody in this debate.

Lord Leigh of Hurley: Of course, exceptions can be made for a few hundred, if it is a few hundred, as with others. But it seems that direct debit is the direction of travel. I have nearly finished.

Lord Forsyth of Drumlean: I am most grateful to my noble friend. I have no idea what the numbers are, but it will be more than a few hundred—and it will be the people who will lose most if they do not have the backing of their union. I appreciate that they may not move in his social circle, but there are a lot of people like that.

Lord Leigh of Hurley: I am not sure the noble Lord knows my particular social circle, but I took the figure of a few hundred from my noble friend Lord Cormack. As I said, I do not know the numbers and I do not think the noble Lord knows the numbers, but it would be interesting to have them presented to us.

Lord Cormack: The point I was making was that even if it is only a tiny number, why are we doing this?

Lord Leigh of Hurley: Yes, I thank the noble Lord—I have taken the point. The point that I was making was that the direction of travel, in the market and clearly by the unions, is towards direct debit, which is a direction of travel that we should encourage.

Lord Judd (Lab): My Lords, this has been a fascinating debate, and I have begun to feel a bit sorry for the Minister, because she totally lacks any kind of support whatever. If I am allowed to say so without being out of order, I also feel very sorry for her officials in the Box and elsewhere, who have to witness the slaughter of their Minister on a completely unacceptable Bill.

I want to make just one simple point: this Bill has a significance way beyond the issue itself. This country desperately needs a strong economy. It desperately needs the most effective, harmonious, productive economic system that we can ensure. There is simply no room whatever for a culture of confrontation. We need co-operation between self-confident people who feel that they really matter and have a stake in the process. This Bill does nothing whatever to promote such a positive approach in the interests of the British economy and British society. There is no place for it. This debate has left no doubt whatever about that.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe) (Con): My Lords, I thank the noble Baroness, Lady Wheeler, for her clear, comprehensive and relatively succinct introduction to this enormous group. It is plain that the sense of the Committee is that there are concerns about Clause 14, for reasons that have been fully debated. However, we have looked carefully at the clause and the amendments, and I will try to explain our thinking in a clear and objective fashion.

It is important to note that check-off was introduced in a very different time when bank accounts were not common and workers were paid in cash. We are now in a modern era of online banking, where public sector workers' wages are almost all paid directly into bank accounts and direct debit is the obvious alternative. The average consumer already has six direct debits. This is the direction of travel, as my noble friend Lord Leigh said. An advantage of moving to direct debit is that a union and its members will have a direct subscription relationship without any need for a public sector employer to be an intermediary.

It is, of course, about the public sector that we are talking, to respond to my noble friend Lord Forsyth. If we were designing a union membership payment method today from scratch, no one would choose to put the employer as an intermediary in the subscription relationship between a union and its members.

Lord Collins of Highbury (Lab): What about Tesco?

Baroness Neville-Rolfe: I suspect that if it was starting now, rather than 100 years ago, things would be different because of the direction of travel.

Baroness Wheeler: The Minister said she would be clear and objective. Will she state what evidence she has been given for saying that that would be the case?

Baroness Neville-Rolfe: I think we have set out clearly in our impact assessment and elsewhere the way things are going. There is clear evidence that there has been a big move to direct debits, internet banking et cetera. I do not think anyone could dispute that. As a former employer in the private sector, I was thinking that if one was setting out on this today, one would not necessarily do it in the same way.

Lord Collins of Highbury: I shall give the Minister a simple fact. She talked about Tesco. She was part of a partnership arrangement. Can she tell me how old that arrangement is and how important payroll deduction is to it? In my memory, it is relatively recent.

Baroness Neville-Rolfe: I think check-off existed for a number of years at Tesco, long before I arrived. We had the partnership agreement to which the noble Lord refers in the late 1990s, and I was involved in that. Check-off is part of the arrangements. In the Bill, we are not seeking to regulate the private sector; we are talking about the public sector, and there is a cost which is set out.

Lord Mendelsohn (Lab): The Minister has been very clear about the notion that there is evidence of the direction of travel. Is she suggesting that the direction of travel—meaning that more people use internet banking, perhaps on their phones, or direct debit—is the introduction of technology, and therefore it is just the direction of travel of technology that is being raised here? There has been a massive expansion in the use of payroll deductions for a variety of things from bicycles to charitable donations. Does that indicate another direction of travel—the velocity of the things that have been introduced? What is the particular evidence that there is a direction of travel which is unique and distinct and obviates the opportunity for choice to be exercised?

Baroness Neville-Rolfe: The noble Lord is right in saying that the direction of travel is driven by digital change—I am not disputing that—and that a fair number of things are deducted at source. However—and I am trying to find my notes—they nearly all have tax or national insurance involved.

1.45 pm

Lord Monks: I remind the Minister about workplace pensions. They are a very recent auto-enrolment initiative. They do not go back to the 1990s; they go back about two years. They are based on payroll deductions. They are not old-fashioned; they are efficient. They are the way to do things. They are much cheaper than direct debit and much easier for people to handle. That is why, on a consensus basis, auto-enrolment is based on payroll deductions.

The Earl of Courtown (Con): My Lords, I do not wish to be discourteous to the Committee in any way, but there have been five or six interruptions so far and the Minister has been on her feet for four minutes. If she is allowed to make just a little bit of progress, perhaps during the course of that progress she will be able to respond to some of the questions being put.

Baroness Neville-Rolfe: I am grateful to my noble friend. We are debating check-off in relation to Clause 4. The Public and Commercial Services Union on its website quotes a member who said of direct debit:

> "It's the easiest way of paying my union subs. You know then that it's going to get paid because you're not dependent on your employer taking it from your wages. I think it's better".

I agree with that.

Public sector employers, where they are funded by the taxpayer, have no place in shouldering the administrative burden of collecting trade union subscriptions. Even where the union pays the employer for the service, it remains the employer's responsibility to manage the payments, and if the employer gets it wrong, it could be taken to an employment tribunal.

Unite, UNISON, GMB and PCS already accept direct debits, and some unions have already modernised their arrangements and accept only direct debit payments. Direct debits are easy to set up, and they offer excellent consumer protection. The majority of adults in the UK use them, and many organisations consider it their preferred method of receiving payments, such as utility providers who offer customers a discount if they pay in this way.

[Baroness Neville-Rolfe]

I thank my noble friend Lord Balfe for setting up a meeting with officials from some small trade unions. What struck me was that they felt that direct debit was the way forward and that some of them had already modernised their arrangements and no longer use check-off. The unions I met included the FDA, Accord, Prospect, the Association of Teachers and Lecturers, the National Association of Head Teachers, the British Dental Association and others.

Modern employment practices are seeing more fluidity in the workplace. As Prospect says:

> "Many Prospect members change jobs frequently, or have periods of unemployment between contracts. If you're moving on, you don't have to resign your Prospect membership. We can stay with you during those times".

At Second Reading, I said that I was in listening mode, and we have listened to some of the concerns raised about implementing this change and allowing a sufficient transition period. So to reply to the noble Baroness, Lady Donaghy, we announced in the other place that the regulations on check-off would not come into effect until 12 months after the Bill received Royal Assent. This will give unions double the time we originally proposed—a full year—to encourage their membership to move over to paying their subscriptions by direct debit. That is on top of the time unions have already had since the proposal was first announced last August. It is one of the many reasons why we do not accept the assertion that the proposal offends human rights or hinders union activity. It is about a change of subscription method over a full year and, as we see it, does not engage the European Convention on Human Rights. It is right that unions should adopt modern subscription practices to reflect the changing needs of all their members. No new entrant to the job market would expect only ever to have one employer these days. Check-off is not well suited to meeting the needs of a diverse and fluid workforce.

We heard at Second Reading that check-off benefited employees as it made sure that they ceased being a union member when they left employment, but all the large trade unions offer specific memberships for retired members, and trade union membership is not restricted to those who are still working.

Noble Lords have claimed several times that the prohibition on check-off will affect those without bank accounts. I have not seen a great deal of evidence that such public sector workers exist outside the hypotheticals—and we are talking about the public sector—but even if a few members still do not have bank accounts, I am sure that a union would be prepared to accept cash or alternative payment arrangements, although this would be very much a matter for the union. Even basic bank accounts now allow direct debits, and of course if you are online you can cancel a direct debit when you need to, which has represented progress in banking. More householders than ever now have bank accounts, and the check-off impact assessment referred to the wider Bill impact assessment that was published at the same time. The impact on union members will be minimal as they will have, as I have just said, 12 months to switch to direct debit.

Lord Mendelsohn: I am finding difficult the suggestion that there is now some prescription that direct debit is the only method that should be used. Putting aside the issue of choice and the fact that direct debit does not appear at all in the Bill as a solution, I would like to give an example and get the Minister's view on the following: in the Government's evidence about the propensity of people to use payday lenders, one of the extraordinary features of those people who have very little who use payday lenders was that they remove direct debits from their bank account so as not to suffer the penalties as a consequence of it. Many of those were low-paid workers and will have been in the public sector. In those circumstances, where it is better to have this deducted at source when the money comes in rather than having an impact on their bank account where there may be a detriment, should those people not have a choice as to where and how they should be able to pay their union deductions?

Baroness Neville-Rolfe: My Lords, the noble Lord makes a fair point. Having said that, the growth of direct debit in lots of areas has continued. As I have said, I do not think we are ruling out a union accepting cash or alternative payment arrangements. We are trying to make a change of direction here within the public sector.

I was going on to say that we debated Clauses 12 and 13 earlier this week, and I indicated then that I would go away and think about concerns relating to which organisations would be in scope of the facility time regulations, so I will not seek to delay the Committee by trying to answer all the related questions that have been asked today in that area.

I should, however, turn to Amendments 94 and 97, both of which seek to limit the employers within scope of the regulations. Amendment 97 in particular would carve out our largest public sector employer, the NHS, plus local authorities, thus excluding large swathes of the public sector. Obviously, that would not deliver on our commitment to ban check-off. As I said earlier in the debate, we are looking at the impact of the skeleton regulations that we sent to noble Lords earlier this week.

Lord Beecham: Will the Minister explain why it is deemed necessary to impose a new arrangement on two parties, a public sector authority and a trade union, that are perfectly agreeable to operating a check-off scheme? Why is it necessary for the Government to intervene in a situation where both sides are satisfied with an arrangement, on the basis that there will be no cost to the employer? If the Government's provision is good enough for the public sector, why are they not seeking to apply it to the private sector? What is the difference?

Baroness Neville-Rolfe: My Lords, the difference is that the cost falls on the public sector.

Lord Beecham: But the premise—the burden of the amendments that we are discussing—is there would be no cost to the public sector employer.

Baroness Neville-Rolfe: The answer is that I think the impact assessment says there is a cost of £7.2 million. I was seeking to answer the question that had been raised.

Amendment 92 would allow check-off to remain and replace the prohibition with a statutory obligation for ACAS to create a code of practice. As part of that, payment for a check-off service would be recommended as best practice. I return to the points made on earlier amendments: this would not deliver the commitment that we have made to prohibit check-off across the public sector. As it would not be a mandatory requirement, some organisations, as I think we have heard today, might choose not to do it while others might do so, and then one would have an inconsistency of application.

I am, however, grateful to my noble friend Lord Balfe for Amendment 93, which seeks to help us by allowing check-off to be retained wherever the employer is reimbursed. However, even where the service is paid for, I cannot accept that it is appropriate for a public sector employer to be the intermediary of the subscriptions relationship between a union and its members.

Lord Cormack: My Lords, I am very sorry to interrupt, as we have had a long debate. I make an appeal to the Minister: from virtually every speaker in all parts of the Committee we have heard a plea that I myself tried to put into one word, which was echoed by the noble Lord, Lord Monks: "choice". Can she not go away and come back on Report, having reflected on the virtually unanimous opinion of those who have taken part in this debate? We are not asking her to trash a manifesto commitment—far from it. We are merely asking her to be a little bit flexible where she is insisting upon inflexibility.

Baroness Neville-Rolfe: I thank my noble friend for his intervention. I have said from the very beginning that we are listening during this Committee stage. Having said that, it is only right that I set out clearly the reasons why we believe that this clause is the right one and is needed, which is what I have been seeking to do. I think that I am nearly through. I am sorry that I have not been quite as succinct as the noble Baroness opposite.

Lord Campbell-Savours: Could the Minister answer this question, which I have great difficulty in understanding? Why is it permissible for check-off to exist in the case of charities, BUPA and all the organisations set out by the noble Lord, Lord Balfe, but not in the case of trade unions?

Baroness Neville-Rolfe: I have already sought to answer this question. Deductions for things such as pensions, childcare vouchers, Cycle to Work and all the other things that have been mentioned have tax or national insurance implications so it makes sense for them to be made through payroll. The collection of union subscriptions should be the concern of trade unions rather than of tax-funded employers. That is the difference.

Lord Collins of Highbury: It is a long time ago for me but I remember that part, if not all, of the subscription for craft unions in particular was treated for tax purposes and was declarable in terms of being alleviated—professional fees as part of a trade union subscription. Where that applies in the public sector, will it no longer apply?

Baroness Neville-Rolfe: I am not sure I entirely understand the point. If I may, I will reflect on it.

Lord Forsyth of Drumlean: I am sorry—I am irritating my noble friend by intervening. I am just worried about this principle that the Government think it should be a matter of law that there should be deductions only for things which have tax implications. Does that mean we can look forward to the Government bringing forward legislation to stop people having deductions for Christmas clubs and suchlike?

2 pm

Baroness Neville-Rolfe: I thank my noble friend. I am not making any commitments about government policy in any of these areas. I am seeking to explain that there is a difference of logic—perhaps not very effectively, but I am trying to do just that today.

I was trying to respond to the noble Baroness, Lady Donaghy, about contractual rights. Amendment 95A seeks to allow check-off to remain where employees have a contractual right or where there is a collective agreement in force which guarantees it. I do not think that that applies in many areas but there are some examples in local government. The prohibition would of course not be fully effective if we could not ensure that it applied consistently to all public sector employees. However, any modification would apply only retrospectively, from when the regulations came into force. It relates only to those very specific aspects of what has been collectively bargained. This is entirely reasonable and proportionate.

Amendments 123A and 124A seek to delay the removal of check-off so that Clause 14 would not come into force for five years. As I commented earlier, we have doubled the amount of time members would have to bring in the changes. This should be more than enough time for unions and members who have not already done so to transition to direct debit.

Finally, I turn to the comments made by the noble Lord, Lord Kerslake, and to his amendment. I am not sure that I should say this but as an ex-civil servant, I was rather shocked to hear of private exchanges between him and the recent former Minister on this matter. However, his amendment is not quite what we are looking for, because it allows for check-off effectively to be put on a statutory footing. This would prolong this method of payment, preserving the status quo and delaying the modernisation that we seek to provide, so I cannot agree to it. In fact, requiring all employers to do this could be seen to be anti-localism, in effect. It does not seem to fit the bill today.

I have covered the main amendments. We have had a long and useful debate and I am grateful for the opportunity to address some of the concerns. I ask that the amendment be withdrawn.

Baroness Wheeler: My Lords, I thank the Minister for her response. This has been a powerful, detailed and consensual debate. She says that she is in listening mode and I will carefully read her comments in *Hansard*, although I am sorry that she has not felt able to respond to the consensual nature of the debate. In fact, the only thing she has listened to is the issue concerning the implementation date, and she has not

[Baroness Wheeler]
moved on that because we knew that the Government were moving implementation from six months to a year anyway. Therefore, there has not been any movement. I seriously struggle to detect any real change in the Government's fundamental understanding of the role and work of trade unions in a modern society, or their simplistic consideration of the two options only approach in their check-off ban.

As speaker after speaker has demonstrated, the proposals are unfair, unjustified and unworkable. They have simply not been thought through. The Government have failed to address the Joint Committee on Human Rights' call for objective justification of the proposals. The Minister simply has not addressed the arguments that have been made across the House. We have had support throughout the House: from the Lib Dems, from the Cross Benches—from my own Benches, obviously—from all noble Lords. I thank them, particularly the noble Lords opposite for the range of support and opinion that they reflect. It is a particular first for me to have such unequivocal support from the noble Lord, Lord Forsyth. His analogy regarding the Conservatives' reaction if they sought to ban contributions to private health insurance was telling and appropriate. He mentioned the review of the noble Lord, Lord Strathclyde. I draw his attention to the debate we had on Tuesday on facility time. Clause 13 seeks reserved powers over capping facility time, which the Government say they will not use unless they have to. The Minister observed that the affirmative procedure would be used in that case. Therefore, we are in quite a bit of difficulty.

I will not go into all the arguments again. It is frustrating that the Minister has not been able to address the consensual nature of the debate, for which I am certainly very grateful. This is about fairness and justice. Amendments 92 and 93 provide the reassurances that are needed if the Government's agenda is openness, transparency in procedures and costs and no burden on the taxpayer. If these amendments are supported in principle, the Government could succeed in achieving their objectives. They would in fact be regulating a system that regulates itself pretty well already, which is an interesting position for a Government who declare an abhorrence of red tape to be in. However, aside from that issue, if they do not support the amendments or move towards accepting them in principle, the only conclusion to draw is that they want to destroy effective trade union organisation, to prevent unions representing their members in the workplace and to attack and seriously weaken their finances. This issue is vital to the future of industrial relations, trade unions and their members, and as noble Lords across the House have said, it is about members' choice. The Government are offering a top-down solution to a problem that does not exist. We will pursue the issues raised today with vigour and determination on Report, and with that I beg leave to withdraw the amendment.

Amendment 92 withdrawn.

Amendments 93 to 97ZA not moved.

Clause 14 agreed.

2.07 pm

House resumed. Committee to begin again not before 3.07 pm.

Flooding: EU Solidarity Fund

Statement

2.07 pm

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford) (Con): My Lords, with the leave of the House I will now repeat a Statement made earlier today in the other place by the Minister of State for Local Growth and the Northern Powerhouse. The Statement is as follows.

"I want to pay tribute to all those who have in whatever way supported the many places that were flooded in December and early January. The whole House will want to recognise the enormous amount of effort that has gone into supporting households and businesses, not just in the initial response to the floods but also in the ongoing work to get residents back into homes and businesses open.

The Government recognise that the immediate priority is to respond to the urgent needs of those affected. That is why we have already provided over £200 million to help those affected by the floods to support recovery and repair. A key feature of our package of support is the Communities and Business Recovery Scheme. It is designed to provide ready support to local authorities affected by Storm Desmond and Storm Eva to in turn help individuals, small and medium-sized businesses and communities to return to normality. Additionally, it provides property level resilience grants of up to £5,000 so that people can protect their homes and businesses against future floods by putting in place resilient repairs. To date under the Communities and Business Recovery Scheme, government has paid out a total of £21 million for Storm Desmond and £26 million for Storm Eva. Further payments will follow. We are also supporting farmers with grants worth up to £20,000 to help restore damaged agricultural land and farm vehicle access, repair boundaries and carry out field drainage.

Having set out what the Government have already done, I want to turn now to what more we can do. Today, I would like to announce our intention to make an application to the European Union Solidarity Fund. The fund was set up to respond to major natural disasters and to express European solidarity with disaster-stricken regions within Europe. The fund was created as a reaction to the severe floods in central Europe in the summer of 2002. Since then, it has been used for 70 disasters covering a range of catastrophic events, including floods, forest fires, earthquakes, storms and drought. The only time the UK applied to the fund was following the flooding of 2007, which saw widespread and significant damage across large swathes of England.

Member states have 12 weeks from the start of an incident to register their intention to claim. Once we have confirmed our intent, there is time to consider with the Commission the elements of assessment. Following this process, the Commission assesses the

application and, if it is accepted, proposes an amount of aid to the European Parliament. Once the appropriations become available in the EU budget, the Commission adopts a decision awarding the aid to the affected state, following which the aid is paid out in a single instalment. When the aid is paid out, the affected state is responsible for the implementation, including the selection of operations and their audit and control. Emergency measures may be financed retrospectively from day one of the disaster. The EUSF is not, and nor is it designed to be, a rapid response instrument for dealing with the effects of a natural disaster. Financial aid can be granted to the applying state only following an application and the budgetary process, which can take several months to complete".

My Lords, that concludes the Statement.

2.11 pm

Baroness Jones of Whitchurch (Lab): My Lords, I thank the Minister for repeating that Statement. However, it seems perverse that the Government are only now announcing that an application is being made—four days before the deadline—when it could have been made in early December, when the first evidence of the devastation in the flood areas became apparent. During that time, communities have been left in the dark about whether an application to the fund would be made, despite the fact that it was established to respond precisely to natural disasters such as those experienced in the north and north-east of the UK.

Can the noble Baroness clarify why this unnecessary delay has occurred? Can she say what scope there is to make multiple applications to reflect the wide geographical spread of communities affected over this time? Can she guarantee that all the aid received will be channelled directly into the affected communities rather than being used to refill the Government's coffers for the financial support already provided? Finally, can she clarify whether part of the fund will be used to assist residents who have not yet been able to return to their properties, where the need is very urgent? I look forward to her response.

Baroness Williams of Trafford: My Lords, in response to the point about the time taken, thresholds have to be met and the damage assessed, so these things necessarily take time. We will be making a regional claim. I am sure that under the rules of the structural fund the money would not be able to be diverted into anything other than repairs following the flood damage, and there is no intention to do so. Therefore, I can confirm that the funds will not be used for anything other than the purposes for which they are intended. I remind the noble Baroness that back in 2007, when an application was made by the then Labour Government, they took eight weeks to signal their intention and to make the application. That was a recognition that these things take time.

Baroness Parminter (LD): My Lords, I am delighted that the Government have now decided to apply. I asked them to do so in this Chamber on two occasions—on 7 December and 14 January, when I was very grateful to the Defra Minister for the reply that I received. This scheme is yet another example of why we are better off being in Europe. The funding could make a huge difference—for example, in repairing the damage to the A591, which I know is known to many Members of this House. Its closure has been disastrous for local people, local businesses and tourism. Therefore, I ask the Minister to confirm that the inevitable time lag in receiving any funding will not delay the plans for reconstruction of the critical infrastructure and that the Government will guarantee those funds.

Baroness Williams of Trafford: The noble Baroness is absolutely right about the A591 and indeed about some of the more local infrastructure repairs that need to be done. In fact, I drove up the A591 as far as I could only last week when I was in Grasmere. Work is under way to repair that road, which is vital not just for businesses but for tourism in the region. I am glad that the noble Baroness was grateful for the reply that she received. Following the floods, on a couple of occasions at this Dispatch Box I signalled that we were considering making an application, and today it is good to say that we are intending to do so.

2.16 pm

Lord Liddle (Lab): My Lords, as a member of Cumbria County Council, perhaps I may say that the Minister's announcement will be very welcome in the county, even if she has had to spend several months arguing with the Secretary of State for Justice that this does not represent a terrible affront to national sovereignty. It is vital that we proceed—as the Minister knows, there is a huge problem. The Government have been helpful so far but the infrastructure costs to the public sector alone amount to not many tens of millions but possibly hundreds of millions in the county of Cumbria alone. Does the Minister accept that there needs to be the quickest possible analysis of the total costs so that a proper application can be submitted and we can try to get as much of this money into the county and into other affected areas as quickly as possible?

Baroness Williams of Trafford: The noble Lord is absolutely right: the devastation in Cumbria has been quite significant. He and I have talked both across the Dispatch Box and privately about the needs of Cumbria, and I hope that the flood envoy, as well as Ministers, have been useful in their visits there. The Government are doing everything they can to work with the flood-affected areas to make right the damage. However, they were very keen to make an immediate response and moved very quickly to remedy some of the immediate problems. This is a much longer-term payment—back in 2007, it took months to come through—so we need to separate the immediate recovery operation from some of the more long-term funding that will come through.

Lord Shutt of Greetland (LD): My Lords, I witnessed the Boxing Day floods from my front-room window and am aware of the damage that has been done in the Calder Valley between Brighouse and Todmorden, and beyond. Liz Truss has been to the Calder Valley and has made certain promises, particularly to Mytholmroyd, where a great wall is to be built and other work is to be carried out. Can the Minister

[Lord Shutt of Greetland]
confirm that none of those promises will be contingent on this European money, that the promises will be honoured, and that the European money that we are talking about will be used to fund other very important work that is still required?

Baroness Williams of Trafford: I can confirm that any obligations or promises that the Government have made will be fulfilled. I can say that quite firmly from this Dispatch Box today. Unlike the noble Lord, I did not see the flooding from my front window on Boxing Day, but when I went up to some of the affected communities in Greater Manchester a couple of days afterwards, I saw that it was really quite devastating—the noble Lord is absolutely right about that. In fact, it is difficult to appreciate the devastation that communities feel until you actually see it for yourself.

Lord Knight of Weymouth (Lab): My Lords, I warmly welcome the Minister's statement, and I particularly warmly welcome hearing a Conservative Minister say "EU" and "solidarity" in the same breath. I accept what she said about it taking some time to put an application together, but I do not think it takes that much time to state an intent to put an application together. The Government could have come forward and provided that reassurance sooner. Can I press the Minister on the point made by my noble friend from the Dispatch Box around an assurance that this money will not be used to back-fill what the Treasury has already promised and is already spending? There must be new money from the Treasury, if new money is needed, to match the very welcome money from the European Union.

Baroness Williams of Trafford: My Lords, in terms of what is expected from the European Union Solidarity Fund, the Government will fulfil their obligations under what they have already committed to. This will not be a sly way to circumvent what we have already promised, and I can confirm that a lot of the money has already gone out of the £200 million that we committed. As for the time it takes to make an application, the noble Lord will appreciate that certain thresholds have to be met. It is in analysing those thresholds that the Government know whether they can make an application. These things take time, and there was no intention of delay on our part.

Lord Campbell-Savours (Lab): My Lords, I want to place on record the appreciation of my former constituency in Keswick, a place where I have spent much of my life, for the work done by Julie Ward, the Member of the European Parliament, in pressing the Government here and working in Brussels to ensure that this process would work. She has been campaigning extensively on the very issue of this fund. Does the Minister have any idea of how much this will actually mean for areas such as the county of Cumbria? Can we have some numbers, please?

Baroness Williams of Trafford: I am sorry to say that those numbers have not been finalised at this stage. I do not know the noble Lord's colleague, but I believe him when he says that she has been working hard. In fact, Keswick is another place that I passed the other day. Perhaps, at this point, the House will indulge me in commending businesses in Keswick, Windermere and Grasmere, where I stayed, for having the grit and determination to get back up and running. Coming into Grasmere, I saw a sign that read, "Grasmere is open for business", and it certainly was full of tourists. I congratulate people who have gone there, and also the businesses for being so warmly welcoming of tourists so quickly after such devastating events.

Immigration: Students

Question for Short Debate

2.23 pm

Asked by ***Baroness Sharp of Guildford***

To ask Her Majesty's Government what consideration they have given to removing international students from the net migration figures by including them as non-immigrant admissions, as is done in the United States.

Baroness Sharp of Guildford (LD): My Lords, in introducing this short debate I declare two interests: I am an honorary fellow of Birkbeck College and I am the treasurer of the All-Party Parliamentary University Group. I should also say that I am looking forward enormously to hearing the maiden speech of the noble Baroness, Lady Brown of Cambridge, whose very distinguished record in science, technology and universities precedes her.

Net migration figures into the United Kingdom quite rightly reflect the flow of all those who come into the United Kingdom within a certain period of time—usually a year—minus the flow of those who leave. The Office for National Statistics, which is responsible for compiling these figures, uses the UN definition of "migrant", which includes all people who move into the country for a period of 12 months or more, regardless of the purpose or permanence of their stay. On that basis, all students coming to study in the UK for more than one year are counted as immigrants. Likewise, all those who leave at the end of their studies are counted as emigrants.

International students are of very considerable benefit to the United Kingdom. They pay fees for their university tuition and accommodation, and UUK reckons that, together with off-campus spending, each student brings something like £26,000 a year to the United Kingdom economy. Indeed, the Government reckon that export earnings from overseas students amount to currently something like £25 billion, and the Autumn Statement suggested an ambition that this should grow by 20% to £30 billion by 2020.

There are also longer-term benefits. For example, a recent study from the Department for Business, Innovation and Skills found that more than 80% of the students who had studied here retained personal and professional links and had an increased appreciation for, and trust of, the United Kingdom. In other words, that soft power is very important as well as the actual money that they bring in. For all these reasons, it is very much to the UK's advantage to encourage as many international students as possible to come to this country.

Problems, however, arise on two scores. First, in so far as the number of students coming to this country from overseas is increasing, we would expect that over that period more would come in than would leave, and that this would be reflected as a rise in net migration. Indeed, given the 20% increase in non-EU students projected in the Autumn Statement, the estimates written into the detailed documents accompanying the Statement projected an increase of 7% in student numbers for 2016-17 and 2017-18. This would amount to an extra 20,000 students each year, adding potentially an extra 40,000 to the net migration figures over these two years.

This, in itself, would not matter, if the Government had not at the same time set themselves a target for reducing net migration to below 100,000 from its current total of more than 300,000. In pursuit of this target, the Government have been tightening up the regulations on student visas, and many universities are complaining that, far from increasing, the number of new entrants is actually falling. Indeed, according to the latest figures, there has been a drop of 3% in new entrants for courses and, in particular, the number of students from west Africa and the Indian subcontinent is down.

The universities are particularly unhappy with the regime of "credibility interviews" instituted by the Home Office since 2012, whereby students, having applied for and received their certificate of acceptance by the universities, and then having to apply for a visa, are further interviewed by Home Office officials, often by Skype, to assess whether they are bona fide students. This is far from a small, random sample; in 2014, 125,000 credibility interviews took place and the total number of entrants was 174,000. There was also a sizeable increase in the number of visa refusals.

Research by the UK Council for International Student Affairs reveals that Home Office officials are making judgments well beyond the agreed terms of such interviews, often countering the university's own assessment of academic potential on a seemingly random and inconsistent basis. But since those who conduct the interviews are not required to keep records of their reasons for turning down a visa, there is, at present, no recourse on these judgments. The overall result, far from encouraging overseas applicants to apply to our universities, drives them into the arms of our competitors, the USA, Canada and Australia, all of which, like the UK, are seeking to increase applicants from abroad.

On the face of it, there are two wholly incompatible strands of government policy: on the one hand seeking to increase overseas student numbers and, on the other, seeking all possible ways to cut net migration numbers. Universities are keen to expand the intake of students from non-EU countries—they bring, as I have said, substantial income both to the university and to local business, and many taught graduate programmes are dependent on recruiting overseas students. But inevitably, expansion in overseas student numbers increases net migration and results in tighter and tighter controls over the issuing of student visas, with the UK appearing more and more unwelcoming to overseas students. The one policy totally contradicts the other.

Others besides me have suggested treating students as temporary migrants and separating them from the net migration figures. The Government have resisted that on three grounds. In the first place, the ONS is obliged to use the UN definition of migrant. Secondly, students, even if temporary migrants, use public services and in this sense are in no way different from other migrants. Thirdly, the International Passenger Survey suggests that many students do not return when their visas expire and are therefore not temporary migrants.

I will return to the first of those, the UN definition, in a moment, but I will deal briefly with the other two issues. Most students are young people who make relatively little demand on public services and are in any case now required to pay an NHS surcharge. As we saw earlier, far from being a burden, they contribute substantially to the UK economy and in the long run very substantially.

In relation to the IPS, there is much controversy over its validity. There are good figures because of visas and university registrations for new entrants, but although attempts are being made to collate exit records, these are as yet in their infancy, which is why reliance has to be placed on the IPS. Even the Oxford-based Migration Observatory concluded that the statistics were unreliable and that the temporariness of international students remains uncertain.

That brings me to my final point—the UN definition of migrant. I suggest that the answer is to copy the Americans. The US gets over the problem by issuing two different sets of statistics on net immigration. The first, issued by the US Census Bureau uses the same UN definition of migrant and, like the UK ONS, measures overall flows of people, including students, in and out of the country on an annual basis. The second set of statistics, produced for the Department of Homeland Security, makes the distinction between permanent immigrants and those classed as non-immigrant admissions, which includes students alongside tourists, business travellers and those involved in cultural exchanges. Canada and Australia make a similar distinction. It seems such a simple solution to a problem that has caused the Government a good deal of grief.

I end by posing two questions to the Minister. Why cannot this country be more pragmatic like the Americans and use two sets of statistics, thereby complying with the UN requirements in measuring overall migration flows, but having a sensible set of statistics on which to base their net immigration targets? Secondly, why does the Home Office think it necessary to best-guess university admissions systems and run such a heavy-handed programme of credibility interviews? Random sampling is one thing; interviewing and often in the process upsetting and putting off two-thirds of potential entrants is another. Is this really necessary?

2.33 pm

Lord Hodgson of Astley Abbotts (Con): I thank the noble Baroness for giving us the chance once again to debate this rather vexed issue. I have listened carefully to what she said and I understand the force of her arguments, but I am afraid for me they are trumped by other and wider considerations. I therefore think that the Government should resist calls to change the categorisation at this time. I will explain why.

[Lord Hodgson of Astley Abbotts]

In the year ending in March 2015, 216,000 student visas were issued—roughly the same number as in the prior year. But also in that year, 73,000 applications to extend the student visa were made and granted. One-third of the total of students asked for an extension: some to continue to study, some to work and some for family reasons. There lies my concern. This could be the beginning of a process whereby individuals who have come here as students slowly morph into becoming members of the settled population of the country.

The extent of this leakage is hotly disputed, and indeed, the excellent briefing pack from the Library for the debate today contains some important figures. Perhaps my noble friend can update us in his reply on the Government's latest estimates of what this leakage is. Whatever the figure, an integral part of this morphing and transition is that the person becomes an immigrant, not a student, and should therefore be classified as such.

Noble Lords will have heard me before express my concern at the very rapid rate of increase in the population of this country and the implications for the entire settled population. Our population is now growing by 1,153 people per day, and of that about half comes from immigration. This is a small and increasingly crowded island. England is now more densely populated than the Netherlands. That is also why, with respect to the noble Baroness, I must say that using the example of the United States, with its massive geographical extent, is not a fair one in a debate such as this.

That takes me to my final point and a question for my noble friend. What gives this debate its edge is that we still have inadequate control over our borders. We cannot ensure that everybody who is here is entitled to be here. Though launched in 2003, the e-Borders system appears some way from completion. I understand that in the past four years, between 2011 and 2015, my noble friend's department spent nearly £90 million on improving systems that the e-Borders system would have replaced, and information about travellers is still being processed on two systems that do not share data or analysis effectively. An update from my noble friend on the e-Borders progress would be much appreciated.

2.36 pm

Baroness Bakewell (Lab): My Lords, I commend the noble Baroness, Lady Sharp, on once again championing the interests of higher education in this country. Universities and academic bodies appreciate her dedication and expertise; I speak as the president of Birkbeck in saying as much. I also look forward to the maiden speech of the noble Baroness, Lady Brown, on such an important topic.

This subject of international students being moved from immigration figures keeps on coming up. We have had debates, Written Questions and Oral Questions. Why has there been so little movement from the Government on this? There seems to be something of a tabloid-driven policy here. Statistics from the International Passenger Survey show a gap between the numbers of immigrants arriving and emigrants returning. The number hovers around 93,000 a year. What a fine UK headline that would make: bogus student immigrants come to stay. We do not want that—do we?

But such fears need to be faced. We need further data and an examination of who these overstayers are. Will the Government consider a post-study work visa? Statistics in this area are limited and the methodology crude. George Osborne told the Treasury Select Committee as much. There seems to be a tension, in that the Home Office planned to increase the amount of cash in the bank that foreign postgraduates must have before they are allowed into this country and insist that they must past tougher language tests, but reports tell me that George Osborne shot down those suggestions. He clearly has a more welcoming agenda.

Will the Government now please give some nuanced thinking as to how to turn what is a ham-fisted ruling into a success story in its own right? At this very moment, the country could use an upbeat immigration story and this could be it. Students come here bringing their wealth and skills, our universities offer them levels of study that they cannot find anywhere else and some of them, just some of them, overstay. For the most part, the vast majority of those returning home have a good story to tell of our academic standards, our outstanding university life and the nature of life in this country in general. That is a huge plus in the soft power that we exercise around the world. That success story needs to be celebrated. Can we have some plausible lateral thinking from this Government to make it so?

2.39 pm

Lord Clement-Jones (LD): My Lords, I too congratulate my noble friend Lady Sharp on instituting this debate and on her powerfully argued opening speech. I declare an interest as a member of the UCL Council. Like my noble friend and the noble Baroness, Lady Bakewell, I look forward to hearing the maiden speech of the noble Baroness, Lady Brown.

The Minister knows that from these Benches we have consistently pursued issues relating to overseas students for several years now. However, the Home Office seems to be oblivious to the overwhelming arguments for excluding students from the net migration figures. Higher education is one of the most important and successful sectors for the UK, contributing £11 billion in overseas earnings, added to which are the continuing personal and professional links that are created—the soft power referred to by the noble Baroness, Lady Bakewell. The Chancellor and the Foreign Secretary, to their credit, now seem to be at odds with the Home Secretary on this issue. No wonder, because to adopt policies which reduce overseas student numbers is economic madness.

The International Passenger Survey figures are estimates. It is clear that there is no reliable measurement of net migration at all, so how can there be reliable evidence of abuse and overstaying, as alleged? Frankly, when is the Home Office going to be able to produce decent figures for net migration?

In Oral Questions last December I raised the issue of the credibility test introduced in 2013, which has led to so many visa refusals for students from countries such as Nigeria and Pakistan, to which my noble

friend referred. But it appears that the Home Office does not even collect statistics on the reasons for visa removal. The Minister tried to reassure me in his response, but there is clear evidence of the overzealous application by the Home Office of the visa rules on overseas students which is potentially chilling, both in respect of applications and expiry. Even completely blameless students are now being improperly detained. I cite the arrest of Paul Hamilton, an American postdoctoral student, as a "flight risk" and the US doctoral student, Sabine Parrish, who was detained for eight hours on no grounds whatever. Will the Minister condemn these abuses? As the *Times Higher Education* says:

"This game makes no economic or educational sense, and will drive international applicants into the arms of US, Canadian and Australian universities".

The number of overseas students coming here is understandably beginning to stall, in contrast to the growth in competitor countries. Our clear aim must now be to restore our attractiveness as a destination for overseas students. Along with putting other policies into place, we should, as so many have consistently called for, including my noble friend, exclude these students from the net migration figures.

2.42 pm

Baroness Brown of Cambridge (CB) (Maiden): My Lords, it is an honour and a privilege to join your Lordships' House. I am looking forward to the opportunity to contribute in areas where I have expertise: engineering, universities, innovation and climate change. I am very grateful to all the staff here, especially of course the doorkeepers and the police, as well as to all noble Lords for being both welcoming, as is evidenced here today, and tolerant. I thank my supporters, the noble Lords, Lord Baker of Dorking and Lord Turner of Ecchinswell, and my mentor, the noble Baroness, Lady Deech. I must declare an interest, in that I am the vice-chancellor of Aston University in Birmingham.

We have heard from other noble Lords how international students contribute to the UK in many ways. Overseas student fees subsidise education for home students. At Aston, 18% of my student population is from overseas, providing more than 30% of my fee income. Overseas students are critical to maintaining engineering provision in UK universities. Engineering UK reports that 25% to 40% of undergraduates on engineering courses are from overseas. At Aston, half our overseas students are on science, engineering and maths courses.

The inclusion of overseas students in net migration figures—that is, within a population we are seeking to reduce—while simultaneously targeting an increase in their numbers, is illogical. It affects the behaviour of our agencies, as we have heard, and contributes to the feeling that these students are less welcome in the UK than they would be in the USA, Australia, Canada or New Zealand.

While UK employment levels have been much less sensitive to the recent recession than those of our competitors, UK productivity is falling behind. The productivity deficit is particularly associated with small and medium-sized enterprises. That is critical because SMEs account for 60% of UK jobs. Research published last week by the Enterprise Research Centre at Warwick and Aston business schools highlights the need for innovation and access to global markets in order to improve SME productivity. But there is clearly a challenge in recruiting the right people to enable this. The CBI *Inspiring Growth* report last year highlighted that while 40% of employers prefer graduates with technical skills, the proportion having problems recruiting scientists and engineers has more than doubled in the past two years.

I ask the Minister that the Government consider not only taking overseas students out of the net migration figures, but make it easier for companies, in particular SMEs, to recruit overseas graduates from UK universities by, for example, reducing or removing the minimum starting salary for a tier 2 visa, a restriction that does not exist in the USA, Canada, Australia or New Zealand. Data for the West Midlands suggest that average graduate starting salaries are below the minimum figure of £20,800 required for tier 2 visas, and starting salaries that are affordable for SMEs and spin-outs are often lower still. Allowing ambitious SMEs in our regions easier access to an affordable international talent pool should be part of our regional growth strategy, supporting business innovation, global reach and the health of our great universities.

2.46 pm

Lord Bilimoria (CB): My Lords, I congratulate the noble Baroness, Lady Brown of Cambridge, on her excellent maiden speech. I have known her for almost a decade, since I was the founder of the UK-India Business Council. Now she is the vice-chancellor of Aston University in Birmingham and I am the Chancellor of the University of Birmingham; we are neighbours. She has taken her title as Cambridge because she is a staunch alumna of Murray Edwards College, known in our day as New Hall, which is one of only three women-only colleges remaining in Cambridge. Her career in the field of engineering is outstanding—from working at Rolls-Royce to heading the engineering faculty at Imperial College in London, to her famous King review in 2008 on carbon emissions from road transport. Not content with being a world-renowned expert in the field of engineering and science, with awards too numerous for me to list, she is also married to Dr Colin Brown, the engineering director at the Institution of Mechanical Engineers. We look forward very much to her contributions in the years to come.

Aung San Suu Kyi, Bill Clinton, Desmond Tutu and Mahatma Gandhi all studied at UK universities. They are the finest universities on this planet along with those of the United States of America, and yet the Government continue to classify international students as immigrants when calculating the net immigration figures, as well as having a target to reduce net immigration to fewer than 100,000. Then, hypocritically, the Government say that there are no limits to international students. Logically, there is no way the Government will meet their targets unless they reduce international student numbers. They have done the right thing in closing down bogus colleges and we all agree with that, but now their policies are damaging genuine international students at our world-class universities. I see this every day in my role as president of UKCISA.

[Lord Bilimoria]

At the University of Birmingham, 20% of our student body is made up of international students and 33% of our academic staff are from overseas. BIS itself states that international students bring in more than £13 billion a year in overseas earnings, and yet, in the words of Professor Leszek Borysiewicz, vice-chancellor of the University of Cambridge,

"the potential economic gains for the UK for recruiting more overseas students are being sacrificed at the altar of political expediency".

He went on to say that it is "ludicrous" to include overseas students in UK immigration targets. Our competitor countries do not categorise international students as immigrants. In the US they are included as non-immigration admissions, while in Australia they are reported as net temporary arrivals. In Canada they are placed in the temporary resident category. I ask the Minister this: why can we not do the same? In fact, the Prime Minister himself has said to me that he would be open to this idea.

The Government are unnecessarily creating a rod for their own back. Furthermore, our competitor countries have ambitious targets to grow international student numbers, accompanied by government action to help them do so. For example, Canada wants to double its number of international students to 450,000 by 2020. In 2014-15 the number of Indian students increased by 32% in the United States, while the number of Indian students coming to the UK has fallen drastically. Does the Minister agree that we should have specific targets to increase the number of international students?

As we have heard, removing our post-study work visa route has also been hugely damaging. An NUS survey found that 51% of students think that the Government are not welcoming towards international students. Universities UK research shows that 22% of the British public considers overseas students not to be immigrants, yet the Government keep relying on International Passenger Survey data, which are completely unreliable. I have repeatedly said that the Government need to reintroduce exit checks at our borders and that all passports, EU and non-EU, need to be scanned in and out of the country. Then, we would have proper control of our borders and we would know the international students coming in and going out.

This year I was appointed chair of the advisory board at Cambridge Judge Business School. Christoph Loch, our director, said that the Government's current policies,

"not only are ineffective … but outright hostile and unfair toward a population of highly talented people who collectively do have an influence on the reputation of the UK in the world".

The Government keep talking about the United Nations' definition of migrants but, as the noble Baroness, Lady Sharp, said—I thank her for the debate—no one is suggesting that the UK should stop reporting to the UN or recording student migrant numbers. There is no reason why the UN definition should be used for the particular domestic policy objective of the net migration target. UUK, the Russell group, London First and the NUS all independently agree with what I have said. International students are not only one of our biggest export earners, but one of the strongest elements of our soft power.

The Government have sent a strong message about their intention to keep out migrants who will bring no value to the UK, but they must be equally clear that the UK still wants to attract economically valuable groups, such as genuine international students. Removing this group from the net migration target would send a clear international message that the UK is open to all the amazing benefits that international students provide to our country and to British universities, which are the jewel in our crown.

2.51 pm

Lord Holmes of Richmond (Con): My Lords, I congratulate the noble Baroness, Lady Sharp, on securing this timely and important debate. I also congratulate the noble Baroness, Lady Brown of Cambridge, on her excellent maiden speech. I note that her PhD was on fracture mechanisms in embrittled alloy steels. I am sure we all agree that her performance was copper-bottomed and I look forward to her contributions to further debates in the House.

I declare an interest as deputy chancellor of BPP University. We attract thousands of international students each year, 96% of whom attain employment within six months of completing their studies. Some stay; some return home. Either way, Britain benefits.

The leaders of Australia, Belgium, Brunei, Botswana, Bahrain—I could go on. Those are just the As and the Bs of world leaders who have studied as international students in the United Kingdom—55 at last count. That is a good enough reason to celebrate international students coming to UK institutions.

On top of that, they bring billions for British business. We just heard from the noble Lord, Lord Bilimoria, the king of Cobra Beer. I ask my noble friend the Minister: can he imagine a curry without Cobra? Unimaginable, yet a reality had the noble Lord, Lord Bilimoria, not come to this country as an international student.

To turn to the data, the IPS statistics are mainly meaningless. That 90,000 is a nonsense number. We can know nothing from those statistics. If we are going to argue on the numbers, we need to have decent data on which to base this debate. I ask my noble friend the Minister: if the system is working and we are open for business, how is it that in the last year we have had a 10% fall in students from India coming to Britain and an 8% fall in students from Nigeria, while Canada has had an 11% increase in international students, the United States 10% and Australia 8%? If we do not get this right, the rest of the world will make a better offer and those international students will go somewhere else.

If we are to have a northern powerhouse, we need international students. If we are to revive our railways, we need international students. If we are to have fully enriched artistic, cultural leisure pursuits in this nation, international students are critical. In short, we need to get the message out there: there is good migration and there is less good migration.

In conclusion, we need to end this visa vapidity. We need counsels of prudence, not of prevention, and we need to warmly welcome the brightest and the best to come and study in Britain.

2.54 pm

Lord Hannay of Chiswick (CB): My Lords, this is far from the first time that the House has debated the Government's policy of treating overseas students as economic migrants. Nevertheless, it is good that the noble Baroness, Lady Sharp, has brought the matter up again, and even better that my noble friend Lady Brown has joined the ranks of those who have been breaking their teeth on the Government's policy for as long as I can remember. This issue is one of the black swans of today's policy agenda—a policy without much support even in the Cabinet and none at all outside it. It is one with no serious justification.

I have five questions to which I would like the Minister to try to find a reply. First, does the system help the Government to reach their target of reducing overall migration to the tens of thousands? Certainly not. Since there are 180,000-plus students coming in and the number is tending to rise, it makes that target impossible to achieve.

Secondly, does it assist the Government's policy of expanding the higher education sector's contribution to our invisible exports, which are substantial, by attracting the brightest and the best? Certainly not, again. It discourages them. The most recent 2014-15 figures are pretty sobering, since we are losing market share to all our main competitors.

Thirdly, are students properly regarded as economic migrants? The answer to that, too, must be negative. They pay fees—often higher fees than our own students—generate employment and pump resources into towns and cities where they study, while making disproportionately small demands on the National Health Service and other benefits.

Fourthly, are we compelled to classify them in this way? No, we are not. The UN classification, to which the Home Office clings like a drowning man to the smallest of planks, is not legally binding. We already have separate statistics for students. We can submit them as the United States does and stop treating them as economic migrants.

Fifthly, does the student issue drive the general concern, which certainly does exist, about immigration? There is not the slightest evidence that it does. If you asked most people whether they regard students as economic migrants, they would look at you in great puzzlement and think that it was a pretty silly question, particularly now that the Government have clamped down on dodgy language schools.

If the Government cannot provide answers to those questions, could they please just change the policy?

2.57 pm

Lord Kennedy of Southwark (Lab): My Lords, I start by thanking the noble Baroness, Lady Sharp of Guildford, for securing this Question for Short Debate. I also congratulate the noble Baroness, Lady Brown of Cambridge, on an excellent maiden speech. She brings a wealth of experience from the higher education, engineering and science fields. I hope that this is the first of very many contributions she will make to your Lordships' House.

It is not possible in the short time that I have to do this subject justice. I find myself agreeing with almost all the remarks made by noble Lords in this debate. The UK attracts a large number of international students coming to study here for a year or more. We have some of the best universities in the world, offering fantastic courses, leading to highly sought-after qualifications. We are, though, in a very competitive marketplace and it is the duty of the Government to do everything in their power to make the UK an even more attractive destination for international students.

I am not asking the Government to change how the net migration figures are reported as this is an internationally recognised definition, but they can do more. Looking at the net migration target that they have set themselves is one example. The Government have created a conflict for themselves entirely of their own making—it does not have to be there—by wanting to boost international student numbers while reducing their net migration targets. As the noble Baroness, Lady Sharp of Guildford, said, that is wholly incompatible. I also agree with her suggestion that we should consider adopting the US system of recording these data.

The Government's ambition for growth in this sector is not as ambitious as that of our competitors. Our visa system is more restrictive and the UK is losing out needlessly. Shortly, I am sure that the noble Lord, Lord Bates, will tell us that there is no cap on the number of bona fide international students coming to study in the UK, but the fact is that our numbers have been relatively stagnant in recent years compared to our competitors, which have seen significant growth. The United States has seen an increase of 10% and Australia 8.9% in international student numbers, in comparison to growth of 0.6% in the UK over the same period.

We need to make our system for getting international students into the UK more welcoming and streamlined like our competitors, particularly the United States of America, as the noble Baroness, Lady Brown of Cambridge, said. People need to feel more welcome. The fall by 50% in the number of Indian students coming to study in the UK is of particular concern. Surveys have shown that the general public do not perceive international students as immigrants, and they bring a significant boost to our economy measured in billions of pounds. International students who study here and have a good experience return home with a very favourable view of the UK. That is of enormous benefit to us, as my noble friend Lady Bakewell said. She rightly pointed out how important that is in terms of our soft power influence in the world.

My time is nearly up so I again thank the noble Baroness, Lady Sharp of Guildford, for enabling us to have this debate. I hope that we can return to the subject very soon as we need to keep impressing upon the Government that it is in our country's interest that it acts on this sooner rather than later.

3 pm

The Minister of State, Home Office (Lord Bates) (Con): My Lords, I add my thanks to the noble Baroness, Lady Sharp, for securing this debate. Although we are very familiar with our respective positions as we have

[LORD BATES]
debated this issue so often, I suggest that there is a great deal more common ground than may at first appear. Of course, we are all grateful to the noble Baroness, Lady Sharp, for the way she introduced the debate. I listened carefully as she set out in precise terms how the current system works and the terms, methodologies and calculations used, which match the Government's exactly, as one would expect from a distinguished academic. There is common ground on the analysis to that extent. However, there may be divergence over some of the conclusions.

The noble Baroness, Lady Brown, made an outstanding contribution to the debate in her maiden speech. More importantly, given her distinguished background in academia, particularly in science, technology and engineering, she brings an immensely valuable perspective to your Lordships' House. We very much look forward to her further contributions.

Another area on which we can agree is that Britain is blessed with some of the greatest universities in the world. Any table will show that we have perhaps four out of 10 or six out of 20 of the top universities in the world. The UK is widely admired and respected in that field. It is not by accident therefore that we are the second largest attractor of foreign students in the world. That is a very important point for us to remember.

Nor is there any disagreement over the fact that the Government have set out in their own financial strategy that we want to see the number of students continue to increase, as was said. We have set targets for the contributions we want to see universities make because this is a great export earner. As a number of noble Lords said, the soft power that this process brings to this country is immensely valuable as we move forward. As the noble Lord, Lord Holmes, said, there is no doubt that we want to continue to attract the brightest and the best. That is common ground. We want to see an increase in foreign students—we are proud of them and we recognise their value—so where is the point of difference? I shall try distil that down to a question about whether the means by which we calculate the number of students coming into this country and those leaving this country acts as a deterrent to people thinking of coming to study here.

As regards the point touched on by the noble Lord, Lord Bilimoria, I think there is a problem. When you look at the overall statistics, there is some encouraging news. The number of overseas students coming to Russell group universities is up by 39% since 2010. However, when you break down the figures and start looking at them country by country, you see differences. You see numbers from China increasing but India's economy is also growing strongly now and yet we see a different pattern there. We have looked at differences in the way British universities welcome these students who are effectively investing in this country, and how the latter perceive that welcome. Having discussed the matter with Jo Johnson, our Universities Minister, James Brokenshire went to India just last week with the specific purpose of busting some of the myths that surround the welcome that awaits genuine students who have the relevant qualifications and have been offered places at our world-class universities. There is a great deal to do in that regard. We need to get across the message that there is no limit on the number of students who can come to genuine universities here and that there is no limit on the number of people who can switch from tier 4 visas to tier 2 graduate programmes, particularly in the types of disciplines to which the noble Baroness, Lady Brown, referred. The level of the salary is, of course, something that we need to examine. If we want to attract the brightest and the best, then, of course, £20,800 as a starting salary is about NVQ level 3 or 4, or about A-level.

Lord Clement-Jones: My Lords, does the Minister accept that that is above the average graduate salary in places such as the north of England?

Lord Bates: That may be so. I would have to look into that point in relation to the north of England, and I am happy to do so. However, the point is that there is no limit on the number of graduate opportunities available. We have special programmes for PhD students and for post-doctoral study. Therefore, we need to get that message out into the wider world much more effectively that Britain welcomes these students and that a range of opportunities exists for students, post-study, to continue to work and gain experience. They can continue on tier 5 with approved internships and training programmes. Twenty-eight thousand organisations have approval to sponsor tier 2 graduate employment opportunities. There is also the PhD entrepreneur route on tier 1. There is a wealth of opportunities for these students.

The noble Lord, Lord Hannay, asked five very pertinent questions and then answered them, albeit not entirely to the Government's satisfaction. We recognise that our country is experiencing growing pressures from inward migration and its effect on the fabric of society. As a result, we need to take steps to bring net migration down. Of course, you cannot do that simply by changing the figures. It would be very easy to change the figures and, by waving a magic wand, halve net migration. That would be very comfortable but it would not be true. Often people come to this country to study and then stay on. That is why there is a discrepancy between the figure of 117,000 coming in and 40,000 leaving. We need to understand better why we have the 77,000 discrepancy and we need to better understand the data.

The noble Lord, Lord Hodgson, asked for an update on e-borders. Exit checks, which were introduced last year, will give us a better picture of where those people are going. We will publish an update report in May on the progress of e-borders and the exit checks. That will give us greater confidence in this regard.

Lord Bilimoria: My Lords, we know that e-borders are not reliable. We have a migration problem with the EU as well. Why do we not institute scanning of all passports—EU and non-EU—at our borders? Then we will have total control. It is easy technology and is available right now.

Lord Bates: We will continue to look at these things. The exit checks are the first step to something we hope will help us get a better handle on flows in and out of the country.

I am aware that there is a great deal of expertise in the House, particularly in the higher education sector. We keep debating the numbers, but I urge noble Lords to think that our message should be to sell the incredible opportunities people have when they come to study in some of the greatest universities in the world. As graduates, they will then have the opportunity to work in some of the greatest companies in world. That is a fantastic offer that we can all come together to sell.

Lord Clement-Jones: I apologise for interrupting the Minister again, but he has time to answer a couple of questions. The two cases I mentioned were quite egregious, because neither postgraduate student had breached any visa rules. That gives Britain an enormously bad name among that community.

Lord Bates: I am very happy to look into those two cases for the noble Lord to ensure we get this right. The message has to be clear, and we have to recognise that we have a duty to welcome people coming in to contribute to our economy and to show them the appropriate respect.

I am happy, should the noble Baroness, Lady Sharp, think it an offer worth accepting, to convene a meeting of interested peers and colleagues with our people from the Department for Business, Innovation and Skills, who have ownership of the universities sector and the tier 2 and tier 4 issues, along with people from the Home Office and immigration enforcement, to discuss how we can tackle these problems and the reasons we are not getting the right message out. We can work together to ensure that our fantastic offer on the world stage is communicated loud and clear: that people from around the world with genuine qualifications and places at great British universities are very welcome and that we are very grateful to them; that, post-study, they will have immense opportunities in this country; and that we would like them to stay and contribute, if they are qualified to do so.

Lord Bilimoria: We have all asked for one thing. We are all great ambassadors for British universities—we are their greatest fans—and we will continue to be, but we are asking for one thing. The Prime Minister has said he is open to the idea, and I am sure the Chancellor would be. We are asking the Government to categorise international students separately, in the way that, as we have shown, the USA, Canada and Australia do. That one move would send out a message. The Minister talked about perception. It would remove that perception once and for all. Why can the Government not do it?

Lord Bates: The noble Lord, who knows this area inside out, knows that we looked at that very carefully. It is true that the United States separates that category out, but when it calculates net migration, it adds it back in. The United States behaves differently because it does not have a net migration target. We do, and therefore we have chosen to include students in the numbers.

Baroness Sharp of Guildford: Would the noble Lord not consider publishing the two statistics side by side, as the Americans do? We could have the net migration figures, but let us also have the figures excluding the students, so that the population can judge for themselves whether the targets have been met.

Lord Bates: Given the gap in the numbers, which we do not yet fully understand, the Government are not comfortable enough to take the heat from our heels—as it were—on the immigration statistics by providing a potentially sharp change in the net migration numbers. It might give us a degree of comfort that is not borne out in reality. The better our data and intelligence, the better able we will be to say to universities, "Listen, your responsibility is not just to attract people here, to ensure they are qualified to come and to give them a great education, but to ensure that, when their time is up and their visa has expired, they go home and use that education to build another career". There are many ways we can all work together, and I am simply extending the opportunity to continue the dialogue—I am sure it will continue on the Floor of the House, but such dialogue can sometimes be engaged in more constructively with officials from different departments off the Floor—should it be helpful to the noble Baroness. I am grateful to her for raising this matter.

Trade Union Bill

Committee (4th Day) (Continued)

3.14 pm

Amendment 97A

Moved by ***Baroness Prosser***

97A: After Clause 14, insert the following new Clause—

"Codes of practice: employee engagement

In section 203 of the 1992 Act (issue of Codes of Practice by the Secretary of State), after subsection (1) insert—

"The Codes of Practice issued by the Secretary of State for the purpose of promoting the improvement of industrial relations must encourage all employers, in both the private and public sectors, to establish mechanisms via trade unions that encourage and enable effective employee engagement in industrial relations.""

Baroness Prosser (Lab): My Lords, I am pleased to speak to the amendment because it is about the only part of the Bill that strikes a truly positive note. The Bill itself is entirely negative, and the other amendments—those we have heard already and those yet to come—are designed as a damage-limitation exercise to stop the Government making a complete hash of industrial relations and complete fools of themselves.

As a trade union organiser over many years, I met many ordinary workers who had great ideas about ways to improve work processes or systems. Even the humble road sweeper—in the days when we had them—could make suggestions about bettering route arrangements, for example. I will not, however, rely simply on anecdotal points; there is ample evidence regarding the link between employee engagement and morale, and employee engagement and productivity.

The Involvement and Participation Association, in which I declare an interest as a board director, has recently produced a report entitled *Involvement and Productivity—the Missing Piece of the Puzzle?*, in which it looks at the influence on productivity in

[Baroness Prosser]
workplaces that have good levels of employee engagement. This is not small beer. We in this country have a very poor record on productivity. We are 17% less productive than the rest of the G7, while the average worker in France and Germany produces more in four days than does the average worker in the UK in five. The report examines evidence from large surveys, behavioural experiments, academic studies and employers themselves, and shows that when employees have a voice in the decision-making process over their jobs and the wider organisation, productivity is higher.

The report also looks at how employees feel about involvement in their workplaces. Just one in three workers felt that managers allowed them to influence, or have a say in, decisions, and employers in the UK are less likely than global competitors to encourage workplace involvement. In many EU countries, for example, solid trade union agreements run alongside works councils. Matters are not helped in the UK by the decline in collective bargaining and the fact that mechanisms for employee voices to be heard are few and far between.

A concrete example of a successful exercise may help to persuade Ministers of the sense of this case. For many years, Royal Mail was renowned for its poor industrial relations. From my six years of experience as a non-executive director of the Royal Mail holdings board, I can say categorically that the problem lay with both management and the union, neither of which for a very long time had any knowledge or experience of workplaces outside Royal Mail. However, a programme was introduced under the then chairmanship of Allan Leighton entitled Great Place to Work. This involved various strands, such as First Line Fix, which enabled local managers to take decisions about local issues, rather than having to send everything to national level for a decision.

For example, when a local clothes dryer broke down and was not repaired for months—meaning that posties had no means of drying their soaked uniforms—it made everyone very fed up and resentful of the company. What was the matter with it? First Line Fix got the dryer mended within a week.

A Great Place to Work also involved work-time listening and learning sessions, discussing ideas from all in a section about ways in which things could work better—ordinary employees advising managers on improving workplace systems. Listening and learning has continued and was felt to be extremely important during the difficult period of privatisation of the company. Engagement scores have improved significantly even through the privatisation process.

Employee engagement is about not only productivity but morale. How do any of us feel if we have no control over what goes on in our lives? Does what we think have no value? Can we be engaged in a process or a subject matter over years and years and still have nothing to say about it? It does not make sense, for either the morale of the worker or the future of the employment, be that big or small.

The world of work is made up of workers and employers—managers. But there is no mention of managers in the Bill. How are we to develop and grow and compete in the wider world when we pay so little attention to the role of the manager? Quite often, even senior managers pay no attention to the behaviour, training, ability—or whatever—of their junior managers. According to the Chartered Management Institute, only 13% of managers in this country have any management training. That is shocking. Here we are, spending our time arguing about problems with trade unions that mostly do not even exist.

Finally, I ask the Minister not to cite the Government's view of red tape and their dislike of it. Please do not say that the Government cannot be doing with the nanny state, because everything about the Bill is about unwanted red tape by the mile and the Government poking into areas about which they are shamefully ignorant and where neither workers nor employers want them to.

Lord Young of Norwood Green (Lab): My Lords, I congratulate my noble friend Lady Prosser on her amendment. I can pay her no higher compliment than I wish I had thought of it myself. I was a junior Minister in the previous Labour Government, who supported the concept of employee engagement. As I understand it, the present Government continue to support that concept. The amendment gives the Government an opportunity to put something positive into the Bill that is direly needed.

As it stands, the Bill is really a lost opportunity. It does not address the real problems facing British industry: low productivity, which has already been referred to by my noble friend; skill shortages; and a lack of management training, which she also referred to. There are so many examples of the value of constructive engagement between employers and employees involving trade unions. Unionlearn was referred to in a previous debate. Health and safety was given a thorough airing on a previous day in Committee. There are examples of where industries have been in serious trouble, as the automotive industry was, where the trade union movement has shown itself more than capable of being involved in very constructive engagement. My noble friend referred to Royal Mail. I could give your Lordships numerous examples from British Telecom, where I was involved. I declare my interest as a lifelong trade unionist. Unions can make a really positive contribution to government policy.

I will quote a couple of examples that do not involve trade unions because we know that there are plenty of workplaces where they are not involved. There was an article in the *Evening Standard* on 11 September last year about Sacha Romanovitch. It said:

"Sacha Romanovitch is a breath of fresh air. It's not only that she's the first female boss of a major City accountancy firm",

it is the things that she has introduced. It continues:

"The new chief executive of Grant Thornton, in effect their senior partner … has already announced a John Lewis-style profit sharing scheme and a cap on her own salary. Her pay will be limited to 20 times the firm's average salary—compared with the average FTSE 100 chief executive on 149 times"—

whether they are all worth it is a moot point. The article goes on to say that,

"profits will be shared among all 4500 staff instead of the most senior, and the profit share will come from boosted profits generated by more collaborative working".

I stress that last phrase because that shows the benefit of it.

Another example, which I saw in the *Times* in April last year, is a company called Gripple, which makes agricultural wire joiners in Sheffield. It is an interesting company. According to the article,

"it employs 500 people and has a turnover of more than £50 million. Hugh Facey, the entrepreneur behind the business, is as original as his invention. He doesn't run the business to make money for himself, he claims"—

I have not had a chance to check that out but I will give him the benefit of the doubt for the rest of the things he does—

"but to provide jobs to local workers".

Goodness knows we need that in British industry. The article continues:

"Rewards are shared throughout the company, because every employee has to own shares in the business, giving them a collective stake of 36 per cent—and a say in how it is run".

It is that last point that I want to emphasise: another good example of employee engagement.

Some of the Government's policies are right. I am with them on their approach to apprenticeships. We might argue about the detail but their drive to increase the number of apprenticeships is a very worthy objective. It would be much easier if, instead of discussing this Bill, we had a Bill that talked about involving trade unions in that campaign to increase the number of apprenticeships, which is why I talk about a lost opportunity.

I cannot help reflecting on my experience of negotiating with senior management in BT—and this applies to many companies throughout the UK—and their love of employing external consultants. They would think nothing of employing McKinsey for a few million pounds. I said to them on many occasions, "I am not going to tell you that you should not do it—I know you won't take any notice—but while you are doing that it just might occur to you that you have about 140,000 consultants, and you are paying them anyway. If anybody can tell you what's wrong with various parts of the company and how to improve productivity and profits, it is your employees. You ought to start listening to them far more than you do at the moment", and I gave them many practical examples. My noble friend Lady Prosser pointed out a significant fact in British industry: the level of management training is really abysmal. We still have a long way to go on that. The need for employee engagement is paramount.

I am sure that we will have some comments from the Minister about the wording of the amendment. I do not think that my noble friend Lady Prosser or I say that everything is perfect. The amendment has been pitched at the fact that this is a Trade Union Bill and we know that there are significant areas of interest where trade unions are not involved. The core principle of the amendment is valid. It says:

"The Codes of Practice issued by the Secretary of State for the purpose of promoting the improvement of industrial relations must encourage all employers"—

I stress "encourage"—

"in both the private and public sectors, to establish mechanisms via trade unions that encourage and enable effective employee engagement in industrial relations".

There is a real opportunity for the Minister to prove that the Government are in fact in listening mode and to inject something positive into the Bill.

I will end on a quote. I cannot match the intellectual capacity of my noble friend who quoted Chekhov—or at least, I could not find a quote that was apposite—but I thought this one would do. It comes from a song written by a couple of my favourites, Harold Arlen and Johnny Mercer:

"You've got to accentuate the positive
Eliminate the negative".

That is my advice to the Minister and I look forward to her response.

3.30 pm

Baroness Donaghy (Lab): My Lords, I thank my noble friend Lady Prosser for moving this amendment. After the rest of the Bill, which was like trudging through a freezing Arctic wilderness, this is like relaxing in a warm bath and savouring the moment. The subject of Royal Mail was raised earlier. When I first got to ACAS and tried to book the best rooms in the building for a meeting I was told, "No, you can't have those rooms. They are set aside for six weeks". I said, "Why on earth are you setting aside those three best rooms for six weeks?". I was told, "Well, that'll be the Royal Mail dispute". So the job, as I saw it, was to eliminate the recidivists and accentuate good employment relations. I know that ACAS saw that as its job. I should say that I am in receipt of a small pension from ACAS before I go on to praise it.

This amendment sums up what ACAS is about. Without going into detail, because I am going to take only two minutes, it produces high-quality reports on employment relations and how to improve productivity and employee engagement. It has a helpline which took 1 million calls a year when I was the chair—it is probably more now—assisting both employers and employees, while its website was consistently praised by HR managers in every industry. ACAS knows the value of good employment relations and about the important work of trade unions.

My noble friend Lady Prosser mentioned the Involvement and Participation Association, of which I am very proud to be a vice-president. It encourages partnership working and employee/trade union engagement, produces reports and promulgates examples of good practice to encourage others. Finally, as a fellow of the CIPD, which also promotes good employment relations as a route to improving productivity, attendance and staff morale, I say that this amendment acts as a welcome contrast to the rest of the Bill, which is such a lost opportunity, as my noble friend Lord Young said. We could have been discussing how to improve our productivity and provide a skilled workforce. Every study from the organisations that I have mentioned, including the workplace employment relations study that ACAS always supported and helped to finance, proves time and again the importance of positive employment relations. I very much hope that the Minister will take this amendment on board in the spirit in which it is intended.

Lord Brooke of Alverthorpe (Lab): My Lords, I too am grateful to my noble friends Lady Prosser, Lord Young of Norwood Green and Lord Mendelsohn, who have put their names to this amendment. I spoke at some length at Second Reading and I will not repeat that today, as much of what I wish to say has already been said. However, at Second Reading I talked about

[Lord Brooke of Alverthorpe]
not just trade unions but the millions of workers who are as yet not members of a union. A series of analyses indicates that many of them lead unhappy lives at work. They do not make the contribution at work that they would like to, while the benefit of what they could add to companies' quality and output is not taken into account. I said that we needed to think in a more positive frame of mind about how we can engage people in unions, and those who are as yet not in unions, to better our economic performance and well-being in this country.

At the end of that speech, I pleaded with the Minister to go back and look at the information and consultative council regulations introduced back in 2005 by Tony Blair's Government. At the end of Second Reading, she had a lot of people to respond to and she did not address that issue—in fairness to her, it was probably because she saw that she needed to speak on other topics. When she responded to me she spoke on something else—check-off, which we were dealing with earlier in the day. But like my colleagues I hope that I can urge her or her Whip, who may be looking at the subject with a fresh pair of eyes, to take this part of the debate away and look carefully at what we have had to say. It is about progress and making a better life for employers and employees.

Following my noble friend Lady Donaghy, I have had a look at some recent documents issued by ACAS. It says:

"Information and consultation are the basic building blocks of every effective organisation. These concepts are as crucial to the relationship between the individual workers and their line manager as they are to",

any other parties. It continues:

"Whatever the size or type of your organisation people need to talk to each other. They need to … exchange views and ideas … issue and receive instructions … discuss problems … consider developments".

ACAS goes on to list a range of topics that are worthy of joint consultation between employees and their managers, including organisational performance, management performance and decision-making, employees' performance and commitment, levels of trust, job satisfaction and work/life balance. The list goes on and on.

In many workplaces, unions are there but such discussions are not taking place in the way that they should. There are even more workplaces around the country where the voiceless have no means whereby they can engage properly with their managers to the overall improvement of the operation of those businesses and companies. That is to the detriment of not only the individuals in and owners of businesses but the company at large. My noble friend Lady Prosser has been extraordinarily agile in finding a way to bring an amendment to a Bill whose primary focus is on what I would see as negatives relating to trade unions. However, this amendment gives the Government a chance to put a positive there, as my colleagues have been pleading, and this time around I hope that we will get a positive response to our points.

Lord Stoneham of Droxford (LD): My Lords, I too hope that this session provides a little light relief for the Minister, who has had quite a hard time through various sessions of the Bill. It has been a bit like a series of one-sided OK Corrals. Over lunch, I thought I might ask the Minister whether she has any genes from Stonewall Jackson, that great Confederate general. The other metaphorical point I would make is that he ended up being shot by his own side—accidentally. I hope the Government at least allow the Minister to make the concessions in the Bill which will be her salvation.

Amendment 97A is welcome in providing a wider debate on where we are going and I would like to make a number of points. Employment engagement is very important to improving the country's competitive position, and to improving services in the public sector. As someone who has been in industry, I certainly feel that we have far too much dependence on adversarial systems and processes—I sense this in our politics as well—when engagement and working together on problems normally provides much better solutions.

I am certainly one of those who welcomes unions and sees their important role in society and industry but, sadly, the reality is that although the unions remain strong in the public sector they have become weak in the private sector. However we may regret that, we have to make the point that although unions are important there has also to be a diversity of systems that can work well. We see that in companies such as Marks & Spencer and John Lewis, and many foreign-owned companies where processes have been developed not necessarily strictly through recognised trade unions. This is very important in the public sector, where we in this country will no longer have a great and dominant manufacturing sector—although we might like to aspire to that—but will be much more dependent on services. That requires the motivation of employees and will be especially important in the public sector; it is certainly important in the private sector. That is why an adversarial system is no longer totally relevant to improving industrial relations.

I welcome the spirit of this amendment, the thinking behind it and the opportunity to have a general debate, however briefly, on this important subject.

Lord Mendelsohn (Lab): I congratulate and thank my noble friend Lady Prosser for introducing this amendment and will set out why it is particularly important. It was a sheer pleasure in the previous debate to listen to the contribution of the noble Lord, Lord Balfe, and to the good sense that came from all parts of the Chamber. I hope that the Government are very much in listening mode and can perhaps hear a case for change. I will set out why the Bill merits some sort of change.

An interesting feature of the coalition Government was that every year, we would read in the papers and in blogs that Conservative Ministers would present this very Bill to Liberal Democrat Ministers. Each year, they would say, "Together, we could do in the Labour Party, which would undoubtedly be to our benefit". Each year, to their considerable credit, the Liberal Democrats would block the Bill. I am sure that some noble Lords present today were witnesses to this annual event. It was no surprise that the Government, given the opportunity, chose to use a huge legislative

sledgehammer to target—and in some ways to torture and weaken—their perceived enemies or to make life a little difficult.

This is unfortunate, not just for the well-being of those who are perceived to be the enemies but because it highlights that the Bill has yet to pass a strong public interest test. During our debates, we looked at the "will the sky fall in?" test. It probably will not, but we have certainly not met the "unattractive consequences" test. We have had a good debate about the impact on the regions and on devolution, and whether or not this will weaken the union; I do not think it has met the test that it will not. We also had a debate about what the point of this is, and looked at whether it passes the test of minimising the harm it might cause.

However, the Bill does need to pass the "making a positive difference" test—not just to trade union members but to the public and the national interest. This is what this amendment is about: the role and work of trade unions in a modern society. As a businessman, I would say that this is also about the massive opportunity we have to use workforces and trade unions for better purposes. The Bill has a stunning lack of meaningful objectives, such as targets, goals or definable and provable outcomes. We have seen repeatedly that there is no evidence to establish that there is a problem to justify the solutions. There is no cost-benefit analysis and no meaningful consideration of the consequences of its measures. It lays regulation on obligation on cost on restriction on complication on Whitehall centralisation. It really is time for a bit of light.

The amendment also passes a very important legislative test, which is that it tempers the Bill with proportionality, purpose, principle and practicality. I strongly believe that government Front-Benchers in this House have clean fingerprints on the design of this Bill. They are respected in this House and do credit to a tradition in their political party and to our country's political culture and traditions—the debate we had earlier attests to that. I have been very encouraged by the debates during Committee and the strong consensus for changes to the Bill in so many areas, but I fear that the dull hand of the other House will compress the capacity of our House to ameliorate the Bill and that the power of the arguments made so ably by so many will not receive the proper response. I hope Members there are listening not just to what we say about the measures they have introduced but to this very welcome addition.

In that capacity, I am very pleased to see the noble Baroness, Lady Finn, in her place. She of course plays a very important role as a special adviser with a particular responsibility supporting the Minister of State for Skills in the Department for Business, Innovation and Skills on trade union reform—a kind of facility time for the Conservative Party. It is very important for the message to be conveyed to the Minister and to those who have held the debates in the other House that there is an opportunity here to do something which restores a bit of balance and addresses the great tragedy of the Bill, which is that it is not about reform for a great purpose.

3.45 pm

I hope the Government will take a moment to reflect, through this amendment, on the shape of the Bill and will consider it a very useful addition. The Bill has been designed to address the issues of the past. As someone who has been a long-standing advocate and sponsor of reform of the Civil Service and public sector performance, I think we will miss a great opportunity to define a forward-looking approach in keeping with our current condition and with what we know will work well for today and the years ahead—where maximising the performance of the workforce is our central purpose and where we can successfully address the challenges ahead with the sensible involvement of employees.

Ministers may not trust trade unions, but employees have trust and confidence issues with employers. In the most recent Edelman Trust Barometer, just over half of UK employees say they trust their own employer. This is the crucial area we have to deal with. Employees are a company's greatest asset, and effective organisations are able to maximise performance by optimising employees' performance. But this needs great managers and great leaders, which is a crucial part of the Bill that is missing. Especially in the public sector, employees are the greatest route to the solutions that Ministers want, as opposed to delivering diktats from Whitehall.

I draw the attention of all noble Lords to my noble friend Lord Carter's magnificent report on achieving efficiencies and the benefits of economies of scale in the NHS. It is a masterly report, which makes this argument completely. In it, he states that the NHS has,

"arguably the greatest concentration of intellect and talent of any UK business, but there is little evidence it has been fully engaged to solve the efficiency and productivity issues".

Commenting on his report, the *Financial Times* said that "the key" is what management does to recognise what employees,

"already know, or can find",

in terms of,

"the answers to poor performance and high costs, if only managers will let them".

A modern approach is to build engagement, maximise skills and adaptability, create purpose and direction and make people feel part of something that properly lives up to the values it claims to espouse.

I congratulate my noble friend Lady Prosser on another element of her elegant amendment. Its drafting should be commended for two reasons: it is workable and it is within scope. Regrettably, the attempts that I and other members of the Front Bench made to provide the House with a workable amendment fell foul of the clerks, who felt that anything that addressed management was outside the scope of the Bill. What more perfect a metaphor could there be for the Bill's flaws? Getting engagement right is in the private sector a source of competitive advantage and should in the public sector be a source of collaborative advantage.

I congratulate ACAS on its work in developing and pioneering ways for manager and industrial relations to develop; I regret that some of its role was weakened and taken away. The Bill does little to move us forward or even to encourage and incentivise trade unions towards what our modern economy needs. Our long-standing poor productivity owes more to the performance and tasking of management than any other single indicator. Getting that right unleashes huge potential

[LORD MENDELSOHN]
gains in individual productive capacity: we have the evidence in industries across the UK. There is so much potential for a forward-looking approach to provide considerable benefits in the public sector, in which our acute problems of productivity, sickness, absence and disputes take two, three or even five times longer to resolve than they do in the private sector.

The Government always want to get more for less. Engagement, not coercion, is the only way. I urge them to restore some balance to the Bill, to embrace the future and to support the only thing that has been debated that is proven to improve workplace relations and has economic and productive benefits. I hope that they take this opportunity to do so.

The Earl of Courtown (Con): My Lords, I thank the noble Baroness, Lady Prosser, as well as my noble friend, for giving me the opportunity to respond to this fascinating debate covering many different aspects of the great relationship.

The Government recognise the positive role that trade unions can play in the workplace. In a debate last November brought by the noble Lord, Lord Foulkes, the House debated that positive role. During that debate, the noble Baroness, Lady Prosser, highlighted from her personal experience some of the important contributions that trade unions can make. Having read the debate and looked carefully at what she said, in the last paragraph of her speech, she mentioned the partnership between workforce and management and how important it was that that worked efficiently for all concerned. I could not agree more.

My experience in this field, apart from a brief period in the 1970s when I was working on the shop floor in an engineering firm in the West Midlands—which was an interesting experience for someone from my background—was up until 2010, when I was a contract manager in the construction industry. I worked for an SME, the backbone of the British economy. We employed 25 to 30 people. I was involved in sending people out to work, finding them work and such like. It was so important that those relationships worked and that there was the engagement mentioned by many noble Lords. It was a non-unionised workforce, but it still worked very well, whether on health and safety or training, but then we were a committed organisation. We worked well with the workforce and it was mutually beneficial.

The noble Lords, Lord Stoneham and Lord Brooke, talked about the importance of employee engagement. I recognise that, and we know that businesses understand it too. The CBI 2015 employment trends survey highlighted that the top priorities for businesses in the coming year are better leadership and employee engagement to foster productive workforces. The noble Lord, Lord Brooke, also referred to information and consultation regulations and said that employees are voiceless in some organisations. Under the information and consultation regulations, employees have a right to request a formal workplace agreement for engagement. That does not apply to workplaces of less than 50 employees—the sort of organisation I was involved with—but employees have greater influences in those workplaces anyway. Also, as we have heard, many employers involve employees in decision-making processes because it makes good business sense.

We have acknowledged that unions can play an important role in the workplace and have heard many examples in many debates in your Lordships' House. However, productivity, which was mentioned by the noble Baronesses, Lady Prosser and Lady Donaghy, is not influenced solely by the presence of unions, but by capital investment, innovation and dynamism of markets—they all have potential to increase productivity, given current record high employment levels. Data from the OECD do not directly indicate a link between trade union density and productivity, but I realise that there are different figures from a wide range of sources. We are very conscious that productivity has to rise, and we are doing a great deal in this area, which I will not go into at present. We also understand the importance of a well-motivated workforce.

The noble Lord, Lord Young of Norwood Green, mentioned apprenticeships, as I suspected he might. The Government accept that apprenticeships and training are key to improving productivity, which is why we are committed to the 3 million apprenticeship starts in England over this Parliament and to making sure that they are of the highest quality possible. We know that the trade union movement will play its part in helping us to deliver this commitment. For example, last year the TUC and the CBI signed a joint commitment to support and promote apprenticeships and traineeships for young people.

It is not right that we restrict how employee engagement can happen. The current approach is flexible and means that businesses have a variety of ways in which to engage with and involve their employers in their businesses. Currently, employers and employees can decide the best mechanisms for engagement and tailor this to address individual workplace needs. This may or may not involve representation through a trade union. The choice for individuals to join or not join a trade union is important. Many workplaces and sectors are not as heavily unionised, and alternative or additional methods have been created for engaging with employers effectively. Therefore, we do not believe that we should restrict the type of engagement that we promote. I do not believe that this amendment will improve industrial relations or employee engagement. But we will take careful note of what has been said.

Baroness Prosser: I thank the Minister for giving way. I am not sure that I made it clear in my speech that employee engagement is conducted in workplaces that are unionised and in those that are not unionised. It is not something that sits separately from trade unionism or can only sit alongside trade unionism; it works in companies where there are good union relations but insufficient attention is paid to ways in which employees can participate and contribute to a debate and in places where there are no mechanisms for engagement. So it is not one or t'other; it goes across both kinds of workplaces.

The Earl of Courtown: I thank the noble Baroness for that intervention. I shall read carefully what she said. Having taken all that into account, I ask her to withdraw her amendment.

Lord Young of Norwood Green: I made the point in my contribution that we did not think that the wording was initially absolutely perfect, but there were constraints on the wording, as we have already heard, given the nature of the Bill. It would be useful to hear from the Minister that they would be willing to meet us to discuss the potential of improving employee engagement.

The Earl of Courtown: I am always willing to listen and to hold a meeting.

Baroness Prosser: I beg leave to withdraw the amendment.

Amendment 97A withdrawn.

Clause 15: Investigatory powers etc

Amendment 98

Moved by ***Lord Mendelsohn***

98: Clause 15, page 12, line 15, leave out subsection (2)

Lord Mendelsohn (Lab): My Lords, I cannot resist making one point on employee engagement. As we move on to the Certification Officer, the measures that we are about to debate would certainly have hugely benefited from some form of employee engagement. I noted in the evidence of the Certification Officer of 9 February to the Select Committee on Trade Union Political Funds and Political Party Funding that he was asked whether he was consulted about the measures that related to party funding. He said:

"No, I was not consulted".

He was asked a broader question on whether he was consulted at all and he said, "Not before the Bill". These measures have the hallmark of something that would have greatly benefited from being examined carefully, and if advice, experience and evidence had been sought from the Certification Officer.

The Trade Union and Labour Relations (Consolidation) Act 1992 clearly intended that the Certification Officer should be accountable primarily to trade union members and that he was to codify reports on compliance, have powers of investigation and intervention and deal with complaints. With the breaches of any rules, remedies were underpinned by law. Indeed, the noble Lord, Lord Forsyth, in the previous debate, gave us a very good understanding of how this was to deal with the issue of a significant foundation about how members felt about the unions and where the unions were. We can certainly agree with that. But we now move on to something where we are substantially and almost completely changing the role and function of the Certification Officer and muddying the waters tremendously.

In his evidence, the Certification Officer was asked about whether the problems about complaints were consistent with his understanding. He said:

"All rules can be improved. No one has complained to me at any time that they have been impaired in making a complaint or pursuing what they want to do. Of course, that does not mean that they do not feel that way—it is just that it has not been reported to me. The answer to the first part of your question is that I am not sure; there is no evidence of that".

He went on to say:

"The Bill approaches it from a totally different perspective. They are not trying to tinker with what exists; they want a new model. I do not think it is fair to say that it is successful or not successful in perfecting the existing model".

4 pm

I find it strange to be debating the expansion of a role like this with the Minister after our discussions on the Small Business Commissioner in a previous Bill, where there was such an apparent case for the extension of the role, which was so narrow as just to be about collating data. There has to be a significant case for why this Bill widens the current role of the Certification Officer. The Bill seeks to extend his role, accountability, reporting and data collection duties and turn him into an inquisitor. Trade unions are being exposed to a vastly different and colossal burden of regulation, which breaks new ground constitutionally and legally and is out of all proportion to any conceivable mischief the Government have conspicuously failed to identify.

Indeed, there is a rationale for the intervention suggested, as outlined in the impact assessment. There are three legs to it. The first is a market-failure argument that suggests that the regulator needs significant change not because members have a detriment but because,

"The actions of unions can have wider impacts beyond their membership and their operations may not always be transparent to the wider public".

This completely transforms the nature of what we are talking about and puts in a burden which is impossible to meet for almost any institution or organisation. In fact, in regulatory principles, this is by far the largest extension that we have had, even if we consider what happens in other industries that are heavily regulated.

Secondly, the impact assessment suggests:

"The regulator must have available sufficiently robust enforcement powers and sanctions to deter breaches".

We have evidence of what the potential breaches are in the role, work and reports of the Certification Officer, and I will come to that later. However, there is no current sense of where there is an identifiable market failure to suggest these measures. The impact assessment also states:

"The Trade Union Bill is modernising and reforming trade union law. Therefore, we will need a regulator that has the right tools to deter breaches with this updated framework, and in a proportionate manner. It is only fair that trade union members, employers and the public can rely on robust regulation of trade unions".

Again, there is no evidence about why any of these things suggest that there are any particular failures in the regulation of trade unions in relation to their members or other activities. The case is just not made.

Finally, the impact assessment makes the point that:

"The Bill provides for recovery of the costs of running the regulator".

It establishes the principle that the trade unions should pay in regard to protecting their members. Whether or not that is the case—I am not hugely sympathetic to that view, given the Charity Commission and others—I think the Government could make a case, but if they were to make such a case, there has to be proportionality in the costs, but the costs have no proportionality whatever.

[LORD MENDELSOHN]

What was also interesting in the evidence of the Certification Officer was the huge difference in his prediction of the costs and consequences of these activities on the Certification Officer and on trade unions. He made the point that, from calculating what he estimates to be the changes required to the Certifications Officer's costs, there would be significantly greater costs on trade unions. The impact assessment, without any basis, notion, thought, breakdown or anything covering the Certification Officer's report, suggests that there may be 50 more declarations over five years. This does not bear serious consideration, given the report of the Certification Officer and the data that have already been published.

I suggest that all Members spend time reading the annual report of the Certification Officer, which is significant and comprehensive, covering all sorts of requirements and obligations on trade unions, including superannuation schemes, membership information, data and all sorts of other things. There is a considerable section on where there have been complaints and breaches of trade union rules. It talks about the number of people who made complaints and says that in the year from 1 April 2014 to 31 March a total of 542 inquiries were received: 42 on general advice on the role of the Certification Officer; 96 on issues related to the listing of trade unions and employers' associations; 21 on annual returns and financial issues; 20 on certificates of independence; 11 on appointment, election or dismissal from any office in the union; and a very few about disciplinary proceedings, balloting and political funds. These are small numbers of inquiries only, which did not lead to complaints. There is no sense that there is either a particular hurdle to raising complaints so that issues are not addressed or that the complaints are drifting in a particular direction. In fact, the only thing that is identified is that the number of inquiries is down, as it has been consistently over a period of time, which is testament to the particularly good job that the Certification Officer has been doing—I hope that by saying that I have not sealed his early termination.

I stress that 11 applications for consideration remained to be determined. The report goes through the series of complaints and issues and how they were dealt with. I have to say that the Certification Officer deals with them very well in the report. Given the number of issues that were raised, I have not calculated the percentage but I think that the unions are broadly running at an average of 80-20 in their favour on how they have dealt with them.

I just cannot see an evidential base for this provision. It is yet another measure with no problem to solve, no justification in the impact assessment and no arguments that bear scrutiny, with no balance of fairness and with the intention of, at best, making life difficult and, at worst, allowing the most malevolent in our society a licence to cause mischief. At heart, this is a detriment to members, not least because of the massive costs involved. We are opening up the examination of trade unions to anyone, even if they harbour ill will with no grounds or justification. The measure creates the ability to frustrate any dispute by means of egregious complaints to the Certification Officer, and allows the Certification Officer to start being involved in any sort of issues that he feels there are grounds for. The costs of this falls on the members. Without a sensible estimate or principle for how the proper costs of this could be established, this is an open-ended burden on members of trade unions.

Our amendments seek to probe, and propose some mitigating factors. The first amendment in the group seeks to prevent the insertion into the 1992 Act of Schedule 1 to the Bill, which provides for the Certification Officer's extended investigatory powers. The extent of those proposed new powers is wide-ranging; they sweep far beyond what is wholly necessary. This proposed remit should be of concern to all, but of particular concern is the potential impact on the privacy of individual trade union members. As it stands, the Certification Officer or other persons can request detailed information from all trade unions on the personal data of their members, including the names and addresses. The BMA has said that these,

> "New powers for the Certification Officer threaten to intrude into union activities and affairs and presents a potential invasion of trade union members' rights to privacy".

The sentiment shown by the BMA has been echoed by many other trade unions and human rights groups. It should lead us to question why this level of data is required at all by the Certification Officer. Many workers and trade union members quite legitimately do not wish their employers to know that they belong to a union, and it should remain their right to keep such personal information private. The Bill removes any guarantee that details of trade union membership and names and addresses of individuals will remain private. Given the sensitive history around blacklisting—I am not even sure we can call it "history", since it still happens today—how can the Government assure trade union members that these new investigatory powers will guarantee individual privacy and the safety of personal information in relation to trade union membership and current or future employers? It is for that reason and many others that the Equality and Human Rights Commission concluded that the proposed new investigatory enforcement powers do not comply with the European Convention on Human Rights.

In addition to the type of personal data which could be collected by the Certification Officer, the question remains as to what purpose this data on individual trade union members will serve to the aim of the Bill or the work of the Certification Officer itself. The answer is: very little. At best this is overkill and at worst it could seriously infringe the privacy rights of 6.5 million trade union members. However, I do not ask noble Lords to take my word for it. The Certification Officer himself in giving evidence to the Select Committee was asked by my noble friend Lord Whitty whether he believed that there were any administrative reasons for the Government's proposals and whether there was any obvious need for improvement in current legislation or requirements of union rules, and said very clearly that no one has made such a complaint.

At the very heart of our amendment to remove these new investigatory powers is the notion that there are no grounds for change. No one—neither trade union members, employers or businesses nor even the Certification Officer himself—is calling for more powers

of investigation. With seemingly no call from any involved parties to change the investigatory powers of the Certification Officer, how and why have the Government identified the need to do so?

The second set of amendments deal with changes to the Certification Officer's powers, which would allow him to instigate an investigation without the need for a complaint, as well as complaints no longer having to be made by a member of the trade union they are complaining about. These amendments state the need for a complainant or applicant to be a member of the union which is the subject of the complaint or application. This is just common sense. There is a real need to protect unions, their members, employers and the Certification Officer from wasted time on malicious complaints. As it currently stands, the Bill allows any third party to instigate a complaint. Anyone from aggrieved employers or employees, any campaign group or even a rival trade union from within the same workplace could become complainants without having ever been in direct contact or personally affected by the actions of the union which is the subject of the complaint. It is just an unnecessary series of complications.

Putting aside the very real threat of leaving the Certification Officer open to malicious complaints, the post may also be subject to an increase in workload due to non-malicious complaints which are still not valid. Complainants could unwittingly instigate unfounded complaints because they are so far removed from the trade union that is the subject of a complaint that they lack the adequate knowledge about a situation or practices of a trade union that they are not a member of.

As it stands, the Bill leaves the investigations of the Certification Office vulnerable to misuse, adding to the time and costs of the Certification Officer's investigations. Amendments 100 and 108 simply seek to offer the protection that is needed to both trade unions and the Certification Officer against any unnecessary additional investigations and a further strain on resources. The Bill proposes an extension of power which places the Certification Officer in the almost unprecedented position of becoming the investigator, the prosecutor and the adjudicator.

During the Select Committee evidence session, the Certification Officer confirmed that he had raised concerns about this drastic change in role and responsibilities with the Government. He said:

> "We have explained the difficulties of the investigator/prosecutor/adjudicator role. I have tried to find, and have asked for, an example of a body, such as the Financial Conduct Authority, that investigates and adjudicates, as you read in the press, to see how it does that. There is nearly always an independent body. The FCA has an independent body that makes recommendations, and the decision is made by the board. The only example we have been given is that of the groceries adjudicator, who apparently does the same thing".

Bodies such as the Financial Conduct Authority ensure that there is a clear division, and that independence is maintained, between any decision to investigate, the investigation itself, the decision whether disciplinary action may be merited and the decision whether there has been a breach. Why, then, has no such guarantee been provided for trade unions and the Certification Officer within the Bill?

On the last amendment in this group, Amendment 117A seeks to address this very problem by probing the Government's attitude to the case for establishing an independent adjudication panel to adjudicate cases where the Certification Officer considers exercising his new powers in the Bill. Very much like the FCA panels, the panel would publish an annual report and might comment on the work of the CO, which the CO would respond to within six months of the publishing of the report. This important probing amendment tries to understand deeply what the Government's objections are to any other form which separates those roles and makes it more sensible.

I must say in this regard that it is very important to place on record the serious concerns presented by the Equality and Human Rights Commission. It has provided a very clear statement on this measure, which is worth addressing at length because it makes the point better than anyone else could. Its analysis says:

> "Article 6(1) of the ECHR provides that, in the determining of their civil rights and obligations, everyone is entitled to a fair hearing by an independent and impartial tribunal. In our assessment, the new proactive character of the CO's functions (i.e. the power to instigate, investigate and then adjudicate the same complaint) compromises the impartiality of the CO. In particular, the new power to instigate a complaint implies that the CO may have already decided that there is something worth looking into further and taken a view of its merits. This is inconsistent with the Article 6 requirement that a complaint should be impartially determined by an independent body. The Government has argued that the right of appeal to the Employment Appeal Tribunal … would remedy any such breach of Article 6. However, in our assessment this would not be a sufficient answer where the CO makes findings of fact and an appeal to the EAT lies only on a point of law, as is the case with current appeals against CO decisions under",

the 1992 Act. It continues:

> "The provisions of Clause 15 and related Schedules are also relevant to the UK's other international legal obligations, in particular, under the ILO Convention 87 on Freedom of Association and Protection of the Right to Organise. Although they cannot be directly enforced through our domestic courts, international human rights treaties (conventions and charters) are legally binding in international law and have mechanisms to hold States to account. The Commission notes that the ILO Committee of Experts, a body which provides advice to the bodies which are responsible for enforcing ILO Conventions, has asked the UK Government to review a number of the provisions in the Bill and to provide comments on the proposals to extend the powers of the CO".

That is a particularly dramatic and significant statement. It is very important that the Government try to meet the test of answering those questions. I do not think that they can, but I look forward to hearing from the Minister.

4.15 pm

In looking at this part of the Bill, I have asked: for whom and to what benefit are the Government extending the powers of the Certification Officer? Throughout the evidence sessions with the trade unions and the Certification Officer, no one expressed an explicit need for the extended powers within the Bill. I keep on reinforcing the point that these are the words of the Certification Officer himself:

> "No one has complained to me at any time that they have been impaired in making a complaint or pursuing what they want to do"—

no one except this Government.

[LORD MENDELSOHN]

In my view, these extensions of the Certification Officer's investigatory powers reveal the real intention behind the Bill. What this Government are pursuing is motivated more by the want to suppress trade unions and their members than by the need to improve openness and transparency. I beg to move.

Lord Flight (Con): My Lords, I have a great deal of sympathy with long-standing trade union members on the other side of the Committee. First, who really likes change, and, secondly, who really wants more regulation? Our whole economy is tied up in string with regulation. It was a delight to hear Labour shadow Ministers arguing against more regulation and complaining about regulators being investigators, prosecutors and adjudicators, which I assure him they are in practice across most areas of regulation, whatever little committees might exist to alleviate it.

We are in a world where institutions that serve the public and with which the public has dealings are regulated, and increasingly so. I am afraid that I do not really see any logic as to why the trade union movement should have special exemption from regulation. Trade unions have the scope to break the law, they have the scope to do things that they should not do and they have the scope to cause inconvenience to the public. Therefore, to argue that they are a world unto themselves is not valid. Some regulation may be needed to protect members from being overlorded by their trade union leaders.

Under the provisions of the Bill, the enhanced powers of the Certification Officer are meek and mild. They are extraordinarily modest in comparison with the powers of regulators in other sectors. The noble Lord should just try working in the financial services sector if he has not done so already. Everyone spends their whole time looking over their shoulder for fear that they are going to break a regulation. There are so many regulations, comprising something like 4 million words and I have forgotten how many tomes.

Lord Mendelsohn: I do work in the financial services sector. I operate under the FCA and am a regulated individual.

Lord Flight: I am glad to hear that; the noble Lord will know all about it then. But he is probably about to enter the new senior managers' regime where he will find that the extent of his regulation will increase substantially.

If really heavy-handed regulation was being imposed on trade unions, there would be a fair argument. However, what is in the Bill is very meek.

Lord Monks (Lab): Is not the real case that there was a massive problem in the financial and banking sector? There was a huge crash that led to lots of people having very serious troubles, and we are still not fully recovered from that to this day. The number of abuses is enormous. In the small world of trade unions, however, there are hardly any abuses, and those that do happen are dealt with by the Certification Officer on behalf of any member who wishes to apply. Opening the door to say that they can take a complaint from anybody and demand this and demand that, and to charge the union for the privilege, involve employer consultants and so on, is no equivalent at all. What the banks did rocked this society to its roots. The unions have not done that.

Lord Flight: I would dearly love to embark on a long debate with the noble Lord on the banking crash, but it was essentially caused in America and not in this country. I do not think that the regulations that have come in since have done very much to prevent another financial crisis arising in the future. They always arise and there is nothing new about them—just look at economic history. But I am glad to have livened the Committee up a little, perhaps.

Lord Collins of Highbury (Lab): The other issue that is constantly reported on the radio is that of mis-selling, which created a huge crisis across the financial sector. I do not understand how that equates to breaches of trade union rules.

Lord Flight: I will dig myself in deeper and say that, to my mind, a great deal of the mis-selling issue is unjustified. First, if you go out and buy a new or second-hand car, you buy what you see. Individuals have some personal responsibility for determining what they buy. Secondly, and more specific to the whole area of mortgages, it was largely about inflation reducing dramatically and returns differing substantially. The simple point is that financial services are at one end of the spectrum and, arguably, trade unions are at the other. It is unreasonable not to accept that the behaviour of trade unions can be extremely inconvenient, if not damaging, to the public at large. Therefore, there is a public interest here.

This group of amendments is about cancelling or dumbing down some parts of the Certification Officer's modest new powers. It seems to me that the powers in question are really not of the substantial importance that the noble Lord suggested. Specifically, the amendments are to remove the new investigatory powers in the Bill and remove the power to investigate in the absence of a complaint by a member. Surely the public have some right to complain if they feel that they have a complaint, and surely a regulator—even a modest regulator—ought to be there to investigate. To say that the trade union itself can investigate does not comply with the government standards of our times, which require some degree of individual investigation.

As we are all aware, the Bill provides the Certification Officer with additional powers he can use proactively to investigate breaches of trade union statutory requirements in relation to political funds, union mergers, internal leadership elections and appointing to, or failing to remove from, a union a person convicted of certain financial offences. It does not seem unreasonable that a very modest regulator should have the power to look at those territories. The Certification Officer ought to be able to investigate formal complaints, not just when lodged by a member but in response to information raised by third parties. Again, his powers beyond investigating are not that great. I do not see why the trade union sector should not be as transparent as any other.

There is a key addition in principle behind what is in the Bill, which is regulation on behalf of the public. The wider public has an interest in trade union conduct where, as I said, unions can by industrial action and in other ways inconvenience the public and damage the economy. Likewise, the investigatory powers cover areas relating to statutory requirements that are of relevance to the public as well as to trade union members.

I note that the Electoral Commission, which is somewhat, if not entirely, analogous to the trade union movement, can impose larger financial penalties. While the Certification Officer has only the discipline of civil penalties, the Electoral Commission can escalate an issue to a criminal offence. I do not propose that that should be the case in trade union regulation, but it illustrates that these measures are pretty modest. On the issue of bearing the costs, again, the industries affected invariably bear the cost of regulation, but I cannot see that what is envisaged here will cost very much at all. I repeat the key point: at present, what exists is purely to protect the interests of members and what is proposed is to protect the interests of the public. That is not an unreasonable change.

I close by saying that I cannot see that there is much in these provisions that is at all inherently damaging to trade unions if they are conducting their affairs in a proper manner. I would have thought, therefore, that it would be a wise strategy to accept the measures, comply with them and make them as unonerous as possible.

Baroness O'Neill of Bengarve (CB): I declare an interest as chair of the Equality and Human Rights Commission. I return to a point that I made at Second Reading, which is that we are talking here about restrictions on Article 11 rights—the right to freedom of assembly. That is a right that I believe all parties are committed to.

The European Convention on Human Rights sets out the permissible purposes for which a restriction may be placed on the right. It is only those permissible purposes that count. They include, for example, the protection of public health, the protection of other liberty rights and the protection of privacy. But the idea that they include general protection of the public and consumer rights, as the noble Lord, Lord Flight, has suggested—not merely today but on earlier occasions—is mistaken. Consumer rights are extremely important, but they are the creature of statute; they are not fundamental rights. I do not believe—and from letters that the Minister has written, that she believes—that those would constitute a sufficient reason for restricting freedom of assembly.

Freedom of assembly is very precious not just for trade unions but for many other groups, including, as I suggested at Second Reading, churches and other faith groups. We must be extremely careful that, when we start thinking about what is proportionate, we remember that it has to be necessary and proportionate for a permitted purpose and not for any old purpose. As the Minister has already said, administrative convenience would not be a sufficient purpose. I suggest that consumer protection and some generic idea about the public are also not sufficient purposes.

4.30 pm

Baroness Donaghy: My Lords, I want to make some general points about the Government's proposal on the Certification Officer in addition to the amendments, but first I thank my noble friend Lord Mendelsohn for such a comprehensive coverage of this subject. In my view the TUC summed it up: this is a disproportionate response to an unidentified problem, and I fully agree. The Minister will be pleased to know that although I am going to take slightly longer on this amendment, I will be as brief as possible on my technical and probing amendments later, which may give her an opportunity to think about the exit door and her throat; certainly before 7 pm and I hope a lot sooner.

My first point is one that I am sure everyone understands, but it needs to be put on the record. The Certification Officer is a public servant who carries out his work with diligence and integrity, and I am sure that all future postholders will do the same. We are not and should not be discussing the role of the individual CO. The officeholder will carry out whatever function the Government of the day give them, and I have no doubt that they will do that to the best of their ability. Secondly, I do not question the right of any Government to promote policies that change the nature of a post or a role, no matter how unnecessary and churlish those policies might be. Thirdly, I do not challenge the right of a Government to increase expenditure without providing the direct means to fund it. One could challenge the wisdom, but not the right.

However, I do challenge on the following matters: unfairness, lack of evidence, the one-sided nature of the proposals, the politicisation of the role of the Certification Officer, the necessity for any substantial change and, finally, the Kafkaesque proposal to make trade unions pay for unnecessary government-imposed red tape. On the issue of unfairness, I am grateful to the Equality and Human Rights Commission for supporting these amendments. Others will no doubt deal in more detail with the EHRC's evidence, and indeed have already done so, but I shall just repeat the quotation given by my noble friend Lord Mendelsohn because it bears repeating. It states that,

"the new proactive character of the CO's functions (i.e. the power to instigate, investigate and then adjudicate the same complaint) compromises the impartiality of the CO".

The commission has dealt comprehensively with the problems caused by Clause 15 and I thank it for doing so.

The clause is one-sided because it will have very little impact on employers' associations. According to the impact assessment, the familiarisation costs will be £2,400 to be met by 93 employer organisations. That represents 26p per employer organisation, although no doubt that will vary depending on the size of the employers' association. So we are talking of an average of 26p per employer organisation. The estimated cost of familiarisation to the trade unions is £525,000. The actual levy of £1.9 million per year will be covered in secondary legislation, and there may be variations depending on the size of the trade union, any exemptions or other issues about which we have absolutely no knowledge. We will not be able to change it, and yet it

[Baroness Donaghy]
will be of considerable importance to at least 7 million people. But if we look at the division of the cost of the levy between the trade unions and the employers' associations based on the same division as the familiarisation costs, it comes out as 0.5% of the £1.9 million levy for employers' associations and 99.5% of it to be met by the trade unions. That is why it is one-sided. I accept that the impact assessment may be completely wrong in its calculations, and I know that there is to be some consultation with employers and trade unions about the levy in the future. I ask that Cabinet guidelines be adhered to and that this will not be yet just another appearance at the August-fest.

The trade unions will have less money because of the ban on deduction from salaries and will be now levied for the bulk of expenditure that, up to now, has been paid from public funds. That is unfair. It will politicise the role of the CO because any third party will be able to ask for an investigation. The purpose of my amendments, and the probing amendments in the following groups, is to ensure that it is trade union members who can complain, not a daily newspaper or Conservative Central Office.

While I am on the subject, I ask the Minister whether there is a typing error on page 77 paragraph 280 of the impact assessment. Under "Rationale for Intervention"—it is "rationale" used in its loosest sense—it says:

"The main market failure arguments which underpin the existence of a regulator are externalities which occur because of union behaviour and imperfect information between employers and trade unions".

That has to be a typo. If it is not, it reveals a worrying ignorance of the role of the CO. Surely it should read "employees and trade unions". I hope that I can be reassured on this.

The impact assessment also comes out with the admirable understatement:

"It is likely that the Certification Officer may receive more representations from 3rd parties".

There is an attempt to reassure us that the representations would need to meet the two tests that,

"the Certification Officer can only require documents if there is good cause to do so and can only investigate where there are circumstances to suggest that a union could be in breach of a duty".

The impact assessment calculates that the increase in investigations as a result of these changes is likely to be limited. That may well be true of formal investigations, but that does not take into account the actual work involved processing any representations short of a formal investigation. This creates an unnecessary industry. There is no evidence whatever that anybody wants it, and, to add insult to injury, the trade unions will be picking up the tab for something that nobody wants.

Lord Oates (LD): My Lords, I shall speak to the amendments in this group, in particular Amendments 98 and 99, and to the question that the clause stand part of the Bill. If I ever wondered why I joined a liberal party, almost every day that we have discussed the Bill I have been given a clear and stark reminder. Today is no different. Clause 15 goes to the heart of the role of free trade unions in a free and liberal society. State interference in the organisation of freely associated people should be contemplated only where there is compelling and overwhelming evidence that it is required.

The comparison between what is proposed here and the financial services industry, which the noble Lord, Lord Flight, made, is entirely specious. The banks beggared our economy and it was millions of trade unionists and other workers who paid the price. What was the first action of the Tory party in government freed from coalition? It was to let the bankers off the hook by reversing the change we had made in the coalition of reversing the burden of proof, and it was to go after the trade unions with this Bill. It says everything we need to know about the Tory party.

Returning to the amendments, a regulator exists in the form of the Certification Officer with a modest and proportional role. The powers and obligations on the regulator will be massively increased if the Government have their way and the grubby and grasping hand of state interference and control will have been further extended. A sensible, modest and proportionate regulator will have been turned into a monster capable—if not intent on—suffocating democratic trade unions in red tape. There will be a vast expansion of the powers and obligations of the Certification Officer. As noble Lords have said, he or she will now be investigator, prosecutor and adjudicator, compelled to investigate the complaints not of trade union members but of any third-party complainant. An array of right-wing organisations and individuals are doubtless preparing their vexatious complaints, led—I have no doubt—by the TaxPayers' Alliance. Why is this happening? What evidence has been brought forward to justify this unwarranted new interference in the operation of free trade unions? The Government proffer none. The current Certification Officer says that there is none.

In the Select Committee, my noble friend Lord Wrigglesworth asked the Certification Officer where he thought the pressure had come from. He replied that he had no evidence of pressure for change—although, to be fair to the Government, they would have had no way of knowing that prior to the Bill being published. Why would they not have known? Because, as the noble Lord, Lord Mendelsohn, noted, at the same Select Committee hearing the noble Lord, Lord Richard, asked the Certification Officer whether he had been consulted, and he replied that he had not been consulted. The transcript shows that the noble Lord, Lord Richard, then asked him again—one assumes incredulously—"You were not consulted at all?". The answer was no. The Certification Officer—the person you assume would have been the first port of call to whom any Government actually interested in the evidence before them would have gone before even considering legislation—had not been consulted at all. That is astonishing—or at least it would be if we had the slightest thought that the Government's intentions in this Bill were to address a genuine problem. Those are not their intentions. Every clause after those relating to the thresholds—the merits of which you could argue one way or the other; personally, I think they are unnecessary—is a nakedly partisan attack on free trade unions and the main opposition party. Although those trade unions and the main opposition party

have often done no favours to the Liberal Democrats, there is something more important at stake here—the nature of our democracy.

Clause 15 will significantly increase the burdens on the regulator and on trade unions. The Certification Officer made clear in the evidence he gave that, in his opinion, as far as he could judge, the costs of the regulator would rise at least fourfold. Can the Minister explain to us how that can be justified? And can she explain on what basis she thinks it right that such a stark increase in the costs should be passed on to the trade unions instead of the Exchequer? For example, does she think that the Conservative Party should pay the costs of the Electoral Commission, or MPs pay the costs of IPSA? These are the relevant comparators. It might be reasonable to charge a levy on trade unions when the regulator was simply looking at members' complaints, but it is most certainly not in the circumstances we are discussing.

The impact assessment is very weak on justification. It can claim only this justification:

"The actions of unions can have wider impacts beyond their membership and their operations may not always be transparent to the wider public".

I could as easily replace the word "unions" with the words "Conservative Party". Given the number of times we have heard the Government justify their position on this Bill by the claim that they have a mandate provided by the Conservative manifesto, might the public not have a legitimate interest in knowing how the content of that manifesto is decided? Should it, for example, be determined by an all-postal ballot of its members? Should there be a 50% threshold, and perhaps an additional threshold requirement that at least 40% of eligible members vote on any section determined to be nakedly partisan?

Given that less than 25% of eligible voters supported the Conservative manifesto at the last election, should the public not at least know that it was properly considered and voted on by Conservative members? Perhaps we should introduce amendments to that effect. But no, of course not. The state should not interfere in the operations of a voluntary association of citizens, unless there is a compelling and overwhelming need to do so. The Conservative Party used to believe that. Indeed, many on the Conservative Benches still do, as evidenced by their contributions in our previous discussion, but Ministers seem to have forgotten it. I appeal to my friends in the Government—if I still have any left after the Bill—to recall that traditional Conservative belief and to drop this obnoxious clause.

4.45 pm

Lord Stoneham of Droxford (LD): My Lords, I am reluctant to detain the Committee longer than is necessary, but I would like to complement the remarks of my colleague, my noble friend Lord Oates, and will therefore contain my remarks on subsequent amendments.

We need to get to the root of the issue about why this reform, particularly this clause, is necessary. In evidence, as we have heard, the Certification Officer said that there was no evidence of pressure for change. The impact assessment contains some clever drafting. It says:

"At present there is scope to broaden the powers and sanctions available to the Certification Officer".

But there is no real mention of what the need is and why it is so essential. It says that there is a need to do this to "ensure greater union compliance" and that the Certification Officer should have "more powerful sanctions" and extended powers to investigate. Why is that necessary?

I have also read the Certification Officer's report. It was 10 years since I read the last one, so I read it twice: once to understand it, and then again to analyse the complaints made to the Certification Officer. And what I found was quite remarkable—this is where it differs from the financial sector. The sector has a turnover of £1 billion and 7 million members, which is not unsubstantial, yet what did we see in the Certification Officer's report last year? We saw 57 complaints, 47 of which were on union rules and were made by 19 applicants. This is a mere handful of complaints.

I also analysed the costs. I am surprised that a Conservative Government do not respect an organisation that, since 2007-08, has reduced its expenditure—now at £560,000—by 16.5%. Of that expenditure, only £150,000 was spent on complaints. So where is this great build-up of complaints that makes necessary these additions to legislation to further control and examine and provide for extra sanctions?

On the rule of law, I think we can take issue with what has been said about the financial sector. Are trade unions a part of our society that does not believe in the rule of law in terms of the Certification Officer? Great detail is required in the submission of returns, in dealing with inquiries and, when dealing with complaints, in providing extra information. According to the analysis, 98.8% of all returns to this body come in on time. These are not organisations that are disregarding the rule of law in the current situation. So you have to ask why these extra powers are now required.

It is not easy for people who have been in the trade union movement to argue against third-party complainants but in any political organisation, there are cranks. The Conservative Party will have them as much as every other political party, and the trade unions have a number of cranks as well. If you open up complaints to third parties you open up to the world of cranks, and you have to ask: is there any sign of a build-up of complaints from third parties that needs to be answered? According to the Certification Officer, he had only 500 inquiries in the year of his last report, and 200 of those were probably just asking to see the accounts. They were not complaints, they were just general inquiries. There is absolutely no reason for this increased bureaucracy to be imposed on the trade unions. Frankly, in pretty much every other business sector the Conservative Government would totally reject this incursion.

The 1992 Trade Union and Labour Relations (Consolidation) Bill had 303 clauses. Since then we have heard from the Certification Officer, and I have given the level of complaints and issues. It is actually working very well. Reading the evidence of the Certification Officer to the Select Committee, he seems a very honourable public servant of long standing and

[LORD STONEHAM OF DROXFORD]
we should listen to his experience. As I say, this Bill has only 25 clauses yet the Government seem to think that it is required to further add to powers to investigate, enforce and so on with regard to the trade unions. There is no justification for this and we need an explanation of why the Government think it is necessary.

Lord Ouseley (CB): My Lords, I want to make a very short contribution. The noble Lord, Lord Mendelsohn, has said virtually everything I was going to say, far better than I would be able to, and I am pleased about that. However, it is important to stress that Clause 15 represents an affront to fairness, justice and proportionality.

The Certification Officer's independence, impartiality and integrity will be compromised by Clause 15. The new expansive investigatory powers and sanctions being vested in the Certification Officer, from the position of reasonableness, as we have heard, would in effect be likely to result in uncontrolled, unaccountable and non-independent interventions in trade unions' reasonable and legitimate activities. There is no evidential basis to suggest that the expansion of powers is justified.

I will not repeat the assessment by the Equality and Human Rights Commission, which has been alluded to already, with regard to contraventions of the European Convention on Human Rights. I would like to reiterate one point raised by the noble Lord, Lord Mendelsohn, about Clause 15 and related schedules being relevant to the UK's other legal obligations, particularly the International Labour Organization's Convention 87 on the Freedom of Association and Protection of the Right to Organise. Will the Minister please indicate how the Government intend to respond to the ILO committee of experts' request that the Government review a number of provisions in the Bill and provide comments on the proposals to extend the powers of the Certification Officer?

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe) (Con): My Lords, the sore throat that I have been keeping at bay all week overwhelmed me earlier so I apologise to the House. I thank the noble Baroness, Lady Donaghy, for what I think I should call solidarity because she presented me with some Fisherman's Friends so that I can get through the rest of today. I also congratulate my noble friend Lord Courtown on his interesting contribution to the Committee's proceedings, and all noble Lords who have spoken in this important debate.

In our manifesto, we said that we would reform the role of the Certification Officer and we are doing just that with, it is fair to say, a great deal of scrutiny in this House. The Certification Officer has responsibility to consider complaints relating to important union processes. It is vital that we have confidence that those processes are conducted properly. For example, the Certification Officer can consider complaints in relation to union leadership elections, union mergers or the accuracy of trade union membership registers—which matter a lot if there is a ballot—or to ensuring the removal from a union office of a person who has been convicted of certain financial offences.

I would argue that there is a legitimate public interest in trade unions running their affairs according to what is required of them. It is not always the case that union members will know their union's regulatory duties. That is why a responsive and diligent regulator is necessary. I hope that is agreed.

Lord Collins of Highbury: If I may interrupt, it is a shame that the noble Lord, Lord Forsyth, is not here because it is important to remember that the reforms of the 1980s, if I am to believe him, were about ensuring that trade unions were representative of and controlled by their members. That is what those reforms were about. I am happy to place it on record that I do not want to see us ever go back on some of those laws. It is a real shame that the Minister is confusing those obligations of a free association, which are to be guaranteed, and then saying that there are other interests which need to be regulated. Can we not go back to what Margaret Thatcher said and ensure that we have free and fair trade unions, controlled by their members?

Baroness Neville-Rolfe: My Lords, I do not think that I have a great deal to add on that point now but I have some observations which, with the noble Lord's agreement, I will move on to. Before doing so, I will comment on the question which the noble Baroness, Lady Donaghy, rightly asked about whether we got the impact assessment wrong. My understanding is that it was not a mistake. The point is that the public in general have an interest in good regulation—in employers, in employees, in families and in the wider public. That is perhaps what we should have said. We are scrutinising this but I am not seeking to change the impact assessment, which has obviously been looked at carefully in the usual way.

Of course the provisions in the Bill have to be proportionate and give effective regulation. As I see it, we are bringing the current powers of the Certification Officer up to date with the accepted normal situation in other sectors. I shall leave the financial services sector on one side, because I want to get through the debate this evening, but perhaps I could give some other examples. There is the Information Commissioner's Office and the Groceries Code Adjudicator, which has been mentioned. The Charity Commission, the Electoral Commission, the Gambling Commission, Ofcom, the Food Standards Agency, the Environment Agency, Natural England, and Ofwat—it is a long list—can all consider representations from third parties and undertake investigations if appropriate.

I am not sure whether I agree with the noble Lords, Lord Mendelsohn and Lord Oates, on the subject of the costs. The Certification Officer has given views on the potential costs necessary to undertake the new regulatory function and I understand that his comments were consistent with the estimates we have set out in the Bill's impact assessment. I think he said, rightly in my view, "I do not want to employ rafts of people only for them to be underused. I want to see what happens and increase numbers as appropriate". My understanding is that we agree that the annual cost will be around £2 million. However, to respond to the point made by the noble Lord, Lord Oates, although I can confirm that the Certification Officer was not consulted before the Bill entered Parliament, we have engaged with him

and will continue to do so as we move towards implementing the reform. As the noble Lord, Lord Stoneham, suggested, we want to continue a tradition of good compliance.

5 pm

Amendments 98, 99, 100, 106, 107 and 108 relate to the new investigatory powers which would prevent the Certification Officer acting in the absence of a complaint from a member. As I have said, the Certification Officer's powers to investigate or take action to ensure compliance are limited unless he receives an application from a member, and I see no reason to treat unions differently from other organisations in other sectors. Furthermore, the powers we are giving the Certification Officer to request documents and information are not new. He has had these powers to investigate the financial affairs of trade unions for many years. Similar powers of investigation are also available to a range of regulators and bodies.

In response to a point made by the noble Lord, Lord Mendelsohn, as with other regulators, deterrence is an important aspect. As the impact assessment says, we expect only a modest increase in complaints. The current system relies on union members being aware of the union's obligation, which is not what most other sectors rely on as the sole source of a regulator's activity.

Lord Stoneham of Droxford: I am very reluctant to test the Minister's voice, as I understand it is wavering a little, but she is proposing to increase the regulator's costs by four times, and yet we are only going to see a modest increase in complaints. Is that a good use of money?

Baroness Neville-Rolfe: I think so. It is important that we have an up-to-date regulator. The £2 million that I mentioned is the upper end of the range in the impact assessment. Obviously, we do not know the figure for certain, and as we have said, we are going to continue to consult the Certification Office. Under a later amendment, we will come on to discuss the levy that will meet the cost.

Amendment 117A seeks to establish a separate independent adjudication panel whose decision will be required before the Certification Officer is able to exercise his powers under Clauses 15, 16 and 17 of this Bill. As I have already explained, it is common for regulators to make proactive investigations or to have the power to initiate investigations and then decide to take enforcement action where a breach of rules or statutory requirements is found—the point that was made about judge and jury. There are various regulatory models in the UK: many regulators—for example, the Information Commissioner, the Charities Commission and the Groceries Code Adjudicator—have internal processes for ensuring fair decision-making. They do not, however, have their decisions made by an entirely separate body that oversees their work.

In view of the Certification Officer's independence—I emphasise to the noble Baroness, Lady Donaghy, that this will be an independent regulator, not a political appointment—it is only right and proper that procedures for investigations and decisions will be up to the Certification Officer. The Certification Officer has in fact recently referred to his early thinking on how best to manage his functions in the light of the requirements in the Bill. A range of different models is used by regulators, and we will have further discussions about the implementation processes with his office. The union will also of course have the opportunity to make representations to the Certification Officer before any decision is made. There will continue to be a right of appeal to the Employment Appeal Tribunal.

The noble Lords, Lord Mendelsohn and Lord Ouseley, asked whether the reforms were in breach of international obligations under the ECHR or ILO. It is important to be clear what the powers will be. The Certification Officer will be able to investigate and to determine whether there has been a breach, and then take enforcement. The decisions are then appealable, as I have said, to an independent tribunal. This is standard for regulators, and it has been established that this framework is compatible with Article 6 of the ECHR.

I am very grateful for the work of the noble Baroness, Lady O'Neill, on human rights, both in this House and more generally in the country. She asked whether Article 11, the freedom of association provision, might be breached. The Government do not think that effective and proportionate regulation infringes Article 11 rights, and our reforms do not interfere with the right to join trade unions. Having said that, I have listened carefully to the points about the oversight of the Certification Officer's decisions, and I would like to reflect on them in the light of discussion.

The noble Lord, Lord Mendelsohn, asked about access to sensitive data. He was concerned that the Certification Officer would have quite a bit of sensitive data—a concern close to my heart. As I have said, the CO is independent from Ministers; the Government will not be able to see any sensitive data that he or she may hold. When handling data, the CO and his or her inspectors will need to comply with the provisions of the Data Protection Act. Any inspector whom the Certification Officer appoints will have a duty of confidentiality. The CO is also under a statutory duty to act consistently with rights conferred by the ECHR, as I have already said. Those are important provisions.

I come finally to the question that a number of noble Lords, including the noble Lord, Lord Oates, have raised about the risk of vexatious complaints using the new power. We are extending the potential to make complaints for members only to third parties. Concerns have also been raised that the Certification Officer might feel duty bound to examine all complaints, which could be very costly. I do not see it like that. Let me first reassure noble Lords that the obligations on concerns from third parties are different from those relating to union members. So while currently the Certification Officer must make inquiries following a complaint from a trade union member, he or she will be under no such obligation with concerns from third parties. He or she will be able to exercise judgment based on the evidence presented as to whether there are sufficient grounds for further investigation. The Certification Officer will remain independent, with responsibility for delivering against the statutory objectives. As I said, his or her enforcement decisions will remain subject to appeal.

Lord Oates: Has the noble Baroness consulted the Certification Officer in this respect? The evidence that he gave to the Select Committee does not suggest that his view is in line with hers. He was certainly concerned about judicial review if he did not investigate third-party complaints properly.

Baroness Neville-Rolfe: As I have said, we are planning ongoing discussions with the Certification Officer, and it will be sensible to revisit that point. But this is the way that we see it in the light of practice in other regulatory areas. I add, if I have not said it already, that enforcement decisions will remain subject to appeal. I suppose that that was the point the noble Lord was making—we have to be careful with systems of appeal.

The Certification Officer reports on the complaints he or she considers in an annual report, which is submitted to Parliament. His or her activity and decisions can therefore be the subject of public scrutiny.

The setting up of a separate body to oversee the Certification Officer's work would, I believe, create additional costs and increase legislative complexity. It could slow down action, allow genuine complaints to go on for longer without being addressed, which is the last thing we want, and go too far in the regulatory direction—noble Lords will be glad to hear me say that.

We will be discussing the levy on a later amendment, but—to respond briefly to the noble Baroness, Lady Donaghy—there is no intention to penalise anyone. The system simply has to recover the costs of its constituent expenses. The Bill provides scope for regulations to provide for different amounts to be charged. This will be deployed if the proportion of functions provided by the Certification Officer to certain organisations is different. That is proportionate and fair, and in line with Treasury guidance. Whether the regulations will specify that different amounts are to be charged in these circumstances will be subject to the outcome of consultation, which seems the right approach. I believe that setting up an entirely separate body to oversee the Certification Officer's work would be unnecessary.

I have managed to get through my speech without another Fisherman's Friend, and I ask the noble Lord to withdraw the amendment.

Lord Mendelsohn: My Lords, let me deal first with the two chinks of light. The first was that the Minister said that the Government will look at the arrangements where the Certification Officer absorbs all the investigatory and adjudication roles. Secondly, her case against having someone to look independently at adjudications as a means of oversight—the case against the enforcement of human rights—was that it was too regulatory. That breaches the principle that she is espousing in the first place. I do not think that the case has been made for regulation, and I do not really understand the architecture for the regulator. I do not understand the model or where we are going on this. I do not think the Minister has made a case for where there are comparable institutions or why, just because this impacts on the public realm, this is a proportionate role and one with any appropriate objectives.

The noble Lord, Lord Flight, tried to make a case for regulation—bizarre as I felt it was. We believe in better regulation—sometimes less, sometimes more—but there has to be a case for it, and there is not for this measure. The point about why this is different from general consumer or other rights matters was extremely well made by the noble Baroness, Lady O'Neill, who has made it before. We are dealing with fundamental rights, which are vastly different to the other sorts of rights that the noble Lord was addressing. I do not think that the Government have taken that point on board at all.

I am very concerned about this extension, because it cuts to the heart of our debate. It is not really about members who are not getting the right service and ensuring that unions are operating properly within the rules. We just have to read the impact assessment, which, it is now apparent, was written long after the Bill was published, without consulting any expert and with no real evidence. It identifies, as does the Bill, the particular areas that it covers as: political fund rules, political fund ballots and expenditure on political objectives. Then there are the areas that the Minister was prepared to address: union mergers, internal elections and other such things. It is absolutely clear that this is targeted at political matters.

The Minister has not addressed the warnings that came from the Certification Officer. In his same evidence to the Select Committee—we could almost recite his entire evidence and ask the Minister to respond to it—he talked about the growing uncertainty caused by the legislation:

> "In my experience, uncertainty gives way to litigation, and there are a number of issues that could give rise to uncertainty. It is not only members who can complain to me about these things; anyone can raise them with me. Given the political nature of the subject matter, which is likely to be highly contentious, and the fact that what is reported to me is likely to be forensically examined, I can see many more issues being brought to me about what is reported".

The nature of trying to open up all political matters provides a completely different sense of what the Government want the Certification Officer to do. It is about the regulation of people's free right and ability to join together and have political views, and they want third parties to be able to intervene on them. That is wrong.

The noble Lord, Lord Stoneham, made exactly the right point about the cases raised in the Certification Officer's report. There were 19 complaints, and four declarations were made that a union had breached or threatened to breach its rules. What were those issues? The cases of note that the Certification Officer addresses are: case 1, union disciplinary procedures; case 2, internal disciplinary procedures; case 3, the elections for general secretary and issues relating to members in long-term arrears; case 4, internal disciplinary procedures; case 5, internal disciplinary procedures; and case 6, a removal from office of an official. All of a sudden, every third party is now going to have a chance to raise issues on every political matter. That is just not credible.

5.15 pm

Baroness Neville-Rolfe: My Lords, I have dealt with the issue of vexatious claims. Whenever you try to modernise a regulator—and this is a regulator, albeit not the Financial Conduct Authority—the people who are regulated obviously have concerns. We are debating

those concerns, but that does not mean to say that the extra regulation we are bringing in, which does not seem nearly as wide-ranging as everybody is suggesting, is unnecessary. Noble Lords should remember that the accuracy of trade union membership registers affects the results of ballots and other very important things. These matter to the economy.

Lord Mendelsohn: I accept the last point, but the report itself demonstrates that there are no problems with that. What is the case for any additional intervention? Can the Minister present me with evidence of any particular case or circumstance—anything, a report or a press cutting? I shall go on for a bit longer to give her the chance to respond on that point.

Lord Stoneham of Droxford: May I assist the noble Lord by pointing out that one area in which we will have more disputes is ballots, because of the Government's determination to get rid of check-off?

Lord Mendelsohn: That is another extremely good point from the noble Lord, Lord Stoneham.

Baroness Neville-Rolfe: The truth is that at the moment the only people who can complain are the members. We are not hiding the fact that there is a change here, so you might have extra complaints, but I think that that is right if we are going to get this regulatory area correct, because of the wider point I was making. I have to say, I do not think we are going to agree on this issue. I look forward to hearing the noble Lord's final comments, as we have a number of other amendments to move on to.

Lord Mendelsohn: I thank the Minister for asking me to hurry up, but I am going to take my time in addressing this, because this is our main opportunity to deal with the major points of principle—although, as I said, we will get on to some more technical matters. She has not made a case or provided evidence, and it is worth continuing to probe these issues. The evidence is there in the Certification Officer's comments that at this stage, in their obligations to collate that material and in the penalties and breaches available, unions are not transgressing and there is no such case. That is a very important principle. She raised a series of issues, and I am very happy to receive a letter establishing that they warrant the grounds on which the regulation of penalties on such measures can be extended, and include political matters. The key point is that it is not just about the regulation of those matters; she is trying to regulate the ability to have a political view together, and to associate. That is the fundamental difference. It is not about regulating other things or about the ability of a board of directors to have a particular view; it is just about trade unions. That is fundamental and really important.

Turning finally to the important issue of costs, the Minister is not on the same page as the Certification Officer, but I will be happy to receive a letter about that, as I am sure other noble Lords will be. The impact assessment refers to the great benefits—including the fine revenue and the levy revenue, although it does not give a figure for the investigation cost levied on trade unions—and identifies extra costs that are much lower than those identified by the Certification Officer: much lower even than if you established the nature of the cases and the type of evidence she is now expecting unions to pay to assemble, to their detriment. It is very important that she understands that my fundamental problem with how the cost-benefit analysis is presented is that at the very end it says, under benefits, that members of the public will benefit from a strongly regulated regime. Members of the unions will not—they will be burdened by the shackles of cost and by a greater interference from vexatious claims, and probably ministerial interference or direction from the Certification Officer. It is not clear that there is a public benefit at all. We will certainly come back to this issue on Report, and I ask her to think again very carefully about it. I beg leave to withdraw the amendment.

Amendment 98 withdrawn.

Amendments 99 and 100 not moved.

Clause 15 agreed.

Schedule 1: Certification Officer: investigatory powers: Schedule to be inserted into the 1992 Act

Amendment 101

Moved by ***Baroness Donaghy***

101: Schedule 1, page 18, line 7, leave out "or any other person"

Baroness Donaghy: My Lords, I have one point about the impact assessment that relates to the previous issue, but I think it better if I write to the Minister rather than take up a lot of time. I am quite concerned that a market failure argument is used. I understand about union behaviour and imperfect information between employees and trade unions, but I do not understand the point about imperfect information between employers and trade unions. That is not the role of the Certification Officer. If it is intended that it will be in future, it puts the whole industrial relations scene on a very different level, but I will drop the Minister a line about my concern.

Baroness Neville-Rolfe: I look forward to receiving the noble Baroness's letter.

Baroness Donaghy: I shall speak also to Amendments 102, 103 and 105. Amendment 101 goes over some of the ground that we have already covered. It would restrict the power to require the production of documents to the Certification Officer and his or her staff. Amendment 102 would require a complaint to be made by a union member and for the Certification Officer reasonably to believe there was evidence of a breach of an obligation before he or she initiated an investigation. Amendment 103 would require a person investigating a breach of an obligation by a union to be a member of the staff of the Certification Officer and not "other persons" as vaguely written in the Bill. Amendment 105 would require the interim report of the person investigating a breach of an obligation by a union to be sent to the union concerned, which is a new point and, if anything, represents the one improvement in the whole area of the schedule.

[Baroness Donaghy]

The concern is that the Certification Officer and inspectors will have wide-ranging powers to demand the production of union documents and access to membership records, members' names and addresses and correspondence between a member and their union, even though no union member has raised a complaint about the union's practices. I am also seriously concerned that the evidence threshold that needs to be met before these wide-ranging powers are triggered is very low. The CO will be able to demand access to documents if he or she thinks there is good reason to do so. The CO would not need to have substantial evidence demonstrating that the union has breached any statutory obligations. Requests for union documentation would not be limited to union head offices, and the CO and any appointed inspectors would also be able to approach branch offices and regional offices to request documents.

These powers represent a serious violation of union members' rights to privacy, as protected by Article 6 of the European Convention on Human Rights, as has already been said. Many individuals do not want their employer or, indeed, the state to know that they are a member of a union for fear of victimisation or blacklisting which, as my noble friend Lord Mendelsohn said, unfortunately still exists today. The Bill may therefore deter individuals joining unions and benefiting from effective representation at work. This will undermine the right to freedom of association. I know that the Minister has said that this information will be confidential to the Certification Officer, but that is not necessarily the perception that will be held by individual union members, who will fear that the information may get out to the public, particularly if they find out that the complaint or investigation has been initiated by a national newspaper or a political party. Perceptions are extremely important on that. It is not surprising that, as the noble Lord, Lord Ouseley, has already referred to, the ILO committee of experts has called on the Government to account for their proposal to increase the powers of the Certification Officer.

I hope the Minister will understand that it is quite important from the point of view of the standing of the Certification Officer that any complaints are confined to union members. I do not think there is a case for any external inquiries. If anyone in the public thinks that there is some illegality going on in the unions, there are different ways of investigating that which have nothing to do with employment relations. I beg to move.

Lord Oates: My Lords, I shall speak particularly to Amendment 104 in the names of my noble friends Lord Stoneham of Droxford and Lady Burt of Solihull. We have discussed the serious concerns about the nature of the changed powers of the regulator. A particular concern has been expressed about the power to appoint a person or persons who are not members of the Certification Officer's staff, and about the severe financial burdens that could be placed on trade unions as a result if organisations such as big accountants' firms, lawyers or others were to be used.

The amendment tabled by my noble friends simply sets out a sensible way—which the Government could accept if they insist on going forward with this clause and these schedules—of ensuring that proper consideration is given to the proportionality of making the appointment, the cost of appointing the person or persons, and their impartiality. This would be very important in reassuring trade unionists. I hope the Minister will feel able to consider the amendment very seriously and adopt it.

Lord Mendelsohn: My Lords, I thank my noble friend Lady Donaghy and congratulate her on some excellent amendments, which naturally I strongly support. I also support the amendment in the names of the noble Lord, Lord Stoneham, and the noble Baroness, Lady Burt.

This group of amendments focuses on the practicalities of the proposed changes to the Certification Officer and their staff. They would further secure the impartiality of the Certification Officer in maintaining an approach by staff to investigations that is free from bias and undue influence. In order to give trade union members assurances over the security of any personal information supplied, it is vital that the power to require the production of documents remains solely that of the Certification Officer and his or her staff. That is what Amendment 101 seeks to achieve. Contracting out investigatory powers and the handling of sensitive information may not only jeopardise the independent standing of the Certification Officer but leave trade unions vulnerable to the misuse of their data.

That potential problem relates directly to the issues raised in the following amendments. There must be a requirement for a person investigating a breach of an obligation by a union to be a member of the staff of the Certification Officer, not simply "other persons" as the Bill currently states. Amendments 103 and 104 would add yet further safety measures for occasions when the Certification Officer appointed as an inspector someone who was not a member of his or her staff. The Certification Officer must have proper regard to the proportionality of making such an appointment, the cost of the appointment and, importantly, the impartiality of the person, which is naturally a matter of deep concern given the political nature of all the issues involved in the appointment.

There is nothing in the Bill to stop the Certification Officer hiring what is vaguely described as "other persons" to take part in an investigation. That leaves us without any safeguards against the hiring of a person who may have a particular political leaning or history of working against trade unions. Without appointees being directly employed by and accountable to the Certification Officer, how can the Government ensure that the investigations will be consistently impartial? This point is critical to the accountability and independence of the Certification Officer.

Reflecting the threat of malicious complaints, as mentioned in discussion on the previous group, standards must also be set to gauge the validity of any complaints. Not only should complaints be made by a union member but the Certification Officer must have reason to believe that there is adequate evidence of a breach of an obligation before they initiate an investigation. Again, this would protect everyone involved from wasting time on deliberately unfounded complaints.

In an effort genuinely to increase openness and transparency, the Certification Officer or the person

investigating any breach of an obligation by a union should be required to produce an interim report, which would be sent to the union concerned. This allows for a truly open process and for communication from the Certification Officer to the union concerned, which ultimately would pave the way for a quicker and smoother resolution.

5.30 pm

Due to the sensitivity of the Certification Officer's work, maintaining their independence and impartiality is crucial. Their investigations should be of the highest quality, able to withstand the most rigorous scrutiny. We must ensure that the Certification Officer's staff are able to maintain their independence and continue to be free from inappropriate influences. This is what these amendments seek to achieve. We have a duty not just to protect the millions of trade union members who will be subjected to these new investigatory powers but to protect the very people being handed the responsibility to carry out these new powers.

Baroness Neville-Rolfe: My Lords, I thank noble Lords for these amendments. In considering them it is important to reflect first on the approach and safeguards that already operate with regard to the Certification Officer's current power to investigate a union's financial affairs and how they will continue to operate after these reforms are adopted. In response to the final point that was made, I agree that impartiality is critical. As with all regulators, that is an absolutely essential point and it is possible to get into a terrible mess, so I assure the House that the Certification Officer's impartiality will continue.

As I have already said, the Certification Officer will continue to be under no obligation to undertake an investigation. They will remain independent, subject to delivering against the statutory objectives. His or her judgments will remain subject to appeal, where he can be challenged through an independent process for the conclusions he or she reaches. In exercising the current powers to appoint an inspector, the Certification Officer needs to be satisfied that there were circumstances suggesting a breach. That will continue after the reforms.

When we reflect on how the current system works we see that the Certification Officer has acted proportionately and only when satisfied that the relevant tests have been met. There is no reason to believe that they or their successors would act any differently in future, and there is certainly no evidence to suggest that a more onerous test for these powers is necessary.

It is also important to reflect on the nature of the investigatory powers which, as I have said, are very similar to the Certification Officer's long-standing powers to investigate financial affairs. That includes the power to appoint an inspector who is not a member of the officer's staff. That approach has been in place for a long time, so we are continuing with that long-standing approach.

Before I comment on one or two of the other amendments I will just respond to the point made by the noble Baroness, Lady Donaghy, on the potential breach of Article 8. The investigatory powers will give the Certification Officer access to members' information. Access to such information may be needed to determine whether there has been a breach of relevant obligations—I am sure the noble Baroness would agree with that. I made two key points in response to the question on data and data confidentiality, which she picked up in her comments about the need for confidentiality and to obey the Data Protection Act—although I note her comment about how people might feel, which is always a fair point. However, the key issue is that the Certification Officer will be under a statutory duty to act consistently with rights conferred by the European Convention on Human Rights, including Article 8, so we have to set it up in a way that does that.

Amendments 101 and 103 aim to restrict inspection activities and Amendments 102 and 104 place controls on the appointment of inspectors, which the noble Lord, Lord Oates, was concerned about. We envisage that most inspections will be carried out by the Certification Officer or their staff. However, the reforms allow the Certification Officer to bring in additional resources, as the noble Lord said, or, perhaps more importantly, specialist knowledge should an investigation prove very technical or complex. This approach is not new. This flexibility has been used rarely, specifically to supplement auditing skills in relation to investigations into a union's financial affairs, and it seems appropriate to bring in such skills. It will give the Certification Officer flexibility in choosing an appropriate inspector to deal with investigations swiftly and effectively. This is common among other regulators, including smaller ones. For example, the Office of the Regulator of Community Interest Companies and the Charity Commission can appoint outside people to conduct or help with an inquiry if that makes sense.

Finally, Amendment 105 allows unions the opportunity to see an inspector's interim or other reports before a final report is compiled. I am not sure that there has been much debate about this. I believe that this would be unhelpful for unions. Any investigation is likely to give a union several chances to state its case to the inspector before a report is finalised. Furthermore, requiring the inspector to provide interim or other copies of his or her report will serve only to slow down the inspection process.

I assure the Committee that the law will continue to require that a union must always have an opportunity to make representations to the Certification Officer before any enforcement decision is made following an investigation. That seems to me very important. As we have discussed, a union also has a right of appeal against any decision to issue an enforcement order.

I hope that some of that explanation is helpful and that the noble Baroness will feel able to withdraw the amendment.

Baroness Donaghy: I could make a number of points. I think the Minister has underestimated the issue of the perception of the individual member who finds himself or herself in the middle of all this. I think that just having an assurance that there will be confidentiality and that the objectivity of the Certification Officer will remain the same will be a bit more difficult to accept in the context that 99.5% of the cost of the levy will be met by the trade unions.

Incidentally, I may well have got that figure wrong. Apparently I was wrong in referring earlier to 26p.

[Baroness Donaghy]
I should have referred to a cost of £26 per employer organisation, so I put that on the record and apologise. However, I am certain that 99.5% of the levy cost will go to the trade unions. That does not look like a fair allocation and, in the context of that unfairness, it will be difficult for people to think that they will be treated fairly.

In the light of the time of day and the fact that we have given this matter a good airing, I beg leave to withdraw my amendment.

Amendment 101 withdrawn.

Amendments 102 to 105 not moved.

Schedule 1 agreed.

Schedule 2: Certification Officer: exercise of powers without application etc

Amendment 106

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

106: Schedule 2, page 21, line 37, leave out sub-paragraph (2)

Lord Stoneham of Droxford: I shall speak also to Amendment 107. Both amendments stand in my name and in the names of my noble friends Lady Burt and Lord Mendelsohn. I do not want to detain the Committee for long on these amendments because, in many respects, we have already dealt with the issues in principle. This is obviously a further initiative to try to restrict the amount of intervention—in this case, by the Certification Officer.

I just want to remind the Committee that the original trade union Certification Officer was appointed in 1975. From memory—I was brought up on the Donovan report, so I think I am right in this—the intention was to try to eliminate disputes, particularly about union membership, within and between unions. Therefore, it was thought that there was a need for better records and the recording of membership and finances to reduce the scope for disputes.

I re-emphasise that the Certification Officer is there primarily to protect the members of individual unions, particularly when they are in some form of dispute or disagreement with their own union. Their complaints are absolutely key. I accept that an investigation initiated by the Certification Officer, particularly if it is a public servant with the experience of the current Certification Officer, is the least-worst incursion that we are seeing in this Bill. Certainly, it is much better than the third-party initiative, which I think is a charter for cranks and would lead to all sorts of muddle and unnecessary bureaucracy. I have already said that there is no evidence that there is pressure or a burden of complaints that need to be answered, particularly from third parties, let alone from union members themselves.

Given that the Government have now started to consult the Certification Officer, can we ask him whether he wants these powers to investigate himself? Does he think these powers are needed? Those are two questions the Minister has to ask in relation to these amendments. It is clear from the oral evidence the Certification Officer gave to the Select Committee that he sees problems with the complications that have now been caused. There are those who say that this is common for regulators, but there are now four distinct areas of requirement for the Certification Officer. He is going to be an initiator of inquiries, if he wants to be, in the form of a policeman; he is going to be an investigator; he is going to be an adjudicator; he is going to be an enforcer. There are quite a lot of complications there, given that this is a semi-legal process. I wonder whether the Government have really consulted the Certification Officer on what he thinks those problems are.

Finally, let us remind ourselves that the great tradition set by the Donovan report—and we have accepted that, as experience has gone on, that was ameliorated by further Acts—was that, wherever possible, where there are disputes within unions, whether a member organisation or voluntary organisation, the emphasis should be on voluntarily resolving them. Trying to set up a semi-legal process that becomes increasingly complicated and does not emphasise the voluntary nature of what you are seeking to do will make it more difficult and more expensive to resolve. That is precisely why, amazingly, a Conservative Government are causing the expenditure on this regulator to go up from £500,000 to £2 million—what an indictment.

Lord Mendelsohn: My Lords, I will speak very briefly as we have spoken to the principle of the amendment and the noble Lord, Lord Stoneham, made a very powerful case and asked some very important questions. I just want to address a couple of points on which I would be grateful if the Minister could give us more detail. If she is not in a position to do so tonight, perhaps she will write to me.

My questions are on the financial components of this. In the Certification Officer's evidence, he said:

"Our provisional thinking on all this is to recruit some new members of staff and then to play it by ear and recruit as we go along".

The increase that he talked about is his,

"provisional view, but we are warning our funders, ACAS, that we may ask for more money".

Within the context of the impact assessment, additional inspectors will cost between £250,000 and £500,000 and will look at an increased number of investigations. The impact assessment also talks about a likely 10 additional enforcement decisions being issued against trade unions every five years. There is very little behind the assumption of how you get to the first cost or the second cost and how the two relate to each other. What are the anticipated number of inquiries and how many of those will go to determination or other sorts of things if we open this up to third parties? I would be very grateful if the Minister could provide more detail on that. As I said, if she is not able to do that now, I am more than happy to receive a letter.

My final point is to clarify the position and probe whether there is a way of ameliorating this. There are of course fears and concerns that the Certification Officer could be pressured into carrying out investigations in response to a request from employers, campaign groups or a variety of people. Will the Minister confirm that the failure to act on submissions from third parties could expose the Certification Officer to risks

of judicial review? Are there any safeguards in the Bill to prevent the Certification Officer being pressured by malicious motives?

I am a great believer that legislation rarely changes the heart and is there to restrain the heartless. In the circumstances that there are heartless people who have ill intent against the trade unions—and I believe there are—how can the Certification Officer be protected from these sorts of vexatious complaints, the racking-up of costs and the problems associated with allowing judicial review to be a mechanism available to third parties on spurious claims? I would be grateful if the Minister could give us some sense of how that could be dealt with.

5.45 pm

Baroness Neville-Rolfe: I start by responding to the noble Lord's questions. On cost, I thought that that aspect of the impact assessment was quite helpful and clear, but I will look through it myself in the light of the questions that the noble Lord has asked and drop him a line. I will copy it to others who are interested, in all the nooks and crannies of this House, which I think is what we agreed on our previous day in Committee.

I also think that I went into some detail on the last amendment about how I saw judicial review and how the Certification Officer would need to act when looking at external, third-party complaints. But again, I will look at what I said, see if there is anything useful that I can add and cover that in the same letter.

The amendments seek to retain the current position by preventing the Certification Officer from making inquiries or taking enforcement action unless a complaint is received from a member in relation to two specific obligations—the duty to secure positions not held by certain offenders and a failure to comply with political ballot rules. As I have explained, the current system is reliant purely on complaints from union members. This relies on union members being aware of all the obligations on their union and of any failures to comply with them. Enabling the Certification Officer to consider potential failures without having to wait for a complaint from a member will enable him or her to take action should information on serious matters come to light, regardless of the source. That is consistent with our reform towards a more responsive and diligent regulator.

The noble Lord, Lord Stoneham, asked what the Certification Officer had said about these reforms. The Certification Officer set out how he might deal with the reforms and how they could be implemented when speaking to the committee.

Lord Stoneham of Droxford: Did he say that they were needed? That is the key issue that we need to know.

Baroness Neville-Rolfe: I am not clear whether there is yet a *Hansard* record of what he said.

Lord Stoneham of Droxford: I thought that the Minister said that, although the Government did not initially consult the Certification Officer, they had now done so. He has, it is perfectly true, appeared before the Select Committee and made certain views known, but I would have thought that it would be helpful for the Government to ask him his views, why he thinks reform is necessary and what powers he wants.

Baroness Neville-Rolfe: As far as I know, he has not given a view on that either in the committee or elsewhere. We consulted him on the implementation of proposals which obviously the Government have set out and believe to be necessary.

Like other noble Lords, I hope that the powers we are discussing under this amendment rarely need to be used because that would indicate compliance, which must be the goal of any good regulatory system. However, in the circumstances of failure coming to light, the Government strongly believe that the Certification Officer should be able to respond. It is important that we have a consistent and credible approach for all the reasons that we discussed earlier. I hope that these comments have been helpful and that the noble Lord will feel able to withdraw his amendment.

Lord Stoneham of Droxford: I thank the Minister for her reply. We have had a long debate on various aspects of the role of the Certification Officer. I shall withdraw the amendment, but I am sure that we will return to this on Report.

Amendment 106 withdrawn.

Amendment 107 not moved.

Schedule 2 agreed.

Clause 16: Enforcement by Certification Officer of new annual return requirements

Amendment 108 not moved.

Amendment 109

Moved by ***Baroness Donaghy***

109: Clause 16, page 13, leave out lines 24 to 27

Baroness Donaghy: My Lords, it is getting to the stage where I have forgotten what a lot of these amendments are about.

Lord Collins of Highbury: I thought you were going to say that you have lost the will to live.

Baroness Donaghy: I have also lost the will to live. However, Amendment 109 intends to delete the following:

"Where an enforcement order has been made, a person who is a member of the union and was a member at the time it was made is entitled to enforce obedience to the order as if the order had been made on an application by that person".

Amendments 110 to 117 are technical in nature and again are consistent with my theory that the role of the Certification Officer should remain simple and that the investigatory powers should be confined to that officer, not spread far and wide. The amendments are all entirely consistent with my view that the Government are going down the wrong track in trying to change this position, which the noble Lord, Lord Stoneham—I might call him my noble friend in view of our common trade union background—has commented on.

[Baroness Donaghy]

It is important to remember that the post originated as a protection for the union member against the union structure, if you like. I know that add-ons have been made over the years, but the role remains essentially the same. Because of its limitations and the way the Certification Officer has carried out his role, it has become a trusted position. The Government have accepted that they are trying to change the nature of the role, saying that it is about modernisation. I think that we shall just have to agree to disagree. We need to take into consideration that any attempt to change the nature of the role by reference to "imperfect relationships" between unions and employers seems to add a meaning that I had not been aware of, which is why I was so worried about the impact assessment. These are probing and technical amendments, but they are consistent with all that we have been saying. I beg to move.

Lord Mendelsohn: I want to raise a couple of quick questions which I hope that the Minister will be able to respond to. I am speaking in support of the amendments and to seek clarity on some of the questions which have been raised by my noble friend Lady Donaghy in her amendments. We have debated provisions that place in our view an unnecessary burden and level of regulation on trade unions. Clause 6 places an obligation on unions to report to the Certification Officer in their annual return the details of any industrial action taken, while Clause 11 places an even heftier duty on unions to include details of political expenditure exceeding £2,000 in their annual returns.

Clause 16 gives the Certification Officer quite a bite to ensure that unions abide by these obligations. The Certification Officer will now be able to declare an "enforcement order" against any union which does not follow these measures. Noble Lords will recall how earlier in Committee we debated the concerns expressed by smaller unions that would not have the resources to comply adequately with such regulation. Will the Minister consider any allowances or safeguards where small unions genuinely do not have the manpower to abide by these provisions?

This clause further enhances the role of the Certification Officer by giving the office the same consideration that a court would be given. New subsection (12) indicates that:

> "An enforcement order made by the Certification Officer … may be enforced by the Officer in the same way as an order of the court".

This seems a little extreme and I would be grateful for any examples the Minister could provide on similar bodies which have the powers of the court.

I should like to make a brief comment in relation to Amendment 109, which would remove new subsection (13). The central argument for doing so is because it just does not make sense. I would be grateful if the Minister could explain it to me.

Baroness Neville-Rolfe: My Lords, I thank the noble Baroness, Lady Donaghy, for her commendable honesty. I will seek to provide some reassurance on this, which is essentially a technical discussion. I think that there is a reasonable explanation; let us see how it goes.

In the current legislation a union member—so it is a member—can apply to the court to ensure that a union complies with an order of the Certification Officer. That is a long-standing provision of the current legislation, which we heard about. However, to reflect the Certification Officer's investigation powers we thought it would be helpful when drafting the legislation to remove any doubt that his own orders may also be enforced, as an order of the court, by the Certification Officer. In doing so, the drafting of the Bill reiterates the existing rights of the applicant member and other members mentioned in relevant sections of the current legislation. The words in Clause 17 that the noble Baroness seeks to amend simply refer to those existing provisions. I do not have any examples, but I will see whether we can find one. The main example is that that is existing practice, but I will look at other regulators and add it to my letter.

I am sure that noble Lords would agree that, if the Certification Officer had found that a union was not compliant with its obligations and it did not rectify the situation, it must be right that a union member should continue to be able to take action to protect their interests.

I hope that that provides some reassurance and that the noble Baroness will feel able to withdraw the amendment.

Lord Collins of Highbury: I need clarity on this. Currently, where the Certification Officer publishes a decision and an enforcement order, the member can go to a court; having been before the CO on many occasions I am aware of the process. Is the noble Baroness saying that the CO will now be able to see enforcement through the courts on his own?

Baroness Neville-Rolfe: My Lords, my understanding is that the orders of Certification Officers are already enforceable as an order of the court under the 1992 Act, so we are just continuing that position.

Lord Mendelsohn: To clarify, the Bill gives over the powers of the Certification Officer. His order can be enforced without going to court.

Baroness Neville-Rolfe: I do not think that that is right, but perhaps I can write and clarify in the follow-up if I do not receive advice quickly.

On small unions, details of the application of financial penalties, including the maximum level of penalties available to the Certification Officer, will be set out in regulations. Of course, they will be subject to the affirmative resolution procedure, as we discussed. In setting maximum amounts in the regulations it will be possible to take into account the type of breach and the size of the union.

I will write to confirm that the answer to the noble Lord's point is no and that it requires an application to the court.

Baroness Donaghy: I thank the noble Baroness for her reply—I think. The best thing for me to do at this stage is say that I will look at *Hansard*, because I am not entirely clear. The negatives have become so negative that I am not quite sure how many stages it has got

through and what it actually means. At this stage, I will withdraw the amendment, but I may follow it up if I do not understand the reply.

Baroness Neville-Rolfe: As this is a technical point where there does not seem to be much difference between us, we can always have a discussion on what it means and involve the officials who drafted the provisions, who I think were trying to repeat an existing provision.

Baroness Donaghy: I beg leave to withdraw the amendment.

Amendment 109 withdrawn.

6 pm

Clause 17: Further powers of Certification Officer where enforcement order made

Amendments 110 to 117 not moved.

Clause 17 agreed.

Amendment 117A not moved.

Schedule 3: Certification Officer: power to impose financial penalties: Schedule to be inserted into the 1992 Act

Amendment 117B

Moved by ***Lord Mendelsohn***

117B: Schedule 3, page 28, line 26, leave out "£20,000" and insert "£5,000"

Lord Mendelsohn: My Lords, I think that we have gained a bit of momentum and I hope not to interrupt it.

We move on to a group of amendments which examines what happens to a union when it is unable to comply with the Certification Officer's enforcement order. Clause 17 of the Bill provides the Certification Officer with a new power to impose substantial financial penalties on unions. Schedule 3 states that the maximum and minimum penalty amounts can be set in regulations but they cannot be less than £200 and cannot exceed £20,000.

The Secretary of State is given a power to issue regulations setting different amounts in relation to different enforcement orders and to reference penalties by whether the person in default is an individual or an organisation and by the number of members that a trade union has. We would be very grateful if the Minister could provide us with the Government's thinking on those areas and how they are looking at setting those fines and how they are likely to operate. Given the momentum we have now achieved, it may be better if that information were provided in writing rather than from the Dispatch Box. However, if the Minister already has the relevant details, they would be gratefully received.

I return to an important issue. At present, the Certification Officer cannot impose financial penalties. I know that this is a repetitive line of questioning but I will ask the Minister again: what evidence has been provided as the basis for the Government to introduce these measures? From reading the Certification Officer's evidence at the Select Committee and his annual reports, there was no sign of the need for a serious measure such as financial penalties for him to be able to exercise his powers effectively. The Government's impact assessment predicts that if the Bill comes into effect, the Certification Officer will on average issue 50 declarations and enforcement notices during every five-year period. This is an increase of 10 declarations every five years. On each occasion, the Certification Officer is expected to impose a financial penalty, and a figure has been identified in relation to income from fines. As a result, it is anticipated that the Exchequer will benefit from fine revenue of £275,000 every five years. I would be very grateful to the Minister to be told how the Government have arrived at that figure. I am reminded that when you look at your credit card statement and it says that you have a credit card limit, it is a limit, not a target. An assumption that there is a £275,000 benefit to the Exchequer starts to create a target or underlines a series of assumptions which I think we should know more about.

There is no evidence of union non-compliance with the Certification Officer's orders or any evidence of the Certification Officer raising concerns with government around the current enforcement regime. Therefore, the idea that there will be fines seems to underline a different series of assumptions or a different evidence base. I would be grateful if the Minister would indicate whether that is the case as regards either of those scenarios. I beg to move.

Lord Stoneham of Droxford: I will be brief because, frankly, discussing this issue will almost cost more—given all the noble Lords around the Chamber and all the people supporting us with the discussion going on until late at night—than this provision will raise in a year. The relevant figure is about £55,000. The impact assessment refers to five-year periods. I wonder why that is the case. The figures are so low. I could not find any evidence of enforcements in last year's report, but, apparently, we have had eight enforcements per year on average. I am sure that the political advisers, the Minister, or whoever saw the impact assessment, thought that they had better talk in five-year periods because it makes the figure—40—sound bigger. If we put in these new powers, we will spend another £1.5 million and we will get two more enforcement orders a year. Goodness me, what is this? It is ridiculous. The Government are clearly contriving an issue out of nothing.

That goes back to my earlier point. The impact assessment says there is scope to increase the powers, but actually the Government have provided no evidence that it is necessary. The great sadness is that, as everyone knows, once you start having fines, interests become entrenched. Pride is at stake—nobody likes to be fined—so it becomes a legal process, it becomes drawn out and the poor old Certification Officer, who at the moment is doing a very good job trying to reach voluntary agreements, finds it more difficult because the parties become more intractable. And for what? For eight or 10 enforcement orders a year—goodness me!

Lord Dykes (Non-Afl): I rise to intervene briefly, having listened carefully all afternoon to our exchanges. I thank the noble Lord, Lord Stoneham, for his remarks, and I fully support both this and the previous set of

[Lord Dykes]
amendments. The more one thinks about this obnoxious, sad little Bill—well, it is a fairly big Bill, I suppose—the more one has deep misgivings about it.

I do not mean to embarrass the Minister, but I genuinely thank her for being a listening Minister on this occasion, and for listening very carefully. It is obvious that the Bill has been contrived, through the interstices of the central office apparatus of the party in power, to produce something that does not reflect the reality of modern trade union/employer relations. I cannot think of any examples, in respect of our exchanges on Clause 16 onwards, where employers have asked for anything in this field. That is fairly telling. Normally, Governments respond to legitimate lobbies, but that has not happened on this occasion.

I look back—it is a long way—to when I first entered the House of Commons in 1970 and the nightmare of the Heath Government, the National Industrial Relations Court, the Official Solicitor being called on to adjudicate, the dockers on strike, and all the rest of it. That all arose from anti-trade union legislation built on principles of prejudice, dislike and antagonism, rather than genuine constructive industrial relations—the kind of thing we see routinely in Germany and other civilised European countries where there is a much more balanced picture.

Given that the Minister has been a patient listener, and given that an expectation is building up that we will return on Report, which, if my memory serves me right, will be on 14 March, to lots of these fundamental points, I ask her, at this late stage in the Committee—we only have a short time to go before we conclude this four-day Committee stage—to indicate that she will come back with modern modifications to reduce the onerous and extreme extra bureaucracy being placed on the Certification Officer's activities. They are not necessary and have not been requested by anybody, least of all the professionals in that department. I ask that she listen to these correct objections.

I am glad that the Liberal Democrats have been involved in objecting, and not just the Labour party, which is the main expert on industrial relations. It shows the authority of the genuine overall opposition—including on these Benches—to these really undesirable measures in a Bill that is widely unpopular among the people observing it. It is a pity that many are not bothering to observe it; they should be, because it is one of the worst examples of the Government's illegitimate use of a so-called mandate based on 24% of the electorate. It is nowhere near a genuine majority of people in this country. People want proper, modern, civilised industrial relations that do not oppress trade union members.

I thank the Minister for her patience. She has the chance to indicate, either in her reply today or on another occasion, that, when the time comes, the Government will respond and make sure there is a definite change in the text of these clauses.

Baroness Neville-Rolfe: I thank Lord Mendelsohn for the amendment. This short debate has raised an important question about the proportionality of penalties for breaches in this area, and I want to emphasise the seriousness with which we should all view the requirements and obligations on unions. The impact assessment helps us to have a useful discussion in this House. It reflects conventions—I do not always agree with the conventions, as I am sure noble Lords opposite will remember, but penalty estimates are one bit of good practice that is rightly included when these assessments are prepared. I emphasise that it is not a target. It is about encouraging good compliance, including as a deterrent, and creating and maintaining public confidence by removing those unfit for union office and ensuring accurate trade union registers. Union leadership elections or political fund rules and ballots should all be carried out according to due process. Any irregularities, quite rightly, would raise concerns and damage confidence among not only union members but employers and the wider public.

We intend that the maximum penalty would vary according to the seriousness of the breach. This is a normal approach among regulators. Within this maximum, the Certification Officer may also set a lower penalty, depending on the circumstances of the case. In a number of areas that the Certification Officer regulates, he is currently limited to being able to make an order requiring the union to correct a breach. There is nothing to sanction a union that has failed to comply with a requirement, no matter how significant the failure. The additional option of a financial penalty being applied will ensure that appropriate sanctions are available as a remedy and a deterrent, as I have said.

Lord Stoneham of Droxford: Is the Minister going to give an example of where due process has not been followed which justifies extending enforcement powers?

Baroness Neville-Rolfe: The honest answer is: not this evening. Obviously, we are making the regulator more responsive. We are making some changes, and one of the things you look at when you review regulators is what the appropriate penalty regime is, and that is what I am proposing.

Lord Stoneham of Droxford: But normally when you reform a process, it is because something is not being enforced properly. I ask again: is there an example of where due process has not been followed?

Lord Collins of Highbury: An enforcement order not complied with?

Baroness Neville-Rolfe: I do not know the answer this evening. I am not sure I am going to give way on this point. We are setting up a modern regulator and a modern regulator needs appropriate penalties. We can argue about the exact detail of the penalties and I am going to come on to say something of a listening kind.

The range of the penalties that we propose mirrors that available to bodies that I see some parallel with, such as the Electoral Commission, which has a maximum of £20,000 in relation to the civil penalties that it can impose; I think it does criminal penalties as well. The national minimum wage regime also provides for penalties of up to £20,000 per worker. Our general approach is that a strong civil sanctions regime is an effective way of ensuring rapid compliance. That is why we do not think that the amendment, which seeks to reduce the fine to £5,000, would be sufficient.

We want to get this right. As the noble Lord, Lord Dykes, said, we are trying to listen during Committee. Obviously, we will consider and reflect on the debate in the House before bringing forward further details, particularly of the application of these penalties and how they would work. I ask the noble Lord to withdraw the amendment.

Lord Mendelsohn: I thank the Minister for that reply. I think the noble Lord, Lord Stoneham, has really put his finger on it. The issue here, which we think is of considerable concern, is that there is no evidence that actions are not complied with or such orders are not dealt with adequately. It is certainly true to say that the Government are extending this significantly and placing potentially terrible burdens on smaller organisations, which may have tremendous problems with them.

As we move to Report, the Government have to make a better case than they have made thus far. They say that it is important to restore public confidence. I think this is setting people up for a fall and that is not how you instil public confidence. To me, it is more like the action of a bully and I regret it. I hope the Government come back with a much better justification.

Baroness Neville-Rolfe: I have already said in a previous discussion that we very much understand the point about small unions. I reiterate that. In the interests of brevity, I have not repeated it under this heading. We are looking to get the detail of this right and look forward to further discussions on the subject.

Amendment 117B withdrawn.

Schedule 3 agreed.

6.15 pm

Clause 18: Power to impose levy

Amendment 118

Moved by ***Baroness Donaghy***

118: Clause 18, page 15, line 3, leave out "may" and insert "must"

Baroness Donaghy: My Lords, I think that I know where I am now. We are on to the proposal for a levy. Points have already been made about this proposed levy, which effectively means that trade unions and not the public purse will be paying for the Certification Office. Like others, I oppose that on principle, which is why I support the proposal that Clause 18 should not stand part of the Bill. I will not go into a great deal of detail about that. The points have already been made during general debate about why this levy is a new and very unwelcome development. Even now, I hope that the Government will reconsider.

The TUC is concerned that the Bill does not place a cap on the levy which can be charged to unions, other than providing that the total amount levied must not exceed the expenses incurred by the CO over a three-year period. Under the Bill's current provisions, the Certification Office could expand well in excess of the Government's current staffing estimates, with unions expected to cover the entire cost of the increased enforcement regime.

The TUC is also concerned that the Bill does not require either the Government or the CO to consult with stakeholders before determining the level of the levy. It believes that this is unreasonable, so I hope for an assurance from the Minister that there will be such consultation and that it will not take place, as I said, in the August-fest.

To speak specifically about Amendments 118 to 121, this is the old argument about "may" and "must". If the Government have something in mind, it is really their responsibility to give some indication about their thinking rather than leaving the Certification Office to hang in the wind on this. The amendments would make it mandatory—not just a "may"—for future regulations introducing a levy to cover the costs of the Certification Office to specify what would be considered as recoverable expenses, including costs incurred by ACAS in providing staffing, accommodation and equipment, and to specify how the levy will be calculated for different organisations, taking into account the number of members and whether an organisation is a trade union, an employers' association or a federated employers' organisation, and the functions carried out by the CO in relation to different organisations.

I am looking, first, for some chink of light about the Government having second thoughts on the levy at all. Secondly, if there is to be consultation it should take place at a reasonable time and for a reasonable length of time. Thirdly, we need to be clearer about the Government's thinking on this levy. It seems that it could be a bit like student loans: the minute you have it introduced, it could go really sky-high. As I said at Second Reading, it could look like the thin end of a very large wedge as the Certification Office is part of the ACAS family, which could include other functions of ACAS. I would be particularly concerned about that.

In the light of the time, I will confine myself to those remarks and hope that the Minister will give us some more positive response.

Lord Balfe (Con): My Lords, I will make a couple of points about new Section 257A(4) in Clause 18, which covers the amount of the levy. They could have been made at various points, but they are probably as well made here as anywhere else. Before I start, can the Minister confirm that the various letters and information mentioned today will be sent to all noble Lords who have taken part in this debate?

Baroness Neville-Rolfe: The noble Lord will be aware that I have already said, in promising letters, that I will ensure that they go to the nooks and crannies of the Chamber, which I think would include those involved in the debate today. We will of course take a careful look at the list.

Lord Balfe: I will not admit to whether I am a nook or a cranny, but I thank the noble Baroness for that.

The impact assessment says that the Secretary of State is,

"to be given a power to make affirmative regulations … The regulations will include a requirement for the Secretary of State to consult trade unions and employer associations on how the fees should be calculated".

Could the Minister give us any indication about what level of consultation of trade unions will take place?

[Lord Balfe]

The impact assessment then says in paragraph 287:

"They will also limit the fees to cost recovery, and provide that the membership size of trade unions … may be taken into account when the fees are calculated".

This is obviously quite important, and I will come back to it in a minute. It then goes on to say, in paragraph 294:

"The change to the operations of the Certification Officer will not change the costs faced by compliant unions".

I am not sure I understand that, because if the costs are going to go up, that must surely change the fees, because they will have to go up to meet them. In paragraph 295, the assessment repeats what it says in paragraph 287:

"The mechanism in which the levy will be calculated will be consulted on with trade unions and employer associations".

Can the Minister give us some idea of how that will take place?

A little further on, paragraph 297 says that,

"secondary legislation will set out how the levy will operate in more detail … a further impact assessment will be needed for the secondary legislation".

Could the Minister give us some idea as to where we are with that impact assessment? Is it in process and will it be produced after the legislation is adopted? What will happen?

Finally, paragraph 299 says:

"The design of the levy will consider the inclusion of specified criteria such as the number of members or amount of income an organisation has".

I have raised this privately with the Minister, but make no secret of the fact that a number of these smaller unions are concerned at the impact this levy will have on them. Particular concern has been raised with me by a number of the smaller unions about the difference in costs that could be incurred because a large union with a political fund—for example, Unite—could end up costing the regulator a lot more to regulate than a smaller union without a political fund, such as the British Dental Association.

I am sure that the Minister cannot say anything tonight, but I would like her to agree, in working out how the levy is to be apportioned, to look, first, at giving due regard to these smaller unions—hopefully some sort of graded system will be introduced. Secondly, will consideration at least be given in the consultation to the fact that unions that have chosen to have a political fund, which is of course regulated separately, should pay an extra part of the levy so that, in other words, the levy for the supervision of the political fund will not be placed on unions that do not have a political fund?

I know that these are rather small and technical points, but they are quite vital to small trade unions. If you are looking at a fourfold increase in costs, and these costs being placed on the unions for the first time, coming on top of other costs that they have recently had placed on them, this is a serious financial burden for the smaller unions in the TUC. Many of those smaller unions, which represent important professional subgroups within the population, play an extremely important part. Some people will say that they can always be taken over by big unions but that, to my mind, is not the solution. The smaller unions of this country play an extraordinarily important part in safeguarding the pay and conditions and bringing the detailed knowledge to bear for important groups of largely, I confess, highly professional workers. They do a valuable job, and in constituting this levy and working out where it falls, I hope that the Minister can assure us that due regard will be given to the points I have raised.

Lord Oates: I shall speak in particular to Clause 18 stand part in this group of amendments. We have considerable concerns about the shift of responsibility for the costs of the Certification Officer from the Exchequer to the trade unions. The Certification Officer estimated the cost of the levy to be £2 million to the department. But as he said in his evidence to the Select Committee, this is very much a provisional view. He said that,

"we are warning our funders, ACAS, that we may ask for more money … Apparently, you should do only a certain amount of forward planning while the legislation is at Bill stage, as you cannot move forward too quickly with public expenditure at that point".

I do not know whether that reflects what he was told by the department. Of course there is a cost to the unions, not just of the Certification Officer but also of the additional resources that they will have to put in to answering complaints when third-party complaints are added.

The Minister has made references to and comparisons with other regulators whose members have to pay the fees. Perhaps she could answer a few questions. First is the question I raised earlier to which I do not think I have yet had a response. Why is it right for trade unions to pay a levy to be regulated but not political parties? I am not suggesting that political parties should pay for being regulated by the Electoral Commission, but they do not. It is not right to make comparisons with the Charity Commission or, indeed, any other area because the trade unions are involved in a political arena. It will be more so if third-party complaints are allowed, as a series of partisan and politically motivated complaints will be made.

If the Government insist on pushing this levy on to trade unions, will the Minister look again at the issues relating to third-party complaints? Will she, for example, look at excluding the costs of investigating those complaints from the levy that the trade unions have to pay? Will she look at restricting the scope of third-party complaints? For example, will the Government consider excluding complainants who are members of political parties unless they are also members of the relevant union? That would help exclude some of the partisan complaints that will inevitably be generated.

Will the Government also exclude organisations which refuse to publish their funding sources? I am thinking of the TaxPayers' Alliance, which we know is very keen on this Bill—one of the few organisations that is. As I understand it, it will be eligible to make complaints against unions relating to details of union finances while refusing to divulge where its funding comes from—as it does at present. That cannot be right. Will the Minister look into that?

Finally, I comment on the irony, given that the partisan nature of the Bill was designed in the Exchequer—in the Chancellor's office—that it is

the trade unions who are having the cost shoved from the Exchequer on to them. That is simply not right.

6.30 pm

Lord Mendelsohn: My Lords, Clause 18 gives the Secretary of State power to make affirmative regulations to provide for trade unions and employers' associations to pay a levy to the Certification Officer. The amendments in this group attempt to remove any ambiguity over how a levy would be imposed on the trade unions and limit vast increases in the cost of the Certification Officer. These are probing amendments to try to establish where we are. I must say that the powerful speech by the noble Lord, Lord Oates, was significant, and I share his sentiments.

The impact assessment on the levy states that membership size and income will be taken into account, without giving any detail of how it will be calculated and how the costs will be shared between unions. As matters stand, there is no indication as to how the levy might be applied in practice: whether larger unions would have to pay more than small unions, how it would work, what the impact would be on union finances or how the future of the Certification Officer's resources is established. All those areas are far too ambiguous.

The Bill also fails to require either the Government or the Certification Officer to consult stakeholders before determining the level of the levy. By contrast, in an area of which I am aware, the Financial Conduct Authority's board is under a statutory duty to consult key stakeholders on fees policy and rates. Indeed, it carries out two consultations: one on policy changes and one relating to fee rates. The amendments simply ask the Certification Officer to carry out the same level of consultation with trade unions and employers' associations before determining any levy.

I raise this matter because there has to be some operating mechanism and some sense of how it will operate. There must be a view on what should be the limits in any year of the Certification Officer's growth and how they will be applied. If circumstances require additional staff, does that have to conform to pre-agreed boundaries? How are we to ensure that this onerous system remains logical and can be applied in any manner that can be described as fair? The Bill must give adequate protection to trade unions that the costs will not continue to spiral in the same way as they tend to in a variety of other places.

The amendments are necessary to inform trade unions how any level will be calculated and at what cost. Without a guarantee that stakeholders will be consulted on the setting of the levy or limit to future costs, the trade unions will be very much in the dark over how much the Certification Officer will cost initially and in future. What is being presented to the trade unions is an endless bill and the potential for the Certification Officer to run up an expensive tab. This is not a deal which you or I would enter into willingly, and is one which all trade unions and employers' associations should be protected against, not least because it is their members who bear the brunt of it.

I am trying to clarify the position. The Minister is held in very high regard in the House, and rightly so. Frequently in this House, we have exchanges where we can disagree on a variety of matters either on the application—how something will work—or the foundation or principles behind it. I am not of a trade union background. I am a businessman, I have never been a member of a trade union, but I sit on the Opposition Benches, so it is entirely logical that someone might say: "You are likely to say that, are you not?". During Second Reading and in Committee on the Bill, we have heard contributions which I hope have given the Government a sense that it is time to pause and reflect very carefully on what has been said.

The noble Lord, Lord Dykes, made a very interesting intervention. There is a certain mood attached to this Bill. The Bill is not worthy of where we are, and I am more than aware that the Minister on previous occasions has been very flexible and thoughtful in considering contributions from this House. I am also aware that there are difficulties in trying to convince those in another place that there is any reason, rationale or desire to make any changes, and that just as a bit of political yah boo sucks they continue in that fashion. I dearly hope that the Minister can use her good offices to convince others. Frankly, over the entirety of this period we have seen the flaws in this Bill and we know that it does nothing for trade unions, employers, our economy or our public services. It also does very little for our politics, and I hope that there is a chance that at the end of this Committee stage the Minister will give us some comfort that we might see some changes on Report, and that it will not be a continuation of an appalling form of politics that we should eschew.

Baroness Neville-Rolfe: My Lords, I thank all noble Lords who have been engaged in this very long debate today. On the final point that the noble Lord made, clearly, this Bill brings together a number of provisions that were promised in our manifesto, on which we were elected last year. There are important changes here but, as I said at Second Reading, and as I have reiterated over these four days in Committee, we are listening. We may be able to make some changes—this is very much a listening part of the process.

This clause provides a regulation-making power to enable the Certification Officer to charge a levy to recover the cost of his or her expenses. It is only fair that the cost of the regulatory functions provided by the Certification Officer fall on those who are regulated rather than on the taxpayer. We are, of course, applying this reform to employers' associations as well as trade unions.

Lord Oates: Could the Minister explain why it is right in the case of the trade unions and not in the case of the Electoral Commission and political parties?

Baroness Neville-Rolfe: My Lords, government is not always logical, and while some regulators receive public funding many do not. In fact, increasingly few regulatory areas are paid for by government. We do not think it appropriate for the costs to fall on the taxpayer. We are going to set out our proposals. The clause requires consultation with relevant organisations, such as the TUC and ACAS, before making regulations. We will ensure that there is consultation, so we can achieve a levy that is proportionate and appropriate. I

[Baroness Neville-Rolfe]
would envisage a consultation document, which can go to those concerned; that is always the sort of approach I favour in the areas where I have responsibility. An impact assessment will be published, as has been said, and the normal process is to publish that with the draft regulations, which of course will come before this House in due course, setting out the arrangements for the levy. We should also ensure that ACAS and the trade unions have a reasonable period of time in which to consider the detailed proposals, particularly in the light of the discussion taking place today.

This legislation is about trade union reform, and I do not think that the point about political parties, which I know is made with great vehemence by the noble Lord, Lord Oates, is a matter for this legislation.

It is important—and perhaps I can explain technically—that the Bill does not prescribe the amount. The Certification Officer needs to decide each year how much he or she needs to be charging to cover the cost of performing the functions for that year, adhering to the framework that is prescribed in regulations made under the Bill. It is common for legislation that introduces a levy or fees to require that the detail be set either in regulations or by the relevant regulator. This is standard practice and recognises that it is simply not possible to be too prescriptive in the primary legislation.

It is right that we do not attempt to limit the flexibility the Bill currently provides to apply one or more of these parameters until there has been proper statutory consultation. Let me give an example. We recognise that trade unions can vary greatly in size. Smaller unions and employer associations may require less of the Certification Officer's time and resources, as my noble friend Lord Balfe said. We want the scope to be able to consider whether those who use more of the officer's time should bear more of the cost, thereby reducing the amount of levy payable by smaller organisations. My noble friend Lord Balfe asked me to look at a point about political funds, and we can certainly consider that as part of the consultation. We will consider very carefully during the statutory consultation whether the amount of levy payable should be proportionate to the trade union or employer association's income. It should take into account affordability for the smallest unions.

Amendments 118 to 121 seek to change that magic word, which the noble Lord, Lord Mendelsohn, knows so well, "may" to "must", so that all the potential criteria in the Bill would have to be applied in setting the framework for the levy—I am afraid my sore throat is getting going again. That limits the flexibility to ensure that the power operates effectively, which is particularly important as we have a statutory duty first to consult.

On Amendment 121A, I appreciate noble Lords' desire for there to be some control over the amount, but there are safeguards that act to control the amount of investigation that the Certification Officer could undertake. Most importantly, he will be able to investigate only where there is good reason to do so. Third parties have no statutory right to complain. The changes allow the Certification Officer to investigate in respect of information he receives that may be from a third party. The officer has had the power to launch investigations into a union's financial affairs for many years, and it has not been suggested that it has been used disproportionately. He or she will also be required to report annually on the amount levied and how it was determined. These reports are laid before both Houses. By way of further safeguards: the amount of the levy will be limited to cost recovery; unions and employer associations will be consulted before the framework for the levy is determined; and regulations to enable the Certification Officer to charge the levy will be subject to the affirmative procedure, allowing a full debate in Parliament, which I much look forward to. In these circumstances, I ask the noble Baroness to withdraw her amendment.

Baroness Donaghy: I am glad the Minister's voice just about held out. I appreciate the points that she made. I will say only that this is creating a power to create a levy, with which I do not agree. It is increasing the costs of the whole exercise and then cynically passing them on to the trade unions. I say "the trade unions" advisedly because, although the Minister said that this will affect employers as well, I do not think I got my figures wrong when I said that they will be paying 0.5% and the unions will pay 99.5%—I am grateful to the Minister for nodding on that.

I do not see that my may/must amendments limit flexibility. I see the transparency which has been promoted by the Front Bench of the Government through all four days in Committee. It is important that people know where they stand. They will not know where they stand because the flesh will appear in the statutory instrument. Yet again we have important policy items waiting for a statutory instrument. It is not good enough just to say that there will be an impact assessment to accompany that statutory instrument; we all know that there are attempts to downgrade our powers to properly debate statutory instruments. Time will pass and everyone will look totally amazed when this side leaps up and down with indignation about the content of that statutory instrument. I give notice now that I probably will be leaping up and down.

I just hope, again, that the consultation will be adequate and that all relevant parties will be consulted, but I strongly believe that it is a very poor change for the role of the Certification Officer to become a tax collector as well as adjudicator, investigator and all the other things that he, or in future she, may have to do. It is a backward step and I very much regret it. In the circumstances, though, I beg leave to withdraw my amendment.

Amendment 118 withdrawn.

Amendments 119 to 121A not moved.

Clause 18 agreed.

Clause 19 agreed.

Schedule 4: Minor and consequential amendments

Amendment 122 not moved.

Schedule 4 agreed.

Clauses 20 and 21 agreed.

Clause 22: Commencement

Amendments 123 to 124A not moved.

Clause 22 agreed.

Clause 23 agreed.

House resumed.

Bill reported with amendments.

House adjourned at 6.47 pm.

Volume 769
No. 114

Thursday
25 February 2016

CONTENTS

Thursday 25 February 2016