Vol. 769
No. 116

Monday
29 February 2016

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

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

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House of Lords

Monday, 29 February 2016

2.30 pm

Prayers—read by the Lord Bishop of Durham.

Sudan

Question

2.36 pm

Asked by ***Baroness Cox***

To ask Her Majesty's Government what assessment they have made of continuing military offensives against civilians in Blue Nile and Southern Kordofan by the Government of Sudan.

The Parliamentary Under-Secretary of State, Department for International Development (Baroness Verma) (Con): My Lords, the UK has provided life-saving assistance to conflict-affected populations in Sudan through our £36.5 million contribution to the UN's response, making us the third largest humanitarian donor to Sudan in 2015. Conflict reduced in the Two Areas following the temporary ceasefires last autumn, but the humanitarian situation and recent fighting in Blue Nile remain of deep concern. The UK is continuing to press for agreement in the upcoming African Union-mediated peace talks.

Baroness Cox (CB): My Lords, I thank the Minister for her sympathetic reply. Is she aware that last month I was in the Nuba mountains in Southern Kordofan, where women and children are forced to live in snake-infested caves by the Government of Sudan's aerial bombardment of civilians in what is a de facto genocide? There is now an IPC emergency level for food shortages in both Southern Kordofan and Blue Nile states. Will Her Majesty's Government use their influence in the UN to recommend extending and strengthening sanctions against the Government of Sudan while they continue to kill civilians with impunity in these areas, particularly in the light of the recently renewed mandate of the panel of experts monitoring sanctions in Darfur?

Baroness Verma: My Lords, although we welcome the role that UN sanctions can play in the right circumstances and support the recent renewal of the sanctions around Darfur, each situation is different. We judge that at present the best way to promote moves towards lasting peace in the Two Areas is to support the peace process negotiations being led by former President Mbeki and his AU High-level Implementation Panel.

Lord Chidgey (LD): My Lords, in January Sudanese armed forces destroyed more than 20 villages in Jebel Marra during a major offensive, leaving literally thousands of people in hiding without food, shelter or assistance. Will the Government condemn these atrocities and challenge President al-Bashir's claims to have ended the rebellion, as he calls it, in early February while his warplanes continue to bomb and murder helpless civilians in Darfur on a daily basis?

Baroness Verma: My Lords, the recent fighting in the Jebel Marra region of Darfur is a setback, and reports of barrel bombs and other military action are very disturbing. We continue to urge all the parties to stop fighting and allow full humanitarian access, as well as for Abdul Wahid to cease provocative actions so that we engage in proper talks.

Baroness Kinnock of Holyhead (Lab): My Lords, does the Minister agree that there can be no military solution to Sudan's internal conflicts, and will she join with the United States which has recently called on the Government of Sudan and the Sudan Revolutionary Front to de-escalate the violence and work with others to agree a comprehensive end to the terrible hostilities which have been described?

Baroness Verma: My Lords, US financial sanctions are a matter for the US Government. We continue to support efforts to improve the effectiveness of UN-targeted sanctions in Darfur and the EU arms embargo that remains in place across Sudan.

Lord Alton of Liverpool (CB): My Lords, given that the Human Rights Watch organisation has said that in the Two Areas of Blue Nile and South Kordofan, civilians, including children, were,

"burned alive or blown to pieces after bombs or shells landed on their homes",

and given what has already been said about Darfur, where between 200,000 and 300,000 people have been killed and 2 million displaced, will the noble Baroness tell us why the International Criminal Court has failed so miserably to bring to justice Omar al-Bashir and others charged with the crime of genocide?

Baroness Verma: My Lords, the UK continues to raise a range of human rights issues with the Government of Sudan, including the issues raised by the noble Lord. We are a big supporter of the International Criminal Court and will continue to make clear to the Government of Sudan and the international community that we expect compliance with the arrest warrant for President Bashir.

The Lord Bishop of Durham: My Lords, in noting that my friends the right reverend Prelates the Bishop of Leeds and the Bishop of Salisbury have particular links with Sudan, is the Minister aware of the key role played by the Anglican Episcopal Church in Sudan in peacemaking, maintaining ministry and pastoral support on the ground in these areas? Will the Government pressurise the Sudanese Government to cease the illegal confiscation of church properties and the oppression of Christian people, especially those who are trapped in the Blue Mountains and South Kordofan?

Baroness Verma: My Lords, the right reverend Prelate is of course right to raise the important role that faith communities play, and we continue to ensure that part of the conversations we have with the Sudanese Government is about enabling people to live freely to practise the religions that they wish to practise. These

[Baroness Verma]
are difficult and challenging situations but the Government continue to press hard to make sure that the concerns raised in your Lordships' Chamber are raised there.

Baroness Symons of Vernham Dean (Lab): My Lords, the noble Baroness has described the terrible situation described by the noble Baroness, Lady Cox, as merely disturbing. We then listened to what the noble Lord, Lord Alton, told us about the horrific atrocities being committed, and the noble Baroness said that these matters were a setback. Surely Her Majesty's Government can produce a more robust response to these terrible descriptions than calling them a setback or disturbing.

Baroness Verma: My Lords, the noble Baroness knows that these are very difficult situations and we have to be mindful of the language used if we are to continue to have dialogue with the Government of Sudan. They are of course horrific atrocities and we as the UK Government take our role very seriously in raising those horrific atrocities. At the same time, we are working both with the Sudanese Government and others to ensure that we are able to access those who need our assistance the most. They tend to be the ones who are hardest to reach.

Lord Lexden (Con): Further to the last question, are there any signs of progress in this most unfortunate country for which Britain, in condominium with Egypt, once had responsibility?

Baroness Verma: My Lords, my noble friend is right in raising that. It is a very difficult situation. Sudan is one of the world's most underdeveloped countries and has suffered from cycles of conflict over many years. A devastating impact of that falls directly on the lives of ordinary people. Our aid, and the UK Government's assistance, is therefore not just to channel money but to try to work with others for a long-lasting peace settlement. This will be done through the UN and African Union agencies.

Lord Collins of Highbury (Lab): My Lords, as my noble friend Lady Kinnock said, obviously support for the peace process, which is very complex, is vital. Because of the economic conditions, many families are forcing young sons into the proliferation of militias, so has the department thought of ways of breaking this cycle? It is now a cycle; every time the rainy seasons ends, there is another round of violence. Can the department look at this issue more fully?

Baroness Verma: My Lords, the noble Lord is absolutely right that we must do much more. We continue to work with partners to ensure that we are doing as much as we can so that on the ground those young people are engaged in a much more meaningful way and do not get attracted to join the militia and others. As the noble Lord said, this will be a very long-term process. We need to work with and support the UN agencies and the African Union, and also get our other donor partners to step up so that their support on the ground is much more prevalent and we can make real progress.

Migration

Question

2.45 pm

Asked by ***Lord Green of Deddington***

To ask Her Majesty's Government what is their assessment of the most recent quarterly migration statistics.

The Minister of State, Home Office (Lord Bates) (Con): My Lords, immigration remains too high and we are committed to bringing it down to sustainable levels. Our reforms have cut abuse and raised standards. The Prime Minister renegotiated the UK's position within the EU to exert greater control by closing the backdoor routes into the UK and tackling the artificial pull factors, but there is still more work to do.

Lord Green of Deddington (CB): My Lords, does the Minister agree with me that there are important benefits to be gained from controlled immigration? However, is he aware that net migration at its current level is well above the high migration scenario of the official population projections? Does he recognise that that implies an increase in our population of half a million every year, of which 75% will be due to future immigration? Does he appreciate that this increase is equivalent to a city the size of Newcastle, Edinburgh or Bristol, and that that increase will continue until such time as there is a significant reduction in net migration?

Lord Bates: The noble Lord is absolutely right, as we all are, to preface our remarks in this area by talking about the immense benefits that controlled migration brings to this country. He is also correct in saying that if you use the statistical data available to forecast, you arrive at roughly the numbers he referred to. Of course, that assumes that no action is taken. That is the reason the Prime Minister, the Home Secretary and others have been working hard through the Immigration Bill and the renegotiation with our European partners to ensure that we address some of the pull factors which cause people to come here in greater numbers, and to increase the discomfort for those who are in this country illegally. I believe that that will have some effect and ensure that the situation projected will not turn out to be so.

Lord Pearson of Rannoch (UKIP): My Lords, what difference do the Government estimate that the Prime Minister's so-called EU reforms will make to the figures that the noble Lord, Lord Green, just gave?

Lord Bates: Of course, we must see what effect they will have, going forward. The important thing is that those changes have not yet come into force. Some changes have come into force: we changed the rules on jobseeker's allowance so that people who come to this country cannot claim it for the first three months and then, if they have not found a job after three months on jobseeker's allowance, they must leave. I believe that that is having an effect on the numbers. If that were extended further so that there

was a restriction on in-work benefits for up to four years for those arriving in the UK, that would have an even greater effect.

Baroness McIntosh of Pickering (Con): My Lords, I declare an interest in that I was a migrant worker on more than one occasion, although I did not consider myself as such at the time. Should not the House applaud the fact that numbers migrating into Britain from the EU are declining? Will my noble friend the Minister explain the position as regards Commonwealth citizens born before 1983? Do they still have the right to come in, abide in the UK and bring all their family members with them, or will we revisit that?

Lord Bates: We changed the rules on that in legislation. We said that we wanted to attract the brightest and best. We want people to apply on a points-based system so that those with qualifications and people who could add something to the British economy through expertise and skills are able to come here, but other people are not. There would be restrictions on their families as well.

Lord Tomlinson (Lab): Does the Minister accept that there has not only been a change in the rules, but a change in some of the language? Today, he did not reaffirm the commitment of the Prime Minister to reduce net migration to tens of thousands rather than hundreds of thousands. Today, his words were "to sustainable levels". Are sustainable levels the level that the Prime Minister promised?

Lord Bates: Yes, they are. That is what we set out in our manifesto. We believe that we can get the numbers down but some extraordinary circumstances are occurring at the moment. The principal driving force is the imbalance in growth across the European economy in terms of employment. This has been picked up and identified as a principal factor by the Migration Advisory Committee, the independent group of labour economists. We would like to see greater growth and reform within the eurozone economy so that jobs would be created in those communities and people would not have to travel, but these things are not totally within our control.

The Earl of Listowel (CB): My Lords, does the Minister agree that among the most important forces are the push factors caused by the dreadful situations such as those we have just debated and those in Darfur, the Horn of Africa and Syria? Is it not much to the Government's credit that they are leading the world in investing in international development as a proportion of gross domestic product, and therefore setting an example of intervening to stabilise fragile states and prevent these things happening?

Lord Bates: That is absolutely right; the noble Earl is correct about the amount of money that is being given. It is one thing to address issues when people arrive in Calais or at a port in the UK, but it is far better for the individuals concerned if we address matters in the relevant countries. It may interest the noble Earl to know that the three top countries for UK asylum applications are Sudan, Eritrea and Iraq.

Health: Black and Minority Ethnic Psychiatric Patients

Question

2.51 pm

Asked by ***Baroness Lawrence of Clarendon***

To ask Her Majesty's Government what steps they are taking to reassure black and minority ethnic patients, carers and users of mental health services that they are not being prescribed higher levels of psychiatric medication than those from other community groups.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, improving the experience, access and outcomes of mental health services for people from black and minority ethnic communities is a government priority. The *Five Year Forward View* of mental health services recommended the appointment of a new equalities champion. The Government have accepted the recommendations for the NHS and agree with the task force's vision for the future.

Baroness Lawrence of Clarendon (Lab): I thank the Minister for his reply. In the last month there has been a government announcement on mental health. There is always a broad-brush approach to this subject. What we need to remember is that no two people are the same and that there are different cultures. People from the black and minority ethnic communities are treated differently when it comes to treatment and institutions where they are placed. That is a fact. There are more treatment options becoming relevant for people with severe, enduring mental health problems and it is not clear whether BME patients are getting access to these—for example, talking therapy. BME patients are more likely to be given higher doses of psychiatric medication. My question to the Minister is: what are the Government doing to ensure that BME patients are offered the same access to treatment options as their white counterparts, and not just psychiatric medication?

Lord Prior of Brampton: My Lords, although there is evidence that gender and ethnicity affect the efficacy and tolerability of some medicines, there is no evidence that people from black and minority ethnic backgrounds are prescribed a higher dose of antipsychotics. On the other hand, there is considerable evidence that many people from BME backgrounds are detained more, spend more time in in-patient psychiatric facilities and suffer greater seclusion, and that other aspects of mental health treatment for black and minority ethnic people are entirely unsatisfactory.

Baroness Hussein-Ece (LD): My Lords, I welcome the Minister's comment that this is a priority for the Government, but is it not the case that this whole issue about the overrepresentation of black and minority ethnic people in the mental health services has been going on for decades and is a scandal? For example, Sarah Reed, a black woman who was incarcerated in

[Baroness Hussein-Ece]
Holloway when she was well known to the mental health services, was found dead in her cell in January. She was failed by the Prison Service, mental health services and the criminal justice system. Why are black and minority ethnic people far more likely to be locked up in prison instead of getting proper treatment?

Lord Prior of Brampton: The noble Baroness makes a very important point and that is why the Prime Minister has asked David Lammy to conduct an inquiry into this precise issue. In his recent report, the noble Lord, Lord Crisp, recommended that there should be a patients and carers race equality standard. *The Five Year Forward View for Mental Health*, produced recently by Paul Farmer, recommended an equalities champion. I hope that we will be able to do both those things in the near future.

Baroness Berridge (Con): My Lords, the Minister of State, Alistair Burt, said earlier this month that he would be meeting a wide range of stakeholders to look at BME groups and their unequal access to mental health services. Will the Minister confirm that those stakeholders will include faith community leaders? Black and minority ethnic people are also disproportionately members of faith communities. If those leaders could be trained in recognising the early signs of mental illness, perhaps more people would be referred earlier to the mental health services that they need.

Lord Prior of Brampton: My Lords, I will certainly have a word with Alistair Burt, the Minister of State for Health, who is having the meeting to which the noble Baroness referred. I will bring her comments to his attention.

Lord Patel of Bradford (Lab): My Lords, the Minister was chairman of the CQC so he will be well aware that the Care Quality Commission has a responsibility to lay before Parliament an annual report on the monitoring of the Mental Health Act, which it took over from the Mental Health Act Commission when it was abolished. The Mental Health Act Commission used to produce a biannual report with a very significant chapter on the details that the Minister just talked about—the disproportionate number of BME detained patients, the disproportionate use of antipsychotic drugs, and their use at levels above BNF recommendations. Why does the CQC not present that level of data and evidence any more on a yearly basis? Without the evidence and data, how can it take steps to tackle this important area?

Lord Prior of Brampton: The noble Lord raises an interesting point. I do not have an answer to his question except the straightforward, "I do not know". I hope that when the WRES data on staff come through, they can be extended to patients and carers as well—as suggested in the recent report by the noble Lord, Lord Crisp. That information and evidence should then be made available.

Lord Watts (Lab): My Lords, the Government seem to be setting great store by the fact that they are waiting for a review. It is well known that mental health services are massively under-resourced. Would it not be a good start to put some resources into those services?

Lord Prior of Brampton: My Lords, the Government are committed to putting more resources into mental health. There is a recognition, across all parties in this House, that mental health has been a Cinderella service for ever. We are all committed to parity of esteem between mental and physical health and more resources are now going into mental health.

Lord Hunt of Kings Heath (Lab): My Lords, in his Answer, the Minister mentioned the Mental Health Taskforce report. It points out that, while there is a workforce race equality standard, there is no equivalent standard for access to services. He said that the Government will appoint a champion, but why not agree to set a standard and appoint a national director to make sure that it is implemented?

Lord Prior of Brampton: My Lords, there are two separate things there. We are committed to the recommendation of appointing an equalities champion. Extending the workforce race equality standard to carers and patients was recommended by the noble Lord, Lord Crisp, and welcomed by Paul Farmer in his report. I hope that we will adopt that recommendation, but I cannot promise it.

Railways: New Lines

Question

2.58 pm

Asked by ***Lord Berkeley***

To ask Her Majesty's Government what steps they are taking to encourage new or reopened rail lines to be cost-effective.

The Parliamentary Under-Secretary of State, Department for Transport and Home Office (Lord Ahmad of Wimbledon) (Con): My Lords, the Government are taking many steps to ensure that all rail enhancement projects, including those working towards opening or reopening rail lines, follow government appraisal guidelines and create business cases which test options ensuring best value for the taxpayer. Local authorities and private sector beneficiaries are encouraged to contribute to the overall costs of the preparation and delivery of such projects to decrease the burden on the public purse.

Lord Berkeley (Lab): I am grateful to the Minister for that Answer but does he agree that part of the problem is the very high costs that come out of some of these calculations which indicate that there is not really good value for money? Does he not agree that the answer is actually to have a set of standards appropriate to branch lines or lower-speed and cheaper track, and to cheaper trains—possibly not even signalling, more like a bus—which would be very good for local services but of course totally inappropriate for a main line? Will he encourage the development of some standards that might reduce such costs?

Lord Ahmad of Wimbledon: As I am sure the noble Lord is aware, the concept of community rail partnerships sets down specific guidelines as to what qualifies as a community railway. Currently about 40 routes do so in that regard. As for his point about trains looking like buses, I am reminded that we are decommissioning Pacers in certain parts of the country.

Lord Spicer (Con): Is my noble friend aware that when the Cotswold line was nationalised, it was a virtual basket case? It was always under threat of being closed. Since privatisation, it has now become a victim of its own success and people are actually standing between the carriages, let alone within the carriages. Will he therefore do everything he can to encourage private companies to invest private capital in this railway line, as well as others?

Lord Ahmad of Wimbledon: My noble friend is quite right. We have seen very encouraging signs from opening up the rail market to the private sector. Underlining that, the Government are also committed to ensuring that they play their full part, and that is why they have committed to a further £38 billion of investment in the rail network over the next five years.

Baroness Randerson (LD): My Lords, there has been a vigorous campaign to reinstate the rail link between Uckfield and Lewes, which would provide better access to employment in Brighton from the Weald and an additional, badly needed route between the Sussex coast and London. The coalition funded some studies into this but the current Government have not given any firm commitment. Can the Minister tell us whether the Government have plans for action on this and does he accept that the regeneration is needed now, not some time in the future, as indicated, possibly 2030 and beyond?

Lord Ahmad of Wimbledon: The Government are committed to ensuring the regeneration of all railways. I will write to the noble Baroness on the details of that particular line. I reiterate that we are looking at ensuring that there is effective and resilient investment in our railways to ensure that they meet the needs of the 21st century.

Lord Faulkner of Worcester (Lab): My Lords, the Minister is absolutely right to draw attention to the success of the community rail partnerships. They have contributed to growth well above the growth on regional railways generally and have attracted some 3,200 volunteers to help improve stations and to work generally on the railway alongside full-time railway staff. This is a great success story and it is important that the Northern Rail franchise embraces that. But does the Minister not agree that for that strategy to succeed, it will be necessary for Network Rail to look realistically at cost levels and get them down where it can, because those have been a bar to opening lines until now? I declare an interest as chairman of the Great Western Railway advisory board and, indeed, the author of a book which deals extensively with this subject.

Lord Ahmad of Wimbledon: I am sure noble Lords will be lining up outside the Chamber for a signed copy. Of course the noble Lord is quite right to point out the need to ensure best value and efficiency on our railways. That is why, as the noble Lord will know, the Secretary of State has appointed Sir Peter Hendy to look at the delivery of the investment in the railways across the board.

Lord Young of Cookham (Con): My Lords, further to my noble friend's question, will the Minister consider that when an existing franchise falls due for renewal, bidders are invited to look at reopening some of the disused railway lines when they put in their tenders?

Lord Ahmad of Wimbledon: My noble friend is correct and that is why the Government are ensuring that that provision is part and parcel of all new franchise proposals.

Lord Lexden (Con): Is it the case that Dr Beeching wielded his axe too well and too many lines were closed 50 years ago?

Lord Ahmad of Wimbledon: History is history and this Government are looking to the future and that is why we are committed to the investment we are making in the railways.

Lord Rosser (Lab): I want to pursue the points made by my noble friends Lord Berkeley and Lord Faulkner of Worcester. The Minister keeps referring to surveys on value and efficiency but in looking at low-cost community rail opportunities, what work have the Government actually done on reopening closed lines on the basis of them being light rail systems, rather than their reopening being costed on an assumption that there will be a much heavier axle load and a complete rebuild of substructure and bridges, which in a great many cases immediately drives up the cost to unaffordable levels? If such work has been done on operating new or reopened community rail partnership lines more like a light rail system than a railway as we normally know it, by how much has it shown that the cost of reopening and operating closed lines or building new lines serving local communities can be reduced?

Lord Ahmad of Wimbledon: As I have already indicated, when it comes to any railways, the new franchises will ensure that community rail is part and parcel of them. The noble Lord talked about surveys but they are not surveys. I have referred to a report and to Sir Peter Hendy. As the noble Lord is fully aware, Sir Peter is carrying out a quite stringent review of all aspects of Network Rail spending to ensure best value for money and best value for the taxpayer.

Lord Grocott (Lab): The Minister said in response to the question from the noble Lord, Lord Lexden, that history is history, but should we not be learning at least one lesson of history? The period of the Beeching closures resulted in widespread destruction of priceless railway infrastructure in many areas which have since seen growths in population that would have benefited from the railways still existing. Should not one clear lesson be that, should lines be closed or mothballed in the future, at the very least the track bed should be protected so that should reinstatement be necessary it

[Lord Grocott]
would be easy to do so? I should also declare an interest as the honorary president of the Telford Steam Railway.

Lord Ahmad of Wimbledon: I am again in awe of the great historical perspective and wisdom within your Lordships' House, and of course I take the noble Lord's comments on board.

Armed Forces Bill

Order of Consideration Motion

3.06 pm

Moved by ***Earl Howe***

That it be an instruction to the Grand Committee to which the Armed Forces Bill has been committed that they consider the Bill in the following order:

Clauses 1 to 13, Schedule, Clauses 14 to 22, Title.

Motion agreed.

Welfare Reform and Work Bill

Commons Reasons and Amendment

3.07 pm

Motion A

Moved by ***Lord Freud***

That this House do not insist on its Amendment 1 to which the Commons have disagreed for their Reason 1A, but do propose Amendments 1B, 1C and 1D in lieu—

1: Before Clause 4, insert the following new Clause—

"Child poverty

Child poverty: reporting obligation

(1) The Secretary of State must lay before each House of Parliament an annual report on child poverty.

(2) The report must include information on the percentage of children living in households where—

(a) equivalised net income for the financial year is less than 60% of median equivalised net household income for the most recent financial year;

(b) equivalised net income for the financial year is less than 70% of median equivalised net household income for the most recent financial year, and which experience material deprivation;

(c) equivalised net income for the financial year is less than 60% of median equivalised net household income for the financial year beginning 1 April 2010, adjusted in a prescribed manner to take account of changes in the value of money since that year; and

(d) equivalised net income has been less than 60% of median equivalised net household income in at least 3 of the survey years.

(3) For the purposes of subsection (2)(d), the survey years are the calendar year that ends in the financial year addressed in subsection (2)(a) and (b), and the 3 preceding calendar years."

Commons Disagreement

The Commons disagree to Lords Amendment No. 1 for the following reason—

1A: Because it is more appropriate to report on the matters listed in clause 4 and because low- income statistics are already published annually.

1B: Insert the following new Clause—

"Children living in low-income households

Publication of data on children living in low-income households

(1) Before the end of the financial year beginning with 1 April 2016 and each subsequent financial year the Secretary of State must publish data on the percentage of children in the United Kingdom—

(a) who live in households whose equivalised net income for the relevant financial year is less than 60% of median equivalised net household income for that financial year;

(b) who live in households whose equivalised net income for the relevant financial year is less than 70% of median equivalised net household income for that financial year, and who experience material deprivation;

(c) who live in households whose equivalised net income for the relevant financial year is less than 60% of median equivalised net household income for the financial year beginning 1 April 2010, adjusted to take account of changes in the value of money since that financial year;

(d) who live in households whose equivalised net income has been less than 60% of median equivalised net household income in at least 3 of the last 4 survey periods.

(2) The published data must be accompanied by information on how the Secretary of State has approached the following for the purpose of the data—

(a) the meaning of "child";

(b) the meaning of "household";

(c) when a child is or is not living in a household;

(d) what is the income of a household for a financial year;

(e) what deductions are made in calculating the net income of a household;

(f) how net household income is equivalised;

(g) when a child experiences material deprivation;

(h) how household income is adjusted to take account of changes in the value of money since the financial year beginning 1 April 2010;

(i) the meaning of "survey period".

(3) The published data may be accompanied by information as to how and when the references in subsections (1) and (2) to the financial year beginning 1 April 2010 are to be read as references to a later financial year.

(4) In this section—

"equivalised", in relation to household income, means adjusted to take account of variations in household size and composition;

"financial year" means the 12 months ending with 31 March;

"relevant financial year", in relation to a financial year in which data is to be published, means the most recent financial year for which the data is available."

1C: Clause 30, page 26, line 38, after "sections" insert "(*Publication of data on children living in low-income households*)"

1D: Clause 31, page 27, line 30, after "sections" insert "(*Publication of data on children living in low income households*)"

The Minister of State, Department for Work and Pensions (Lord Freud) (Con): My Lords, the other House has now considered Lords Amendment 1, which was proposed by the right reverend Prelate the Bishop of Durham, the noble Baroness, Lady Sherlock, and the noble Earl, Lord Listowel. The intention behind that amendment was to insert a new clause into the Bill, which would have increased the measures on which the Secretary of State was required to report annually to include income-based measures. As I have said previously, that amendment has technical faults and would require redrafting to make it work as noble Lords intend but, moving quickly beyond the technical defects in that amendment, I have repeatedly tried to shine a light on the fundamental flaws of the income-based measure.

The "poverty plus a pound" approach that results from measures of this kind led to billions of pounds

being invested under the previous Government, with little or no transformational impetus in the life chances of young people. It is widely recognised that the low-income measures can give a misleading picture. For example, in a recession, when average income falls, poverty can appear to be falling too even if living standards have not improved for those at the bottom.

I stress again that low-income measures drive the wrong action, as I have sought to explain throughout the passage of the Bill through this House. Such measures simply focus on treating the symptoms of child poverty, whereas the Government are intent on tackling the root causes such as worklessness and educational failure. It is in these areas where we believe that the right action can make the biggest difference to the lives of disadvantaged children, both now and in the future.

Moving on, it is clear that substantial concerns remain that publication of the statistics on children in low-income families through the Department for Work and Pensions annual HBAI—households below average income—may not continue. This is despite the very clear commitments that the Government have given in both Houses and the protections already in place to safeguard HBAI as a national statistics product.

As I have said previously, I believe that the only difference on this issue between us is the word "statutory". Given the doubts and concerns that remain about the continued publication of this low-income data, I am able to say that we have listened, we have heard and we are willing to provide further guarantees. Three of the four income measures—including relative low income, combined low income and material deprivation, and absolute low income—are already routinely published in the HBAI publication.

Through the government amendment we are putting forward today, we propose to place a statutory duty on the Secretary of State to publish this information annually. This provision will give the data the additional statutory protection that noble Lords sought. The amendment also places a statutory duty on the Secretary of State to publish new data on children living in persistent low-income households annually. The information will be based on a new data source, and the first figures will be published before the end of the 2016-17 financial year.

However, let me be clear that although we have given full statutory guarantees that this data will be published annually, we will not commit ourselves to laying a report before Parliament on it. This amendment is about providing a further guarantee that information on low income is made available for all to see, every year. Reporting to Parliament on income measures would incentivise government to take the wrong action and would simply continue to incentivise actions, such as direct income transfers, that will not tackle underlying factors.

We need to move on from this unhelpful approach. Resources are finite and it is crucial that the Government prioritise the actions that will make the biggest difference to children. The evidence is clear that this means tackling worklessness and low educational attainment, as set out clearly in our life-chances measures and approach. Any move to report on these low-income measures would divide government's efforts and undermine this new life-chances strategy. I firmly believe it would not help to bring about the transformative change that we all wish to see.

It is worth talking briefly on one technical point in our amendment. Subsection (3) provides for the absolute low-income measure to be rebased in the data publication. This is vital because over time an absolute low-income measure using a 2010-11 baseline, such as that proposed in Lords Amendment 1, would be likely to become increasingly meaningless due to growth in the economy. As a national statistics product, the data publication already has significant statutory protections, guaranteeing that any rebaselining would be carried out by statisticians following best practice and free of any political influence. I reassure colleagues on this point.

I hope that these proposals will be welcomed in this Chamber. I urge noble Lords not to insist on their amendment and beg to move the Motion on the government amendments in lieu.

3.15 pm

The Lord Bishop of Durham: My Lords, throughout our debates on the Bill, we have all consistently expressed our desire to see child poverty in our nation reduced and, ultimately, eradicated. We have different views about how this might best be achieved, and about the impact the Bill will have. I continue to have deep concerns about its impact. I fear that it will lead to more children and families being poor.

Having said that, I fully agree that, in most cases, the best way out of poverty is through work, and work that is better paid. I remain unconvinced that the measures in the Bill will have the complete effect suggested. Among the many concerns that a wide range of noble Lords and those outside the House have expressed has been the matter of the publication of the information and statistics on financial poverty. The Government have consistently noted that to work simply on financial targets in relation to child poverty is inadequate, and I have consistently agreed.

I meet children from very affluent backgrounds who are poor. They are poor because they lack being loved. Sometimes, their parents are working so many hours to maintain a wealthy lifestyle that they give no time to their child. Such children in homes where money is plentiful have been emotionally starved and, generally, spiritually malnourished. Theirs is a different kind of poverty.

I meet children from very poor backgrounds, in terms of financial income, who are rich in being loved and cared for by their parents or parent. They are emotionally strong, doing well at school and have a wealth of spiritual life. In many cases, they have a parent, or sometimes two, in work but on low wages and working only part-time, the latter often because the parent prioritises—rightly, in my view—time with their child over time away from them simply to earn more cash. They are not poor in very many ways.

It is right to look properly at life chances, therefore, because issues of educational achievement, work, housing and the like have a serious impact on children's lives now and their long-term life chances.

[The Lord Bishop of Durham]

There is also a danger that, with only financial modelling of poverty, the very poorest are not properly helped. Strategies can be worked that just lift people above a specific target, rather than supporting those who are persistently and consistently the very poorest in financial terms. However, along with the almost unanimous view of academics and practitioners from the areas of healthcare, social care, education, economics and other disciplines, I share the conviction that lack of finance is one of the factors that places children in poverty, and that this affects their life chances. The evidence is clear that income poverty impacts cognitive development, school achievement, social and emotional development and health.

Absolutely, that is compounded significantly when other factors are also considered, and they too must be tackled, but not to take seriously the reality of financial poverty would be a major mistake. As the wise proverbialist Agur, from the book of Proverbs, said:

"give me neither poverty nor riches; feed me with the food that is needful for me, lest I be full and deny you

and say, 'Who is the Lord?' or lest I be poor and steal and profane the name of my God".

The four indicators that have been used since 2003 work well together. It is how they are worked together that matters: any one standing alone and being used alone is inadequate. So I am delighted that the Government have decided to listen to the arguments and agreed to make a statutory provision for the continued publication of those figures. I think that a persistent poverty figure could well be a very useful addition, although how it is arrived at will need to be as robustly worked through as have been the existing, well-tested measures. It will be important, if it is to be a valuable addition, that it be as rigorously tested as they are.

In conclusion, I thank the Minister, and his team, for the time that he has given us and for how they have listened and worked with us to reach the conclusion that stands before us today in relation to publishing financial child poverty figures. These last weeks have been an interesting journey for myself and my colleagues on this Bench. We are pleased to have been able to serve those whom it is most important we serve well, the children in our nation who are living in poverty—a poverty which all of us must keep striving to end, and which I believe the publication of these figures will assist.

Baroness Manzoor (LD): My Lords, I am grateful to the Minister for bringing forward his amendment, and I am pleased that the Government have seen sense on the need to publish these important measures. They will help policymakers and others better to understand the issues affecting child poverty and the levers that may be used to help to lift children out of poverty. The argument with the Government was never really about their life chances measures, which it is clear will provide an important point of reference for policy interventions in the incredibly complex and multifaceted problem of child poverty. It was about understanding that, while child attainment and parental worklessness are important to understanding the problem, the money in a parent's pocket is still important to understand when seeking to help to lift children out of poverty.

I understand the Minister's concerns that focusing entirely on income risks the "poverty plus a pound" approach to policy. However, I equally understand that, for example, an intervention in the cost of transport may help to boost attainment, because you can understand that the cost of the bus for extra classes costs more than most of the families that you are trying to help can actually afford. That means that you must have access to data on income; that is important. These four additional measures will help, and not hinder, the Government's attempt to take a more active approach to this issue. I am particularly pleased with the inclusion of the long-term poverty measure in subsection (1)(d), and I suspect that there may even be policy officials within DWP itself who will find that measure helpful in developing interventions.

This is a good compromise and I am pleased that the Minister has been able to achieve it. Thank you.

Baroness Lister of Burtersett (Lab): My Lords, I warmly welcome Amendments 1B to 1D, and I offer my thanks to various people, at the risk of sounding a bit like an Oscar winner, which I am not. First, I thank the right reverend Prelate the Bishop of Durham, who spearheaded the original amendment and made such a powerful speech on Report and again today. I thank the Minister for listening, hearing and bringing forward what I agree is a pretty fair compromise at this stage. As he said, it gives legal status to the commitment to continue publishing the very important HBAI statistics. Also, there was a letter to the *Times* last week from nearly 180 academics, including those at the forefront of child poverty measurement, including Professor Sir Michael Marmot—I declare an interest as one of the signatories in my academic capacity. Despite what the Minister said, I think that they will see this as recognition of what was said in that letter: income and material deprivation should be at the heart of child poverty measurement, because such indicators are vital to our ability to track the impact of economic and policy change. I thank Dr Kitty Stewart of the LSE, who organised that letter, and all those who signed it, along with the voluntary organisations that have worked tirelessly to achieve something like this outcome.

Last, but by no means least, I thank Rebecca, a mother of two who, off her own bat but with the help of CPAG, launched a petition to keep the measures and collected 50,000 signatures in less than a month. Writing in the latest edition of CPAG's journal *Poverty*, she said that she had been very moved as she read through many of the words written by people explaining why they were supporting the petition. She concluded that we should make sure that all children who are living in poverty are counted in the measures so that we can really see if things are getting better for them. She wrote:

"Children in poverty already feel poor and disadvantaged, why should they also be unnoticed?".

Amen to that.

Lord Kirkwood of Kirkhope (LD): My Lords, I have been studying these figures for as long as anyone. I start by acknowledging that I do not think the change would have happened without the direct personal intervention of the noble Lord, Lord Freud. I am very grateful to him, as the whole House should be, because

he has the weight to be able to do these things and has the knowledge and understanding of what it means to people.

This gives me a lot more confidence that policymakers within the Conservative Government are not running away from the extent of this problem. I never really believed that that was the case, but this change means that they are not giving the impression that they do not want to see any of these figures published. Individually, these figures—they are relative, and there are well-recognised problems about relative measures—establish trends over time. That is important. Sixty per cent of national median income is perfectly well understood. It is a bellwether figure which we must all bear at the front of our minds as these policies unfold in future.

I remind colleagues that in the last figures the HBAI produced, in 2013-14, something like 17% of British children were in poverty. That is a ballpark figure of 2.3 million in all. That is a serious situation. If that is not difficult enough looking back, looking forward, the best estimate that I can find—the most accurate, up-to-date figure—is the projection that that figure might rise from 2.3 million to 3.8 million by 2020. That is the biggest increase in my generation and an issue of some concern. Obviously there are very difficult financial circumstances, and austerity has to be factored into the policy mix, but it struck fear in my heart when, speaking from Hong Kong, the Chancellor of the Exchequer said that he is looking for further savings in public expenditure. Looking forward to 2020, I think the pupil premium will help a lot in England, and the educational attainment and childcare provisions will help, but I do not think that the Government's life chances strategy, as currently set out and planned, will deal with the projected increase in child poverty. That is serious and it is what we should be spending time on.

Having said that, reassurance will be provided by the Government accepting these figures and adding persistent poverty, which is a particularly important indicator, although it should be rebased, and I understand the technical need for that. This is a good and welcome step but, more than anything else, I want to acknowledge that it would not have happened without the intervention of the noble Lord, Lord Freud.

The Earl of Listowel (CB): I thank the Minister for bringing forward these amendments. I was delighted to see them tabled. I agree with him that employment and education are the most important ways out of poverty. I am also delighted to keep reading the employment figures and seeing that we have the highest records of employment on record, I believe.

I thank the Child Poverty Action Group, which has briefed me on this and introduced me to the First Love Foundation, a bank providing food to hungry families in east London, and, through it, to Lorna, a mother of three boys—two, I think, with disabilities—who was working 16 hours a week. Two-thirds of children in poverty live in working families. It was so helpful for me to meet her and hear about her experience and that of her family, and the difficulties she faced living on such a low income.

I am also very grateful to my Cross-Bench colleagues, who listened very carefully to the debate on Report. I am most grateful for their attention to this matter. I thank the Minister again.

3.30 pm

The Lord Bishop of Portsmouth: My Lords, I, too, am grateful for the Government's decision to publish under obligation the three HBAI low-income measures, along with the further measure of children in persistent poverty. In welcoming this response to the clear wish of the House, I will not detain the House with my commentary on the tortuous routes to this wise and welcome decision, tempting though that is; we are in Lent and bidden not to succumb to temptation. As we have so powerfully and carefully considered in this House the plight particularly of children in poverty, I recall that the Minister said that he expected the Government to come under further pressure—I paraphrase—and I do not want to disappoint him.

Can he confirm that he retains an understanding of the special circumstances of children where there is bereavement or domestic violence? Widowed parents are not like other lone parents, and I hope that, as we look forward, there can be some recognition of that.

I reiterate the point that I made as I withdrew another amendment to this Bill: no society should tolerate violence. The Government recognise that in exempting victims of rape from the two-child limit. In the present proposals, those who suffer domestic violence are still encouraged to stick it out and put up with it or be penalised. If violence is wrong and to be deplored, then it is always wrong—rape, yes, but also the brutality, cruelty and horror of all violence. It is a thin line that divides rape and domestic violence, and it does no credit to a Government or a society that seeks to maintain such a marginal distinction. In welcoming these amendments, I wonder if the Minister can indicate that there can be still further consideration of the matters that I raise.

Baroness Sherlock (Lab): My Lords, I welcome this change of heart from the Government, and I thank the Minister for bringing forward his amendment. It is good to know that we can guarantee that in future robust data will continue to be published about the incomes of poor children so that we can see what is happening to child poverty in Britain. I congratulate the right reverend Prelate the Bishop of Durham on his leadership on this issue and, like all other noble Lords, I thank the Child Poverty Action Group and the End Child Poverty coalition for their work. I thank noble Lords who have supported us on this issue through their words and their votes as the Bill has moved through this House.

I regret that we could not persuade the Minister to carry on reporting on child poverty, but I reassure anyone listening outside this House that we will continue to use these data as they are published to hold the Government to account for the consequences of their policies, particularly should those policies contrive to increase the number of poor children in Britain. I fear that I share the view of the right reverend Prelate the Bishop of Durham that it is most likely that that will take place.

[Baroness Sherlock]

I was not going to get into the area of poverty measurement but I have been tempted. I say to the right reverend Prelate the Bishop of Portsmouth that while I have given up sugar for Lent I am not going to give up politics as well, so I hope that he will bear with me for just one moment. Since the Minister took the opportunity of saying why the Government do not want to be in the business of counting the incomes of poor children, I should say that no one has ever felt that it was just about money—but it is not not about money. I am still proud that the last Labour Government lifted 1 million children out of poverty. The Minister may not think that income transfers make that much difference but they really do to the families involved. Labour tried very hard not to focus on tipping people over some imaginary poverty line. Instead it invested child tax credits for all families; it put in place the New Deal to help parents into work; it created tax credits so they could afford to take their jobs; it gave them childcare so that women could afford to go out to work; and it created Sure Start to ensure that the children developed. Therefore I fully support his agenda to look at poverty across the piece. The right reverend Prelate the Bishop of Durham did a nice job of explaining the different kinds of poverty and wealth. However, in the end, if you cannot afford to feed your kids, money matters. I apologise to the right reverend Prelate but now I am back on track.

The particularly important thing about these data coming out is that there is very strong evidence of the scarring effects of living for a period of time on low income in childhood and what that does to children's life chances. Therefore I hope that as the Government publish the data, because the data will then be available to them they will also influence policy-making. However, given all of that, the House of Lords has done itself proud; I am grateful to have been part of a process during the passage of the Bill where the House of Lords has been able to scrutinise the evidence and the Minister has been willing to listen. I thank all noble Lords and I thank him. I am grateful for this concession, which is important, and we are pleased to support the Motion.

Lord Freud: My Lords, I thank noble Lords for their contributions and thank the right reverend Prelate the Bishop of Durham, who led in this area. I will make just one or two short points. In response to the noble Lord, Lord Kirkwood, I remind him that the forecasts of what happens to this measure of relative income are notoriously difficult to get right. I have been in this House on several occasions when there have been dire warnings that child poverty is about to go up over the next two years, but when you get to the figures two years later, it has not happened. I therefore hate having to defend myself against things that do not happen—it is bad enough having to defend myself against things that happen.

We have had a very useful debate on this area in this House. The point is that the debate succeeded in unpicking the concerns that noble Lords had, which is why we were able to find common ground. We are not in agreement in this area in our approach but we have found common ground here, and I hope both sides will be able to live with this amendment. However, I want to give some reassurance. One of the reasons we have brought forward this amendment is because we wanted to reassure the House and other people around the country that we take this whole issue seriously—that we have an agenda and we want to do something about this. We did not want to leave this issue with the impression that we were not taking it seriously. I can agree with the noble Baroness, Lady Sherlock, that I am convinced, as she is, that the publication of the HBAI will not go by without comment by someone on each occasion.

I will pick up on the point made by the right reverend Prelate the Bishop of Portsmouth, although I need to give him a two-handed answer. As I said when we went through this, we have separate arrangements—a specific set of payments—for bereavement. However, on domestic violence, which we dealt with specifically when we discussed it earlier, the right reverend Prelate has made reasoned arguments; I repeat my acknowledgement that this will remain an area of interest, at least for them, and anticipate the natural corollary of that. With those few words, I urge noble Lords to agree to the Motion.

Motion A agreed.

Motion B

Moved by ***Lord Freud***

That this House do not insist on its Amendment 8, to which the Commons have disagreed for their Reason 8A.

8: Clause 13, leave out Clause 13

Commons Disagreement

The Commons disagree to Lords Amendment No. 8 for the following reason—

8A: Because it would alter the financial arrangements made by the Commons, and the Commons do not offer any further Reason, trusting that this Reason may be deemed sufficient.

Lord Freud: My Lords, I will also cover Motion C and we will be able to take the issue in the round rather than have separate debates.

Since we last met, the other place has of course considered the amendments passed in this place to remove the changes to the ESA work-related activity component and the universal credit limited capability for work element. In both cases, there was a clear vote to reinstate the clauses. In addition, the Speaker in the other place ruled that these changes attract financial privilege.

However, a lot of specific, useful points were made by noble Lords during our debate and I would like to provide an assurance that I have listened to their concerns. I aim to address some of the unintended consequences of these measures and to announce how we propose to address some of the specific issues that noble Lords raised. I touched on some of them in a letter that I sent to the noble Lords who spoke during the debate but I will go through them in greater detail now.

The noble Lord, Lord Low, among others, spoke eloquently about the effect that these changes might have on people's ability to engage in work-related activity, citing the extra costs that can arise from activities such as attending interviews and training courses, and accessing the internet to look for and apply for jobs. We are responding to that concern. We announced in the summer Budget a sum of £60 million per year rising to £100 million per year for practical employment support, but I can announce today that we plan to provide additional funding of £15 million in the first year, 2017-18, directed at the local jobcentre flexible support fund. This money will increase the fund by 22% and it will be set aside specifically for those with limited capability for work. The flexible support fund is used by district managers and work coaches to provide the local support that our claimants may need to return to work, and it has proved to be very effective.

We will also provide guidance to ensure that jobcentres target this additional money at claimants with limited capability for work. The fund will be used to help those affected by the changes to the ESA WRAC and the UC limited capability for work element to attend training courses on gaining practical skills, access mental health support, attend community projects or take part in motivational courses.

The noble Baroness, Lady Meacher, raised the possible impact of these changes on people with progressive conditions. Indeed, several noble Lords expressed real concern on this issue. I have had a very close look at this. I assure noble Lords that we are committed to ensuring that all claimants receiving ESA or UC due to a health condition are subject to appropriate conditionality, based on the way that their condition limits their ability to function. For some people with progressive conditions, this will be the WRAG; for others, it will be the support group.

While the department already offers reassessments to claimants who feel that their condition has deteriorated, I am aware that we can and should do more to make claimants aware of this. To this end, I am committing to improving the awareness of this option to claimants with progressive diseases, as well as the guidance for claimants and disability charities on reassessments. We will also provide training for jobcentre staff to ensure that they are aware that they may need to talk to claimants with deteriorating conditions about requesting a reassessment. This is not an easy area. It is an operational area, and I have told noble Lords who are interested in it that we will work with them and other stakeholders to make sure that we get the guidance and processes absolutely right.

3.45 pm

The third area is work incentives, which many noble Lords, including the noble Baroness, Lady Meacher, talked about at length. Clearly, this Government have a strong focus on the importance of work incentives. Indeed, the very structure of universal credit provides a strong incentive to find a job and will continue to do so. It is estimated that 300,000 more households will be in work once the impact of universal credit is fully realised. We intend to build on the success of universal credit and will be releasing a White Paper this year to improve support for claimants with health conditions and disabilities.

I want to act now to improve the work incentives for those continuing to get ESA—in other words, before they move on to UC—by removing the 52-week limit that applies to permitted work for those in the ESA WRAG. ESA WRAG claimants can currently work up to 16 hours and earn up to £107.50 per week under the permitted work rules, and keep their benefit. But the existing position is that, after undertaking permitted work for 52 weeks, ESA claimants in the WRAG have to stop work altogether, reduce their earnings to £20 per week, or lose their benefit. We will amend the regulations to remove the 52-week limit and allow claimants to continue to undertake 16 hours of part-time paid work and earn up to £107.50 per week, gaining skills and experience and building their confidence while still receiving benefit over a longer period.

As many noble Lords will be aware, we have set up a task force to advise us on the use of the £60 million, rising to £100 million, of employment support funding that was announced as part of this change. This task force included disability charities and disabled people's user-led organisations, employers, representatives of the employment services industry, and policy think tanks. The charities include Scope, Leonard Cheshire, RNIB, the National Autistic Society and the Disability Action Alliance. I would like to report that we have had excellent discussions over three meetings, and task force members have also contributed case studies and views individually.

A wide range of views has been presented and we are working with the group to distil and agree its advice on key principles and priority areas to address. This will then inform development of the employment support package in the context of a wider reform agenda that we will set out in the forthcoming work and health White Paper. Alongside the task force recommendations for the summer Budget money, we will be investing £43 million over the next three years in trialling ways to provide specialist support for people with common mental health conditions—a point I have touched on in the past.

I turn now to the amendment tabled by the noble Lord, Lord Low. This is the third time this amendment has been tabled—once in the other place and for a second time in this House. It seeks to do two things. The first is to require the Secretary of State to publish a report before the changes relating to the ESA work-related activity component and UC limited capability for work element comes into force. That report covers the impacts that the provisions would have on those affected by the changes, in particular the impacts on the person's health, finances and ability to return to work. We debated this amendment in Committee, when it was laid by the noble Lord, Lord Patel, and a similar amendment was laid and debated in the other place.

As I have said before on such amendments, it is clear that what is proposed in the majority of the amendment will be impossible to provide through our analysis. This is because the data that are currently

[LORD FREUD]
available do not allow us to make a meaningful estimate. We would therefore need to undertake a large-scale trial over several years which would substantially delay implementation. A trial starting, perhaps, in April 2017 with 15,000 claimants would not yield results before 2019-20. Therefore, the earliest that we would be able to roll out the change would be 2020-21. This delay would not only impact on the savings associated with the change but would hinder the Government's commitment to providing the right incentives and support for people with health conditions and disabilities to allow them to improve their life chances and fulfil their potential.

The impact on the savings associated with these changes, some of which we plan to recycle into employment support, is significant and would cost the Government more than £1 billion over the four years of this spending review period plus at least a further £1 million in research and analysis costs. What it is possible for the Government to provide—namely, the estimated financial effect of the reforms—has already been provided, along with other impacts, in the impact assessment that was published on 20 July last year.

Those who may be affected by this change are people who claim ESA or UC due to a health condition from April 2017 who might otherwise have been found eligible for the work-related activity component in ESA or the limited capability for work element in UC. How the changes affect individuals will depend on their circumstances, including the nature of their illness, which can vary considerably. There is a large body of evidence that shows that work is generally good for physical and mental well-being. Combine this with the growing awareness that long-term worklessness is harmful to both physical and mental health and it becomes clear why it is so important that, where health conditions permit, sick and disabled people are encouraged and supported to remain in or to re-enter work as soon as possible.

The second part of these amendments is a most unusual idea. It seeks to require that the commencement regulations be made under the affirmative resolution procedure. The changes to the ESA, WRAG and UC limited capability for work element—and, indeed, this specific amendment—have been debated extensively throughout the passage of the Bill with both Houses having ample opportunity to vote to express their view. That is why, in line with the usual process, the commencement regulations are not subject to any parliamentary process. Indeed, I have not been able to find any previous example of affirmative DWP commencement regulations. I would have thought that this House would agree that the time to take decisions of substance on these measures is now, during the passage of the Bill following extensive debate and scrutiny by both Houses, rather than postponing it to the commencement regulations.

In fact, this could appear to be a mechanism that sails perilously close to the wind in terms of trying to overturn normal parliamentary process, and I am sure that I am not alone in having concerns that this appears to be an attempt to block primary legislation through the back door. I cannot agree that requiring further debates in both Houses on the commencement regulations is either necessary or an appropriate use of parliamentary time. Furthermore, noble Lords are fully aware that we have committed to publishing a White Paper which will provide considerable opportunity for further debate on issues relating to support for people with health conditions and disabilities. In the light of the convincing vote in the other place, the application of financial privilege and the additional support I have outlined today, I am disappointed that the noble Lord, Lord Low, has felt it necessary to table his Motion. At best, as currently drafted, it is a delaying tactic that undermines conventional parliamentary process, but in practice, and I am sure unintentionally, it acts as a wrecking amendment. I therefore urge the noble Lord to withdraw the amendments and hope that noble Lords will feel able to support the Government. I beg to move.

Motion B1 (as an amendment to Motion B)

Moved by ***Lord Low of Dalston***

At end insert "but do propose Amendments 8B and 8C in lieu—

8B: Clause 13, page 14, line 24, at end insert—

"(8) Subsections (2) and (3) shall not come into force until the Secretary of State has laid before both Houses of Parliament a report giving his or her estimate of the impact of the provisions in those subsections on the—

(a) physical and mental health,

(b) financial situation, and

(c) ability to return to work,

of persons who would otherwise be entitled to start claiming the work-related activity component of employment and support allowance.

(9) Regulations bringing subsections (2) and (3) into force shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament."

8C: Clause 13, page 28, line 2, at end insert ", subject to section 13(8) and (9)""

Lord Low of Dalston (CB): My Lords, I beg to move Motion B1 as an amendment to Motion B. I shall speak also to Motion C1. The proposed amendments set out in Motion B1 provide that cuts to ESA should not come into force until the Secretary of State has laid a report before Parliament, while the amendments set out in Motion C1 make similar provision in relation to the limited capability for work component, the equivalent component in the new universal credit which will replace ESA and a number of other benefits. My remarks will mainly be directed to Motion B1 but they should be taken also to apply to Motion C1 mutatis mutandis.

When the matter was debated during consideration of Lords amendments in the other place last week, Jeremy Lefroy said from the Conservative Benches that he hoped that the House of Lords would have taken up the idea which he moved as an amendment on Report that the Government should carry out an assessment of its impact before implementing a cut of £30 a week for those in the work-related activity group of ESA. These amendments in lieu are what Mr Lefroy was looking for. The case for removing Clause 13 and the £30 cut from the Bill remains as strong as when we did that on Report on 27 January, but the amendment in lieu, drafted in the same terms as the amendment

moved by the noble Lord, Lord Patel, in Committee, recognises that the Commons have reasserted their commitment to Clauses 13 and 14 by reinstating them and attempts to find a compromise by simply providing that the cut should not come into force until the Secretary of State has laid before both Houses of Parliament a report giving an estimate of the impact on the,

"physical and mental health … financial situation, and … ability to return to work, of persons who would otherwise be entitled to start claiming the work-related activity component of employment and support allowance".

The Government have brought forward no more evidence for their central contention that reducing benefit support incentivises people back to work. In the debate in the other place last week, Dr Eilidh Whiteford MP said:

"If someone is seriously sick or disabled, reducing their income will not make them better quicker. There is not a shred of evidence to support that ill-founded fantasy, but there is plenty of evidence that financial worries and the stress associated with work capability and PIP assessments have a negative impact on people's health. A large and growing body of evidence suggests that hardship and stress slow down recovery and push people further away from the labour market".—[*Official Report*, Commons, 23/2/16; col. 236.]

Indeed, several of those who spoke in the debate made the point, supported by the Institute for Fiscal Studies, that abolishing the WRAG component of ESA could strengthen the incentive for claimants to try to get into the ESA support group. Taking the disincentive thesis head on, Paul Scully MP said that,

"61% of people in WRAG want to go back to work. The majority of people who are out of work want to go back to work".—[*Official Report,* Commons, 23/2/16; col. 226.]

Stephen McPartland said:

"I do not accept that £30 a week is an incentive for somebody not to go to work. Most Conservatives do not accept that. Most Conservatives consider it to be their proud duty to look after the disabled. Ideologically, we have no issue about providing a welfare system that is a safety net for those who need support when they fall on hard times, to help people back into work".—[*Official Report,* Commons, 23/2/16; col. 232]

4 pm

Heidi Allen MP made the case positively for retaining the ESA WRAG component. She said:

"I do not believe mentoring and support alone will heat the home of someone recovering from chemotherapy or help the man with Parkinson's who needs a little bit of extra help. I remain unconvinced that these people do not also have financial needs. The DWP states that many people stay stuck in the WRAG for too long—up to two years—but I would question its conclusion that they are financially incentivised to stay in that group. For me, the fact that they are stuck in that group says more about the failure of DWP processes than about claimants' active choices".—[*Official Report,* Commons, 23/2/16; col. 214.]

The Minister argued that the WRAG was not working. She said:

"While one in every five JSA claimants moves off benefit each month, this is true of just one in 100 ESA claimants in the work-related activity group".—[*Official Report,* Commons, 23/2/16; col. 195.]

However, Dr Philippa Whitford pointed out that,

"people in the ESA WRAG have been classed as not fit for work, unlike those on jobseeker's allowance, so one would not expect the same success rate".—[*Official Report*, Commons, 23/2/16; col. 229.]

Dr Eilidh Whiteford said:

"In contrast to ESA, jobseeker's allowance is for the most part a short-term benefit. Depending on the state of the economy, the vast majority of jobseekers move off JSA in a few weeks or months, but those with long-term health conditions and disabilities are far more likely to face long-term unemployment".—[*Official Report*, Commons, 23/2/16; col. 236.]

Finally, the Minister made reference to the White Paper that the Government are working on that will set out plans to improve support for people with health conditions and disabilities to further reduce the disability employment gap and promote integration across health and employment. Neil Gray, from the SNP, spoke for several in the debate when he asked whether the Minister was,

"not approaching the matter the wrong way round? Should she not introduce the White Paper first and then look at making changes to ESA?".—[*Official Report,* Commons, 23/2/16; col. 195.]

Heidi Allen acknowledged,

"that a taskforce drawn from the Department and charities will be set up, but that should have happened before decisions were made to reduce financial support. I am uncomfortable about agreeing to the cuts until I know what the new world will look like for such people".—[*Official Report,* Commons, 23/2/16; col. 214.]

That surely brings us to the nub of the matter, and why it is right to be bringing this moderate amendment in lieu. It does not seek confrontation with the House of Commons.

Just before the debate, I was handed a letter from the chief executive of the EHRC to Roger Godsiff MP. She writes: "We consider that the Government's impact assessments make very little attempt to set out comprehensively how the three aims of the equality duty have been considered. On 16 September 2015, the commission wrote to the Secretary of State for Work and Pensions to set out our concerns about the impact assessments for the Welfare Reform and Work Bill. We believe the assessments would benefit from a more detailed consideration of the likely impact of the proposals on people with different protected characteristics. They contain very little in the way of evidence, and this limits the accompanying analysis and the scope for parliamentary scrutiny and informed decision-making on the proposed legislative changes. In relation to the impact assessment covering the proposed changes to ESA and the WRAG group, the analysis is very limited. There is, for example, no attempt to break the limited data down to understand how the proposals will affect people with different forms of disability. This makes it difficult to understand whether the changes will affect, for example, people with some types of physical disability more or less than people with particular types of poor mental health or who experience bouts of ill health and may therefore be in and out of work. It is also unclear whether applying the changes to new claimants will mean they have a more significant impact on younger disabled people or new migrant workers. These are the kinds of matters that we might have expected a more thorough analysis to have considered. Without this level of evidence, the assessment does not, in our opinion, sufficiently support consideration of alternative options which might have less of an impact on people with particular protected characteristics".

[Lord Low of Dalston]

In the face of such a devastating critique, your Lordships may consider that my humble amendment in lieu is moderate indeed.

The Commons disagreed with the amendment we passed on Report on grounds of financial privilege. I do not think that my amendment falls foul of the rules on that. We are not seeking just to send the same amendment back. Rather, we have brought an amendment in lieu with which the Government should be able to comply in the time before implementation without adding to costs. The Minister said it would be an expensive and time-consuming matter to provide the information my amendment calls for, but I would say that if the Government do not already have this kind of information they should not seek to implement such a drastic cut to ESA in the first place. I react to the Minister's blood-curdling predictions a bit like those who want to leave the European Union and say that the scare stories put out by those in favour of remaining in are simply that—just scare tactics, and not to be taken seriously.

Before I conclude, I pay tribute to the Minister for the way that he has conducted this discussion. In keeping with his usual style, he followed an extremely open process. He has given most generously of his time to meet several groups of your Lordships to discuss the matter. Most to the point, he clearly listened and laboured valiantly within government, as we heard, to find concessions or commitments he could make to blunt the force of a cut to ESA. So it is no disrespect to the Minister when I say that his concessions are just not enough. I genuinely thank him for his efforts, but the concessions are really just at the margins. Against a reduction in the incomes of disabled people of some £640 million by the end of this Parliament, I estimate that the Minister's concessions would return only about £25 million or £30 million to the pockets of disabled people. I am afraid that that is just not enough. From the passages I quoted from the debate in the House of Commons last week, it is clear that the Government may have had the votes but they clearly lost the argument. That is why it is right for us to make the argument again today.

Baroness Campbell of Surbiton (CB): I support the amendments of my noble friend Lord Low. I, too, am extremely disappointed that the other place rejected the amendments passed by this House. Like my noble friend, I thank the Minister for his genuine attempts to find some concessions to alleviate the effect of the outcome of the cut. He generously met us, took great pains to explain how far he could go, and listened very hard to our concerns and worries that this may not be enough. However, I am afraid that the concessions—I studied them very hard over the weekend—do little to address the real reasons why the disability employment gap remains at a constant 30%.

I remind the House why disabled people placed in the work-related activity group of employment and support allowance receive £30 a week more than those on jobseeker's allowance. This group of disabled people faces multiple costly barriers in finding work and in just living from day to day. First, they have to manage very severe conditions, whether complex, progressive conditions or long-term illnesses, which may or may not be associated with severe fluctuating pain. It is important to remember that when they are awarded ESA WRAG, they are judged to be unable to work. Almost 40% of them are not expected to improve for at least a year. The majority of this group also struggle with mental health challenges or learning disabilities, and that is just for starters.

The next barriers are the problems of getting to work and staying in work. You have a hostile built environment with inaccessible transport, offices and information systems. Then, when you are finally through the door, you face your biggest challenge ever—the attitude of employers. Trust me, it is comparable to doing an SAS assault course before you even get to do your day's work. The concessions will do little to address these barriers that have nothing to do with sorting out the individual but have everything to do with sorting out society. This is borne out by the fact that almost 60% of people on JSA move off the benefit within six months, while almost 60% of disabled people in the WRAG need this support for nearly two years. Until now the ESA WRAG component has recognised that disabled people are seeking work for far longer than their non-disabled counterparts. If one looks at the Minister's concessions, they are focused solely on supporting the individual. This is good but it is only a very small part of the problem. It ignores the major reasons behind disability unemployment, which are the countless external barriers. To suggest that this cut will incentivise disabled people to work is deeply flawed and, frankly, quite offensive.

The Government say that there is evidence of a correlation between employment rates and the level of disability benefit, but this is found only in countries where the level of disability benefit is significantly higher than in the UK. The think tank Reform produced a report last year citing Norway, where the equivalent benefit to the WRAG rate is 66% of the average wage; Sweden, where it is 80%; and France, where it is 50%. By contrast, the ESA WRAG rate is only 20% of the average wage. Believe me, this is not sufficient to provide a financial incentive to remain out of work. In addition, the OECD data show that, since the mid-1990s, in every country where there has been a reduction in the proportion of people receiving disability benefits, unemployment among disabled people has gone up.

4.15 pm

I am pleased that the Minister will bring forward a White Paper in the coming months, setting out how the Government intend to close the disability employment gap. I hope this will address all the barriers that disabled people face getting into and staying in work. For instance, I am currently a member of the Lords post-legislative scrutiny Select Committee which is examining how effectively the Equality Act is addressing the discrimination faced by disabled people in the UK. The evidence we received, which was pretty tough going, overwhelmingly suggests that legislative remedies and awareness need attention if disabled people are to be treated equally in society. That, of course, includes disabled people trying to get a job and stay in work.

The recommendations made in the committee's forthcoming report need to be addressed in the White

Paper because these are the real barriers preventing disabled people joining the workforce. They are incentivised, but the barriers stop them. Will the Minister assure the House that his department will include in the White Paper a detailed consideration of those recommendations? I think he will see that therein lies the problem.

It is nonsense to make such drastic changes to the financial support received by disabled people in the WRAG before the House knows what a reformed employment and support system will look like in the future. The Government are asking us today to take a massive leap of faith in their future policy intentions. This is a huge gamble with people's lives and survival, and I am not prepared to take it. I urge the Minister to accept the amendments proposed by the noble Lord, Lord Low. They make total sense and are very realistic. They would ensure that the up-and-coming reforms are coherently structured to support the Government's commitment to halving the disability employment gap. What we do not want is a policy that drives the most severely disabled in our society further into a life of poverty and further away from any hope of employment.

Baroness Manzoor (LD): I start by thanking the noble Lord, Lord Low, for his leadership and commitment to this issue, and other noble Lords who have also given their wholehearted commitment. This is a fundamental and important issue, not only to Members of this House, but to the most vulnerable in our society. I thank the Minister for the three concessions he has offered. These are real, substantive changes to the operation of ESA, and the wider system of support for disabled people, which will have a positive impact on the lives of some sick or disabled people. I am particularly pleased by the decision to end the 52-week rule, allowing those who are able to do so to stay close to the job market by working part-time. This is really important. This is a positive change to bring things in line with the system that will be in place under universal credit, and it is to be strongly welcomed.

I am also pleased by the decision to increase funding for the flexible support fund by £15 million to help those who are struggling to stay in work while managing a sickness or disability with whatever will make that task a little easier for them. However, I hope the Minister can look at ensuring that those who may benefit from the fund are aware of it. As we all know, with many of these kinds of funds the difference between availability and awareness can be significant in their success.

Finally, the commitment to ensure that those with degenerative conditions are able to move quickly into the support group if and when their condition worsens is important, although I hope the Minister will be able to give the House some details now of how this may operate. I also hope that he will commit to providing further updates to the House as details of this mechanism become clearer so that we may help to ensure that it operates in a way that is most beneficial to those who may need to call upon it.

It is to his credit that the Minister, despite not needing to do so, has fought for further concessions and I applaud him for it. These concessions will and could benefit many sick and disabled people, regardless of the cut to ESA being imposed by the Bill. But, as he well knows, no matter how hard fought, the concessions he has secured are merely tinkering around the edges. I do not believe for a minute that the Minister really thinks that the cut to ESA WRAG is a sensible measure or that it will somehow, as the Government have claimed, incentivise people to get better and into work more quickly. Some 50% of those likely to be affected by this cut suffer from mental health conditions. These are people living with depression and other conditions that make it hard for them to get through the day. The idea that pushing them closer to financial hardship, making it harder for them to afford their rent or feed their children, is going to help them in any way is, frankly, ridiculous. The fact is that for some, the risks of this added pressure could be severe.

If I could, I would seek to strike these measures out of the Bill again but, as we know, the Commons has spoken and the constraints of financial privilege have been put upon us. So we are left with the amendment to the Motion in the name of the noble Lord, Lord Low. This is a good amendment. It is not aiming to wreck the Bill, it is simply asking the Government to do one simple thing: to prove their case. The Government have said that this cut will help incentivise people to return to work. If that is the case, they should prove it. The Government say that this will have a limited impact on people's physical and mental health. If they truly believe that, the noble Lord's amendment gives them the chance to prove it. The Government say that sick and disabled people do not need that £30 extra a week. If that is the case, they should prove it.

When experts and NGOs from across the spectrum are saying the case is flawed, the least the Government can do is to present their evidence to prove their case before they implement the changes. That is what the noble Lord's amendment does and that is why I and my Lib Dem colleagues strongly support it. Surely that is the bare minimum needed in the interests of good lawmaking.

The reason this cut has to happen is because of the need to meet an arbitrary spending target to completely abolish public sector borrowing set down by the Chancellor. The job of balancing the books can be done without this or other welfare cuts. These cuts are a choice, not an obligation. People deserve to know that they are happening because the Chancellor has made the calculation that it is better to look tough on spending and welfare by hitting those who are the most vulnerable than to accept, perhaps, that he has made a misjudgement about the economy.

I support the amendment of the noble Lord, Lord Low, not just because I believe that it is vital in ensuring that these cuts to ESA will proceed only if the claims by the Government about their impact can be proven but because those affected deserve some transparency—some honesty—from the Government. The Treasury must not hide behind good and honourable Ministers such as the noble Lord, Lord Freud, while doing immeasurable damage to some of the most vulnerable in our society.

Lord Young of Cookham (Con): My Lords, perhaps I may respond briefly to the points that we have heard in the last three speeches, which I listened to with great

[Lord Young of Cookham]
interest and respect. The points fall into two categories: one is on the substantive issues about the benefit changes; the other is the argument about the procedural changes mentioned in the amendment.

On the substantive changes about whether ESA claimants in the WRAG should have their benefits realigned with those on JSA, with comparable changes to those on universal credit, the reality is that these changes have been debated extensively by both Houses. They were debated most recently last Tuesday in the other place, where after a three-hour debate the House of Commons insisted with a majority of 27—above the Government's national majority—that the changes which we made should be resisted. The time has come to recognise, as I think the noble Baroness has just indicated, that we should respect the view of the Commons on this.

The noble Lord, Lord Low, said that the Government lost the argument but won the vote. Whether one has won the argument is a subjective decision and I happen to take a different view. Whether one won the vote is not a subjective decision, and that is the basis on which we should proceed. I hope that those who have expressed anxieties have been reassured by what my noble friend Lord Freud said in introducing this debate. There is the increase of £15 million for the flexible support fund, aimed at those with limited capabilities for work and enabling them to attend job interviews and training courses. I hope that that reassurance and the extra resources will allay some of the concerns that have been expressed.

Amendments 8B and 9B seem, briefly, to be going in exactly the opposite direction to that in which the House wanted to go in the context of the debate on my noble friend Lord Strathclyde's report where, by and large, we wanted more done in primary legislation and less in statutory instruments. In that debate, I urged the Government to set the tone for constructive discussion by not using SIs where primary legislation is more appropriate. These amendments go in precisely the opposite direction to what I think the majority of the House wanted by putting the substantive change not in the primary legislation but in the statutory instrument. That would deny the opportunity for a conversation, which the House has always preferred, because the SI would not allow that. In effect, the amendment would give the House of Lords a veto over this part of the legislation, which the House of Commons has approved, and we would be back in the same territory as we were last October. I, for one, do not want to be back in that debate again and I hope, for those reasons, that the amendment will be resisted.

Baroness Lister of Burtersett (Lab): My Lords, I strongly support the amendment in the name of the noble Lord, Lord Low of Dalston. He has made a strong case today, as he and other colleagues have made consistently, yet the Government continue simply to repeat that the original clauses will improve work incentives and somehow provide more support for disabled people moving into work, without any convincing evidence. Indeed, in the Commons the Minister fell back on the assertion that the Government strongly believe that this is the right thing to do. However, she did not even convince all her own Back-Benchers. As the noble Lord, Lord Low, said, a number of them had grave reservations about steaming ahead without the kind of evidence that is being sought, never mind the reservations and concerns of the wider constituency of disabled people and disability organisations.

However, the main point I want to make is the one that I and the noble Baronesses, Lady Grey-Thompson and Lady Thomas of Winchester, made on Report, which was brought to our attention by Sue Royston. Because the limited capacity for work element acts, in effect, as a gateway to the extra £30 in universal credit to cover the additional cost for disabled people in work, abolition means significant future losses for the very group the Government say they want to support. When the three of us made the point on Report, the Minister did not provide any substantive response. I did not receive the letter until just now, so it is possible that I have not read it properly. I have a horrible feeling that it might be languishing in my junk email folder, because a number of previous letters from the Minister finally turned up in that folder—I do not know what my email knows.

4.30 pm

At the time, I said that I could not believe that this was an intended consequence. The Minister talked earlier about unintended consequences, and I apologise if he has actually dealt with this, but on a very quick reading of the letter, I do not think that he has. It appears that the Government are happy to countenance this as an unintended consequence, so that in the name of improving work incentives for disabled people, it will worsen the situation of those in work and in receipt of universal credit in the future. Whatever one thinks of the underlying premise that the measure is necessary to improve work incentives—I and others have made it clear that we do not believe that the evidence supports this premise—this cannot make sense. It is therefore essential that there is a proper review of the full impact of the original clauses before they are implemented, to address this issue if nothing else.

Despite the welcome concessions that the Minister has made, I hope that noble Lords will feel able to support the noble Lord, Lord Low of Dalston, who has worked so hard to protect disabled people from the worst effects of this Bill.

Baroness Meacher (CB): My Lords, I rise to support briefly but most strongly the amendment to the Motion tabled by my noble friend Lord Low. I thank the Minister very sincerely for meeting us last week, and more particularly for his very real attempt to respond to the concerns expressed by noble Lords on Report. However, it is perfectly clear from the very restricted nature of the amendments that the Minister has been working within the tightest possible straitjacket. I accept that the Minister has done his very best, but I hope that he will understand that those sick and disabled people who genuinely cannot find an employer willing to take them on—which in my view is the very big problem they face—will face the most incredible hardship if Clauses 13 and 14 are implemented.

I shall address my next remarks directly to the Chancellor of the Exchequer. Mr Osborne, when it was our greedy and unscrupulous bankers, not disabled

people, who generated the budget deficit, is it not immoral to reduce the meagre incomes of sick and disabled people by £1,500 a year to raise some half a billion pounds to deal with the deficit? Most bankers would regard £1,500 a year as literally peanuts—they would hardly notice it—but for these people, that sum is very considerable indeed. For me, the purpose of pressing this amendment today is to provide another chance for MPs in the other place to challenge the Chancellor directly about the scandal of such a policy.

The Minister said that the amendment would delay implementation until 2020-21. I am sure that he is right, but if I am right, Clauses 13 and 14 will not incentivise sick and disabled people to get into work—quite the opposite. They will find it ever more difficult to do so. So what are three or four years to find that out and prevent the hardship that these clauses will cause?

The Minister has agreed that if people with a lifelong progressive illness suffer a step down in their condition, it should be made easier for them to be assessed quickly. I thank him profusely for that concession, but it is very difficult to have confidence in the process. Even if DWP staff are able to deliver that commitment, the assessment process itself is deeply flawed—we all know that—and often very distressing indeed.

I should be really grateful if the Minister could assure the House that, whatever happens to the amendment moved by the noble Lord, Lord Low, today, for these groups— people with terminal, progressive, lifelong illnesses—the assessment process will be very straightforward and paper-based, simply involving a letter from the doctor to confirm that the individual indeed has a lifelong progressive health issue, has suffered a downward step and is unlikely ever to work again. It should be unnecessary—and, in my view, it would be cruel—to demand anything more than that.

My only other point is that the Minister's concessions will do little or nothing for the 50% or so of ESA WRAG claimants who have mental health problems. Yes, as others have said, until universal credit is introduced the 52-week rule will end—and again I am grateful to the Minister for that. But there are two main problems for these groups. First, the chances of being referred to high-quality therapy services and receiving those services remain small. I know that cross-departmental work is always extremely difficult, but we can go to the moon, so I expect we can do this, too. We need from the DWP some way for these people to get the therapy that they need, just as somebody with a broken leg gets something done about it.

The second major issue is that it is extremely difficult for these people even to get an interview, let alone to find an employer willing to take them on and keep them. So the loss of income for these people is simply a punishment for something that is no fault of their own. That is my problem with all this. The Minister's concessions, I am afraid, do very little to set right this injustice. It is despite my respect for and thanks to the Minister that I will vote for the amendment of the noble Lord, Lord Low, today. My vote will signify my disbelief that disabled and sick people are being asked to pay the price for the bankers' greed and appalling behaviour—which, according to a former Governor of the Bank of England, continues pretty much unchecked today.

Lord Lansley (Con): My Lords, I shall contribute briefly to this debate. As noble Lords have already said, we have had substantive, detailed debates both in Committee and on Report in this place and in another place, and I do not want to repeat at length arguments made then.

We should not underestimate the value and importance of the further enhancements that my noble friend has announced to the House. They respond directly to many of the points made in the debate. From my point of view, there is specialist support for those with mental health issues, to which the noble Baroness, Lady Meacher, rightly referred. With the noble Lord, Lord Layard, in his place, I think we can look forward to strong cross-departmental working between DWP and the Department of Health, with the therapists required being recruited to support the rollout of the access to psychological therapies programme to be completed by 2017-18. That gives us, for the first time, a realistic hope that those who are out of work with mental health problems—largely depression and anxiety—can have access to psychological therapies sufficiently quickly that they can be supported back into work before their condition deteriorates. It is one of the abiding characteristics of the failure of the work-related activity group that people have not had the support they needed both into work and for the treatment of their condition at the earliest possible stage.

These are important enhancements. As my noble friend Lord Young said, the flexible support fund responds to the points made. For those who are in the existing work-related activity group who are not to be cash losers, the enhancement of removing the 52-week rule will put them in a good position to be incentivised and supported into work, and encouraged to do so.

In response to the points made not least by some of our friends in another place, and on the point about improving the assessment, particularly for those with chronic or progressive conditions, the work capability assessment is really important. For example, it responds to the points made by the noble Lord, Lord Low, when he talked about Jeremy Lefroy's speech, which was all about improving the work capability assessment. That responds directly to that.

The noble Lord, Lord Low, quoted extensively from the debate in the other place, but did not quote those who were in the majority. I am not going to have a corresponding series of quotations, but I regret that he did not get to the nub of the matter. The nub was that not only was the vote won but the argument was won. The nub of the matter was expressed by Paul Maynard, Member of Parliament for Blackpool North and Cleveleys, who in the course of commenting on a number of government policies to support those with disabilities—he was talking of the Government's support for the Disability Confident campaign—in one phrase encapsulated the reason why the majority in another place supported the Government's proposal and rejected this House's amendment. He said:

> "We all accept that the status quo is inadequate, and it would be the worst of all worlds to lock in a failed policy for the work-related activity group. That would benefit no one at all".—[*Official Report*, Commons, 23/2/16; col. 207.]

[LORD LANSLEY]

I hope that your Lordships accept that the Government's policy should be implemented. I am afraid that it would be continuing in exactly the same vein that was criticised in the other place if they tried to delay the implementation and remain with the status quo; that will be the inevitable consequence of passing the amendment in lieu proposed by the noble Lord, Lord Low. If we are to move to a better system to help and support people into work, we need to do it now, rather than remain with a failed status quo.

Baroness Thomas of Winchester (LD): My Lords, I hope that I will not be considered to be lowering the tone of this debate if I ask the Minister a few practical questions about the concessions that he is offering and to say where I stand.

The Minister says that the funding within a flexible support fund will increase by £15 million a year to ensure that JCP targets the money at claimants with a health condition or disability. That is, of course, welcome—but which particular person within JCP will be doing this? Is it the decision-maker or the disability employment adviser? We know that there are not nearly enough DEAs to go around, so I am struggling to picture who will engage with the claimant to help them. There are also work coaches—will it be the work coaches and, if so, are there enough to go round, one to every Jobcentre Plus office? Will that person offer help to the claimant, or will they wait for it to be requested? If they wait, it will not happen, because how will claimants know about it? I do not suppose that they read *Hansard*.

The Minister says that the money might be used to pay for an internet connection at the claimant's home, but who will teach them how to use this internet connection, particularly if their health condition poses problems? He may think that I sound sceptical, but I am afraid that is because, from long experience, I know that what Ministers say at the Dispatch Box and what actually happens on the ground are two very different things.

Furthermore, the Minister's offer that the reassessment can be requested if a person with a long-term condition feels that they have got worse is just a restatement of the existing position. How long would people have to wait for a reassessment?

I welcome unreservedly the abolition of the 52-week limit for the permitted work rule, which I always thought was absolutely daft.

Finally, I agree with all those people who say that the Government have got things the wrong way round. Let us have a White Paper first and then see what needs to be done in this whole area, in the light of the proposals. I shall be voting for the amendment.

4.45 pm

Baroness Grey-Thompson (CB): My Lords, I, too, thank the Minister for meeting a number of Peers last week and listening to our views. Unfortunately, that has not alleviated my concerns about the impact the Bill will have on a significant number of people. Many people are already close to crisis point. They feel so beaten up by the changes that they are finding it hard to articulate. It is not that they do not care. They just do not have the energy left and are just trying to survive.

I welcome the changes in the permitted work rules, and congratulate the Government, as they have been needed for a long time. They could perhaps have been made before, but I am really glad that they have been fixed. I listened with interest to the noble Lord, Lord Young, on what it is technically right for us in this Chamber to do. We have to think about the effect the Bill will have on people outside this Chamber. I have received many emails on this subject from individuals worried about how these changes will push people further away from where we all want them to be.

My noble friend Lady Campbell of Surbiton made a compelling argument about the lack of proof about the incentive to get into work and about the contents of the White Paper. I should congratulate the DWP on our knowing so little about what is going to be in it, but it worries me greatly that we do not know what will be in it. As the noble Baroness, Lady Thomas, said, we are doing this the wrong way round. I understand that there is a need for us to save money, but I believe we can do it in a better way.

I have previously said in your Lordships' House, and I will reiterate, that this change will affect disabled people in work as well as disabled people out of work. Disabled people in work will get less under universal credit. I thank the Minister for his letter, but perhaps we will disagree on the numbers that come out of it. To push these measures through, the Government are relying on the report by Reform, which is an ideological statement of the Government's intent. I believe there are a number of flaws, especially around the erroneous contention that only 1% of claimants in the WRAG group end their ESA claims, as was raised many times in another place last week. The reality is that a simple check of the Government's figures shows that more than 250,000 claimants in that group have ended their claims.

One of the many reasons that so few people ended up in work was that half the claimants were ex-incapacity benefit claimants and were too unwell for work. They have been through that assessment process. There is a great deal of difference between someone who is categorised as sick and will get better, say someone with a broken leg, and somebody who is categorised as sick with, say, Parkinson's, where we do not know how quickly that condition will affect them. It almost feels as if we are putting the blame on disabled people, trying to fix them and not understanding the barriers that they face getting into work. Reducing the gap between those who are economically inactive through sickness and those who are unemployed throws away all recognition of those who are facing hardship through sickness and through no fault of their own.

I am sure the Minister will tell me that the answer is in the additional discretionary fund delivered through jobcentres. That sounds positive and it might be helpful to disabled people who are able to look for work, but we should remember that we are talking about an additional £15 million given to jobcentres to be used at their discretion with a range of clients, not just disabled people. Furthermore, this pales into insignificance

when we think that the Government's cut to ESA is taking £640 million out of disabled peoples' pockets. It further introduces an additional round of bureaucracy, as claimants, many with mental health problems, will have to grapple with increasingly inaccessible local support networks, which will become a postcode lottery. It is thus likely to lead to claimants simply not applying for whatever help they may need because they just do not know that it exists.

I want to know what the support looks like. I was told by a special careers adviser that the best job I could ever get would be answering telephones and that I should not aim too high. That might have been 25 or 30 years ago, but right now disabled people are being told similar things. An adviser who works in a citizens advice centre told me that job coaches are telling people who are correctly in WRAG that they need to reapply when they do not have to. They are putting their support at risk, getting removed from WRAG, going to appeal and getting put back on WRAG. This is costing a huge amount of money and undermining everything that we are trying to achieve.

If job coaches right now do not understand the system, how are they going to be able to administer the discretionary fund? Reformers also claim that there is a financial advantage to being on sickness benefit. That suggests to me that they have no experience of what living on that amount of money if you are sick and/or disabled is actually like.

Universal credit is today a benefit that promises much but has yet to get off the starting blocks. No analysis at all has been provided showing how the lives of claimants with limited capability for work, or limited for work-related activity, will be enhanced by universal credit. It is hard for me to see how the Government taking £1,500 a year away from people who are profoundly limited in their capability for work will leave them better off under universal credit.

If you look at what others have said about universal credit, you see it reported that it is behind schedule, dogged by computer processing errors, poor communication with claimants and delays in fixing simple administrative problems. That is how it exists now. Noble Lords should remember that many of those people who are going to be affected will not be able to apply for PIP because of tightened criteria and will not be able to get support anywhere else. The decisions that we are taking today need to be clearly understood for the impact they are going to have on disabled people.

I agree that there is a lot of money wasted in the system through assessments and reassessments, and I have discussed that in the legal aid Bill. The appeals for ESA work capability assessment logged at HMRC have reached record levels; they are currently at 1.1 million, the highest for all benefits. We need to look at the system—that is essential—but right now disabled people are bearing the brunt of wastage in the system.

The amendment tabled by my noble friend is highly sensible. I urge the Minister to keep listening and think about the consequences that this will have on a significant number of people. I strongly support my noble friend in his endeavours.

Lord Kirkwood of Kirkhope: My Lords, I would like to add a couple of broad points to this important debate on this significant subject. As far as I am concerned, the noble Lord, Lord Low, has done the House a great service in tabling his amendment. I take the point made by the noble Lord, Lord Young of Cookham, as a former Chief Whip; the amendment may well be defective, and I certainly do not want to go back into the territory covered by the report of the noble Lord, Lord Strathclyde. However, the noble Lord, Lord Low, is saying that the House of Commons has asserted its rights in the process of ping-pong but this is merely a Motion to ask for some extra time.

As one or two other colleagues have said in the debate, I would want that extra time, if for no other reason than—a point made by the noble Baroness, Lady Thomas—to look at the White Paper. The White Paper that is coming will be significant and I am looking forward to it; it is an opportunity to have a look at this whole important policy area again. Taking this decision this evening would be a retrograde step and might make it more difficult for us to take the proper opportunity that the White Paper represents. If this change were not to be introduced until May 2017, that would be a sensible pause. I take the Minister's point about the difficulty and technicality of meeting the test set out in the amendment, but it would be perfectly possible to have a sensible stab at estimating the impact on this particularly vulnerable group of our fellow citizens—the DWP has hundreds of researchers who do this work all the time.

I want to draw a broader point from that: we would not need to be here if we had had a proper impact assessment in the first place. To make an even broader point, it is now deemed to be old-fashioned and not sensible to have White Papers, Green Papers and a pre-legislative process for our legislation because it all has to be done for the greater glorification of Chancellors at Budget time so that they can make ex cathedra statements and get plaudits in the *Sun* newspaper the next day, only for us to find a fortnight later that all is not as it seemed. There is a plea here and a lesson to be learned: we should be more deliberative about the consultation process in these specialist areas of policy in order to get this kind of thing done right in the first place.

I make a point in passing about universal credit that a number of colleagues have made: this strips out some of the many advantages that universal credit will have in future, and that is regrettable. I also make the point that the £640 million saving has to be measured against the £100 million. I accept that again the influence of the noble Lord, Lord Freud, on this has been entirely beneficial. No other Minister could have had the success he has had in refining in important but second and third-order ways when considered against the fact that we are spending a sixth of the savings we are making in support for people who are in the work-related activity group. That is not enough. If it had been 50:50 and the Government came forward to the House with the savings bill—and it is correct to bear in mind that we are facing austerity as you cannot ignore that either, but to put one-sixth of the saving into the support services that are necessary for people in the WRAG group is not a proper balance or the

[Lord Kirkwood of Kirkhope]
right judgment—the House would have been a bit more willing to listen if the balance had been a bit more even.

The other thing is that the personal independence payment provisions we have introduced will not survive the test of time. The assistance we give people who are in the support group is nearly absent, and we need to do far more to provide help for people in that group to find work in the longer term. Therefore the Government would be well advised to think again. The noble Lord, Lord Low, has brought forward an important amendment; if he presses it to a Division I shall certainly support him, and I hope that other Members of the House will do the same.

Lord McKenzie of Luton (Lab): My Lords, as others have said, we should be grateful to the noble Lord, Lord Freud, for his focus on a number of initiatives that seek to ameliorate the problems created by withdrawal of the WRAG component for new claims after March 2017, whether those were intended or unintended. However, I will be clear up front: we do not consider that the Government's package of proposals adequately deals with the consequences of that withdrawal.

I will start by addressing the specific points raised by the Minister. First is the commitment to increase the funding in 2017-18 for the flexible support fund with guidance to jobcentres to ensure that the additional funding is targeted specifically at those with limited capability for work. The sum of £15 million has been mentioned. Obviously, this is to be welcomed so far as it goes and it could be used to help with extra costs of expenditure on attending interviews, training courses, accessing the internet, and so on. The focus on those in the WRAG is important because at present, as the 57 pages—would you believe it?—of guidance to district managers makes clear, the fund can be used to support all Jobcentre Plus customers, including 16 and 17 year-olds. Does the Minister have any indication of the current annual application of the fund to those in the WRAG, and how many claimants in the WRAG is the new money expected to help? With half a million people in the WRAG, £15 million amounts to 50p a week on average.

As for those with progressive deteriorating conditions, increasing awareness of the right to seek reassessment is fine but is this not just what the system should deliver anyway? Perhaps the Minister can say a little more about how it works at present, what data there are on the numbers currently seeking reassessment from the WRAG, and what information there is on the timescales within which these assessment are delivered. If it is envisaged that this awareness-raising would lead to greater numbers of individuals being reassessed, what additional resource is being made available to cope with it all?

On permitted work, the proposition is that someone on ESA will in the future be able to undertake work for more than 52 weeks, which, as we have heard, is the current limit, as long as it is for fewer than 16 hours a week and earnings do not exceed £107.50. It is understood that such earnings would not be taken into account for benefit purposes, including housing benefit. Perhaps the Minister can confirm that. Can he also say what the position will be in relation to council tax support schemes?

5 pm

This proposal does not seem to add anything to the current arrangements for supported permitted work, where there is no 52-week limit at present, nor for permitted work for those in the support group. Of course, there are no permitted work provisions in universal credit, although the briefing note refers to the non-time-limited work allowance arrangements. We can see the similarity but there does not seem to be any direct read-across on the amounts. We can see the merits of removing the time limit for permitted work and the encouragement that this would bring, particularly to those closest to the labour markets, but it raises a couple of questions. What in fact would bring it to an end, and what would be the position of somebody on JSA and somebody on ESA, each working, say, 15 hours a week at the same rate of pay? What would be the consequences for somebody on ESA of having undertaken permitted work when it came to reassessment? As we know, the DWP has to be notified if somebody undertakes permitted work. Perhaps the Minister can say whether this would trigger any process for early reassessment. As a matter of fact, how many notifications does the DWP have in any one year?

All in all, these government proposals might be said to be helpful but they are a long way from being transformational or addressing the real damage being done by the removal of £30 a week from those in the WRAG. That is why we will support the amendments in the name of the noble Lord, Lord Low.

We have previously debated this matter at length and have rejected the clauses that abolish the WRAG component in ESA and the equivalent component in universal credit. We share the concerns of those who challenge the assertion that the removal of this component would be a work incentive and that it would assist in closing the disability employment gap. In particular, we agree that the analysis has not properly understood the barriers to accessing work faced by many disabled people—the noble Baroness, Lady Campbell, spelled those out in some detail—nor the poverty that they face, which will be made worse by implementing these provisions. Nor indeed has the analysis properly understood the adverse impact that there will be on the health of many disabled people. Widespread evidence has been presented to us on these matters, and we have had the *Halving the Gap?* review, led by the noble Lord, Lord Low.

In those circumstances, the call to hold back on the legislation until there has been a fuller impact assessment of its effects on the physical and mental health, the financial situation and the ability to return to work of those affected seems "modest"—I think that that was the word used. The Government have in part recognised that there is a serious issue and, as we have heard, they have promised a White Paper, although the timing and scope of this is unclear. It is hoped that it will in part make amends for a wholly inadequate impact assessment, but is it not at least a recognition that more is to be done and that legislating in this Bill in this way is premature? It is the wrong way round.

The Minister has told us that the data requested by the amendment are not currently available. Is that not a rather flimsy basis on which to legislate? It seems to us unacceptable—indeed, reckless—to legislate without those data and without that analysis, and it is playing havoc with the lives of many disabled people.

Lord Freud: I start by thanking noble Lords for their contributions. Clearly, many of them feel very strongly on this issue and they have expressed that.

I was struck by the noble Lord, Lord Kirkwood, saying that this was merely an amendment to ask for extra time. However, the point that I tried to make was that the time being asked for was very substantial—as the noble Baroness, Lady Meacher, accepted, we are talking about the way this is constructed—pushing this measure out to 2021. The noble Lord, Lord Low, rather gave it away when he said that the concessions—the practical concessions I am trying to deliver to the House, and to the people who need them to help with their particular circumstances—were not enough, and that he would therefore bring forward this amendment to drive at the whole structure of the Government's proposal. The noble Lord said that this amendment is a compromise, but in practice it is not, because it would mean that these measures could not go forward. Research has to happen, which we could not therefore do to any reasonable timescale.

There may be compromises—I have found three—but this is not a compromise. Although I am sure that this is not the noble Lord's intention, his amendments effectively wreck this policy, for those reasons. I argue that that is not something this House is here to do, given the very clear message that was sent. This House sent this measure back to the other place, and it has come back with financial privilege. If the noble Lord's amendment is carried, we will be sending this measure back with just as many costs—I gave an illustration of those—as were involved the first time. I know that a lot of noble Lords will feel pretty uncomfortable with that process. I accept that many noble Lords do not like this measure, but we are beyond that position now: we are into the question of the appropriate position of this House, in the context of a very substantial vote for the measure's coming back.

Let me deal with some of the points that noble Lords have made. I point out to the noble Baroness, Lady Manzoor, that there is evidence that financial incentives do work in this area, and I have quoted those in the past.

Baroness Meacher: My understanding is that the evidence is all about able-bodied people, not disabled people, and that is a crucial difference. Disabled people are a different issue.

Lord Freud: Disability benefits was dealt with in a paper by Barr et al, published by the *Journal of Epidemiology & Community Health* in 2010, and there are some others.

People in the WRAG are not incapable of working: they have limited capability to work. That is the distinction—the tier down—from those in the support group. The noble Baronesses, Lady Campbell, and Lady Grey-Thompson, made the point about the barriers that exist. I accept that people face barriers to work in this category. One of the things we are focusing on in the White Paper, and which we will spend a lot of time on in future, is dealing with these barriers, because this Government are committed to halving the gap.

Meanwhile, the flexible support fund is designed to go to the work coaches. However, to pick up on the questions of the noble Baroness, Lady Thomas, this depends on whether it is in relation to ESA or UC. Within UC the work coach maintains the relationship right the way through regardless of the health status or employment status of the person. That is where we will focus our attention and, clearly, because there is a relationship with a work coach, the money will be available directly to support such people.

As to the point made by the noble Baroness, Lady Manzoor, on progressive conditions and reassessment, I thought that this was a legislative issue and I was considering how to sort it out. However, it is not a legislative issue but a communications and operational issue. That is why the approach I have taken is to work with some Members of this House and stakeholders to get the system working. It is important. Sometimes people who have Parkinson's are fine at the beginning and go about their lives, but then it gets worse. So being labelled with a particular illness does not mean that you should be at the top rate but, if you take a downward move, it is vital that you are straight in. We need to look at the processes for that and I have committed to doing so.

As to mental health conditions, which many people have talked about, the most frightening single statistic about our system of welfare support is that 42%, I think the figure is—I am speaking without a note—of people go into ESA with mental health reasons as the primary indicator. Once they have been on ESA for a year, that figure has moved up to 68%. We have turned the system round. Work is part of the solution. Leaving people sitting at home is the worst possible thing we can do for them. The whole of our welfare system has been wrongly directed at that kind of projection and we are moving the system round to stop that—

Noble Lords: Oh.

Lord Freud: It is true. We will debate it elsewhere.

The noble Baroness, Lady Thomas, asked who will do all this. We are developing a system we call universal support under which we join with local authorities to support people with particular barriers. We have never had this kind of system before. We have had systems where individual problems are addressed but no one has tried to sort out people's problems in their entirety. We have now found a way of doing this. Through district partnerships with local authorities we are trying to make sure that people's problems are addressed. We have a relatively narrow position at the moment—we are considering budget and digital issues—but it is a potent position and it is likely that we will pursue it.

The noble Baroness, Lady Campbell, referred to the Select Committee's recommendations on barriers. We have already announced that we will replace both the work choice and the work programmes with the work and health programme.

[LORD FREUD]

The noble Lord, Lord McKenzie, showed his usual mathematical skills, but he got the wrong denominator. That is because £15 million is quite a lot of money in a flow measure in the first year, and I can assure him that he need not multiply it by everyone in the group because we are looking only at the flow. There is no impact on the work capability assessment of doing permitted work; it is a functional assessment.

Perhaps I may recap the commitments we have given and which noble Lords have generously pointed to. We have put an extra £15 million into the jobcentre flexible support fund, a rise of 22% that will go straight to the right people. We have removed the 52-week limit on permitted work in ESA. We have set in train a way of protecting people with progressive conditions to make sure that they have a rapid route into the support group when they need it. We have also made a number of commitments and changes to the Bill as it has gone through, and I thank noble Lords for their help in focusing on where those changes were needed. We have taken on the DPRRC recommendations. We have amendments to bring in exemptions to the benefit cap for people in receipt of carer's allowance and guardian's allowance. We have exemptions to the measures limiting support to two children in child tax credit and universal credit for kinship carers and sibling group adoptions. We have agreed a year-long exception for all supported accommodation from the rent reduction measures and we have placed a statutory duty on the Secretary of State to publish income measures annually. We have really gone through the Bill with the help of Peers around the House to get it right.

I shall return to the amendments at hand. I hope that the Government have made a strong case not to accept them because they do not work as intended. We have already had the original amendments returned with a ruling of financial privilege. I hope that the House takes the relationship between this House and the other place seriously and gets its judgment right.

5.15 pm

Lord Low of Dalston: My Lords, I thank the Minister and all noble Lords who have spoken. We have had 10 speeches in this substantial debate on my Motion which in my estimation break down to eight to two in favour of the amendment, so the opponents are gaining. We also had 10 speeches on Report, but they broke down to nine to one in favour of the amendment. Eight to two still gives us a substantial lead. Frivolity apart, I thank all noble Lords who have contributed to the debate and for the support which has been signified right across the House. I am also grateful to the Minister for the way he has engaged with this.

I wish to pick out four points from the debate to allude to. The noble Lord, Lord Young of Cookham, is very knowledgeable about the dynamics of these matters and I am sure we all respect his views, but I am afraid that we will just have to disagree about who won the argument in the Commons. Yes, it is a subjective question, but in support of my interpretation of the debate I would simply argue that, as I said when moving the amendment, the Government have not really brought forth any more evidence in support of their case. What they have said is based largely on assertion, and in the circumstances I believe that it would be wrong for your Lordships not to draw attention to the weakness of the case.

Secondly, we would be failing disabled people, who will suffer dramatically if these changes to ESA go through, if we did not at least move an amendment like this and, it is hoped, carry it. I have long thought that a particular strength of this place is its openness to pleas for support from constituencies of the vulnerable outside this House. I am strengthened by the independent mindedness of noble Lords and the comparative independence of the Whips. That makes this place more open and accessible to the concerns of vulnerable communities, and I do not think that we should clam up against them at this point. The House should be true to its traditions and true to the spirit that it showed in carrying Amendments 41 and 44 on 27 January on Report.

If we are to keep faith with disabled people, the only way in which to do that is by calling for a report to be brought forward under secondary legislation. That is why the amendment seeks to use secondary legislation rather than primary legislation; it is the only course open to us.

Thirdly, the amendment is extremely appropriate given the EHRC's strictures on the impact assessment that the Government have come up with. Fourthly, it is a question of delay. I do not think that the amendment will be delaying because the Government have 14 months to comply with what it is calling for. To the extent that it is delaying, it is appropriate that the changes to the benefits system for claimants of ESA should be finalised in the context of the White Paper. That point has been strongly made by a number of noble Lords.

The Minister made the point that it is impracticable for the DWP to carry out the sort of assessment that the amendment is asking for. I cannot remember who it was—it may have been the noble Lord, Lord Kirkwood—who said that surely the DWP, with its hundreds of researchers, can at least have a stab at it. We are not seeking the last word in methodological rigour, but within the time available it should not be impossible for the department to have a better stab at an impact assessment than what we have seen so far.

I do not think it is a wrecking amendment. It is more than possible for the Government to come up with a passable show of what we are asking for. However this goes today, I undertake to the Minister that we will continue to work with him to get the best outcomes for disabled people, which I know is what he wants, too. For now I hope he will not mind if I seek to test the opinion of the House.

5.23 pm

Division on Motion B1

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Motion B1 agreed.

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Byford, B.
Caithness, E.
Cathcart, E.
Chadlington, L.
Chalker of Wallasey, B.
Chisholm of Owlpen, B.
Colwyn, L.
Condon, L.
Cooper of Windrush, L.
Cope of Berkeley, L.
Cormack, L.
Courtown, E.
Craig of Radley, L.
Crathorne, L.
Cumberlege, B.
Dannatt, L.
De Mauley, L.
Deben, L.
Deighton, L.
Denham, L.
Dixon-Smith, L.
Dundee, E.
Dunlop, L.
Eaton, B.
Eccles, V.
Eccles of Moulton, B.
Elton, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fall, B.
Farmer, L.
Faulks, L.
Fellowes of West Stafford, L.
Fink, L.
Finkelstein, L.
Finn, B.
Fookes, B.
Forsyth of Drumlean, L.
Fowler, L.
Framlingham, L.
Freeman, L.
Freud, L.
Gardiner of Kimble, L. [Teller]
Gardner of Parkes, B.
Garel-Jones, L.
Geddes, L.
Gilbert of Panteg, L.
Gold, L.
Goldie, B.
Goodlad, L.
Goschen, V.
Grade of Yarmouth, L.
Green of Hurstpierpoint, L.
Greengross, B.
Greenway, L.
Griffiths of Fforestfach, L.
Hague of Richmond, L.
Hameed, L.
Hamilton of Epsom, L.
Hannay of Chiswick, L.
Harding of Winscombe, B.
Harris of Peckham, L.
Hayward, L.
Helic, B.
Henley, L.
Higgins, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Home, E.
Hooper, B.
Hope of Craighead, L.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howarth of Breckland, B.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Jopling, L.
Kakkar, L.
Keen of Elie, L.
King of Bridgwater, L.
Kinnoull, E.
Knight of Collingtree, B.
Lamont of Lerwick, L.
Lane-Fox of Soho, B.
Lang of Monkton, L.
Lansley, L.
Lawson of Blaby, L.
Leigh of Hurley, L.
Lexden, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Livingston of Parkhead, L.
Luce, L.
Lupton, L.
Lyell, L.
McColl of Dulwich, L.
MacGregor of Pulham Market, L.
McGregor-Smith, B.
McIntosh of Pickering, B.
Magan of Castletown, L.
Maginnis of Drumglass, L.
Mancroft, L.
Maude of Horsham, L.
Mobarik, B.
Mone, B.
Montrose, D.
Moore of Lower Marsh, L.
Morris of Bolton, B.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Newlove, B.
Northbourne, L.
Northbrook, L.
O'Cathain, B.
O'Neill of Bengarve, B.
O'Neill of Gatley, L.
Oppenheim-Barnes, B.
O'Shaughnessy, L.
Palumbo, L.
Pannick, L.
Perry of Southwark, B.
Pidding, B.
Polak, L.
Popat, L.
Porter of Spalding, L.
Prior of Brampton, L.
Ramsbotham, L.
Rawlings, B.
Redfern, B.
Ribeiro, L.
Ridley, V.
Risby, L.
Rock, B.
Rogan, L.
Rowe-Beddoe, L.
Ryder of Wensum, L.
Saatchi, L.
St John of Bletso, L.
Sanderson of Bowden, L.
Scott of Bybrook, B.
Seccombe, B.
Selborne, E.
Selkirk of Douglas, L.
Selsdon, L.
Shackleton of Belgravia, B.
Sharples, B.
Sheikh, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shields, B.
Skelmersdale, L.
Slim, V.
Smith of Hindhead, L.
Spicer, L.
Stedman-Scott, B.
Stirrup, L.
Stowell of Beeston, B.
Strathclyde, L.
Suri, L.
Sutherland of Houndwood, L.
Swinfen, L.
Tanlaw, L.
Taylor of Holbeach, L. [Teller]
Thomas of Swynnerton, L.
Trefgarne, L.
Trenchard, V.
Trimble, L.
True, L.
Tugendhat, L.
Verma, B.
Waldegrave of North Hill, L.
Warsi, B.
Wasserman, L.
Wei, L.
Wheatcroft, B.
Whitby, L.
Wilcox, B.
Willetts, L.
Williams of Trafford, B.
Wilson of Tillyorn, L.
Young of Cookham, L.
Young of Graffham, L.
Younger of Leckie, V.

Motion B, as amended, agreed.

5.40 pm

Motion C

Moved by ***Lord Freud***

That this House do not insist on its Amendment 9, to which the Commons have disagreed for their Reason 9A.

9: Clause 14, leave out clause 14

Commons Disagreement

The Commons disagree to Lords Amendment No. 9 for the following reason—

9A: Because it would alter the financial arrangements made by the Commons, and the Commons do not offer any further Reason, trusting that this Reason may be deemed sufficient.

Motion C1 (as an amendment to Motion C)

Moved by ***Lord Low of Dalston***

At end insert "but do propose Amendments 9B and 9C in lieu—

9B: Clause 14, page 14, line 27, at end insert—

"(2) This section shall not come into force until the Secretary of State has laid before both Houses of Parliament a report giving his or her estimate of the impact of the provision in this section on the—

(a) physical and mental health,

(b) financial situation, and

(c) ability to return to work,

of persons who would otherwise be entitled to start claiming the limited capability for work element of universal credit.

(3) Regulations bringing this section into force shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament."

9C: Clause 31, page 28, line 2, at end insert "and subject to section 14(2) and (3)""

Motion C1 (as an amendment to Motion C) agreed.

Motion C, as amended, agreed.

Motion D

Moved by ***Lord Freud***

That this House do not insist on its Amendment 34 and do agree with the Commons in their Amendment 34A in lieu.

34: Clause 28, page 26, line 18, leave out from beginning to "does" in line 21 and insert—

"(a) in a case where the maximum amount applying under regulations under section 26 or Part 1 of Schedule 2 is determined on a basis that treats an amount, or a description of an amount, payable by way of service charge as part of the rent payable, includes a reference to an amount, or an amount of that description, payable by way of service charge,

(b) in a case where section 21 applies after regulations under section 26 have, or Part 1 of Schedule 2 has, applied a maximum amount determined on a basis that treats an amount, or a description of an amount, payable by way of service charge as part of the rent payable, includes a reference to an amount, or an amount of that description, payable by way of service charge,

(c) in a case not falling within paragraph (a) or (b) where, under the terms of the lease or agreement, an amount, or a description of an amount, payable by way of service charge is part of the rent payable, includes a reference to an amount, or an amount of that description, payable by way of service charge, and

(d) in any other case,"

Commons Disagreement and Amendment in lieu

The Commons disagree to Lords Amendment No. 34 and propose Amendment No. 34A in lieu.

34A: Clause 28, page 26, line 16, leave out subsection (5) and insert—

"(4A) Regulations made by the Secretary of State may specify cases in which a reference in the social housing rent provisions to an amount of rent payable to a registered provider includes, or does not include, a reference to—

(a) an amount payable by way of service charge, or

(b) an amount payable by way of service charge that is of a description specified in the regulations.

(4B) Regulations under subsection (4A) may, in particular, make provision by reference to—

(a) guidance with respect to the principles upon which levels of rent should be determined issued by the Housing Corporation under section 36 of the Housing Act 1996;

(b) a standard set under section 193(1) of the Housing and Regeneration Act 2008 that includes provision under section 193(2)(c) (rules about levels of rent);

(c) a standard set under section 194(2A) of the Housing and Regeneration Act 2008 (the power of the regulator to set standards relating to levels of rent) that was published by the regulator before 8 July 2015;

(d) guidance relating to levels of rent issued by the regulator before 8 July 2015 (including guidance issued before 1 April 2012);

(e) guidance relating to levels of rent for social housing issued by the Secretary of State before 8 July 2015.

(4C) Regulations under this section must be made by statutory instrument.

(4D) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament."

Lord Freud: My Lords, at Third Reading earlier this month, I informed the House that we had received representations from providers and the regulator for social housing about an unintended consequence of one of the government amendments we brought forward on Report. That amendment sought to enable continuation of existing policy on affordable rents and service charges which we had intended to be helpful. I said at the time that we would seek to address this issue by tabling an amendment in lieu when the Bill returned to the other place, and this Motion is the result of doing that.

In speaking to the Motion, I find myself reminded of Alexander Pope's popular quotation, "To err is human", but that would give noble Lords the chance to be divine in their forgiveness, which is clearly unacceptable. Perhaps it is more appropriate to quote William Hickson, the proprietor of the *Westminster Review*, who is credited with popularising the proverb:

"'Tis a lesson you should heed:
Try, try, try again.
If at first you don't succeed,
Try, try, try again".

I hope that I have now removed the opportunity for noble Lords to make jokes at my expense, but I doubt it.

I will outline briefly why the change is needed. The providers have told us that the drafting of the original amendment would inadvertently bring service charges within rent reduction measures for some standard social rent housing. This is because, although providers are entitled, under existing guidance, to charge service charges on top of formula rent, this has been implemented by providers in different ways. For example, some landlords of formula social rented housing reserve service charges as part of rent for purposes of enforcement in relation to non-payment of service charge. As a result, the service charge, even if it is separately itemised—and it is not always—forms part of gross rent and is captured by the provision. In such cases, service charge is part of rent and the entirety of the sum would be captured. This would result in a larger reduction in revenue for the providers than expected. We understand that these practices, while not general, are sufficiently widespread to be a problem for the sector. This was not our intention and we thank providers and the regulator for drawing it to our attention.

Given that this is a complex area, the amendment sets out a new regulation-making power instead, rather than setting the position out in the Bill itself. This will allow flexibility for further adjustments if they are ever needed. Regulations made under these powers would do two things. First, they would identify the cases where the social rent reduction limits being imposed by the Bill would limit both the amount of rent and the amount of service charge payable by tenants. This would apply to most affordable rented housing, where the rent is set using a percentage of market rent principle. Secondly, they would identify the cases where only rent is to be limited by the 1% per annum reduction policy. These are cases where rent is determined by a formula social rent approach. This is all standard social rented housing and that minority of affordable rented housing where rents are set by reference to the formula social rent model.

I regret the need for this late amendment. I am grateful to the housing sector for bringing this issue to light. I hope, with the explanation I have given and on the basis that the new provision will help providers, your Lordships will feel able to support the Motion. I beg to move.

Lord McKenzie of Luton: My Lords, as the Minister has anticipated, we have a sense of déjà vu on this drafting. We have lost count of the number of amendments and changes the Government have made to their own legislation. Again, the Commons are disagreeing with an amendment that the Government themselves laid in your Lordships' House and replacing it with an alternative. So confident are they now that they will get it right on this occasion that they have decided to address the point at hand in regulations.

However, the substantive point is serious and it is important that the legislation is right. It is understood that the issue is to properly identify those cases where the 1% per annum reduction will apply to only the rent and to where it will apply to rents and the amount of the service charge. The former will apply to rents determined by a formula social rent approach; the latter to what is known as affordable rents, which are determined on a percentage of market value. It is understood that the sector is content with this differentiation—the Minister has confirmed that—and so are we. We look forward to the regulations in due course. There will, doubtless, be various iterations of them.

Lord Freud: I thank the noble Lord, Lord McKenzie, for being merciful in his remarks. As I said at the start of this brief debate, this Motion has been tabled as a result of representations made by the providers—I confirm that again—and the regulator. We welcome their input, as the noble Lord does. I urge noble Lords to support this Motion.

Motion D agreed.

Calais: Child Refugees

Statement

5.47 pm

The Minister of State, Home Office (Lord Bates) (Con): My Lords, with the leave of the House, I shall now repeat in the form of a Statement the Answer given by my right honourable friend James Brokenshire to an Urgent Question in another place on child refugees in Calais. The Statement is as follows:

"Mr Speaker, last Thursday a judge in France ruled that the authorities in Calais could proceed with clearing the tents and makeshift accommodation from the southern section of the migrant camp. Over the weeks the authorities, working with NGOs, have ensured that the migrants affected by the clearances—which have begun today—were aware of the alternative accommodation that the French state had made available. For women and children, this means the specialist accommodation for around 400 people in and around the Jules Ferry centre, or the protected accommodation elsewhere in the region. For others, this means the recently erected heated containers which can house 1,500 people.

The French Government have also, with the support of UK funding, established over 100 welcome centres elsewhere in France, where migrants in Calais can find a bed, meals and information about their options. To be clear, no individual needs to remain in the camps in Calais or Dunkirk. The decision to clear part of the camp in Calais is, of course, a matter for the French Government. The joint declaration signed in August last year committed the UK and France to a package of work to improve physical security at the ports, to co-ordinate the law enforcement response, to tackle the criminal gangs involved in people smuggling and to reduce the number of migrants in Calais.

Both Governments retain a strong focus on protecting those vulnerable to trafficking and exploitation, and have put in place a programme to identify and help potential victims in the camps around Calais. The UK is playing a leading role in tackling people smuggling, increasing joint intelligence work with the French to target the callous gangs that exploit human beings for their own gain. The UK shares the French Government's objective of increasing the number of individuals who take up the offer of safe and fully equipped accommodation away from Calais so that they can engage with the French immigration system, including lodging an asylum claim. It is important to stress that anyone who does not want to live in a makeshift camp in Calais has the option of engaging with the French authorities, which will provide accommodation and support.

This is particularly important with regard to unaccompanied children. Where an asylum claim is lodged by a child with close family connections in the UK, both Governments are committed to ensuring that such a case is prioritised. But it is vital that the child engages with the French authorities as quickly as possible. This is the best way to ensure that these vulnerable children receive the protection and support they need and is the quickest way to reunite them with close family members in the UK.

The UK is committed to safeguarding the welfare of unaccompanied children and we take our responsibilities seriously. No one should live in the conditions we have seen in the camps around Calais. The French Government have made huge efforts to provide suitable alternative accommodation for all those who need it, and have made it clear that migrants in Calais in need of protection should claim asylum in France".

5.50 pm

Lord Rosser (Lab): I thank the Minister for repeating the reply to the Urgent Question. The thrust of part of it is that the Government are working with the French authorities and others to ensure that the claims of refugees, including the estimated 150 unaccompanied children in Calais and Dunkirk, of the right to be in this country under the Dublin regulations are processed quickly. What is the evidence that that is actually happening, as opposed to the Government claiming that it is happening?

Since the Government do not allow such children to come to the UK immediately to be in the care of their family while they make their applications, as the UK tribunal ruled they should be, and the reality, as opposed to what was in the Statement, is that cases from France take up to nine months, are the Government considering allowing those children who have a claim to be in the UK to come to the UK to make that application? What specific provisions are in place to ensure that the reality, as opposed to the Government's belief, is that such children who are currently being moved out of the camps in Calais and Dunkirk are

properly safeguarded and rehoused in suitable accommodation for children, and not left vulnerable to child traffickers, to join the thousands in Europe who have already disappeared?

Finally, the UNHCR has offered to set up a system to expedite the claims of those children in Calais and Dunkirk with close family in the UK with whom they could be reunited under the Dublin regulations. Have we accepted that offer from the UNHCR, and if not, why not?

Lord Bates: I am grateful to the noble Lord for his questions. Dealing first with the time that it takes to process such applications, I say that nine months is clearly too long. That is one reason why we have announced that a senior Border Force officer is going to be embedded in the interior ministry in France to ensure that particularly the Dublin family reunion cases are processed as quickly as possible. We hope that that situation will improve.

The noble Lord asked what we are doing to ensure that children do not fall prey to the trafficking gangs. The evidence from Europol is that 90% of those who come to Europe have paid a criminal gang to do so. We know that those gangs are a serious threat and are operating in that area. One reason we are putting so much emphasis on the hotspots is that we want especially children but all asylum seekers to be processed as soon as they come into the EU. There are five hotspots in Greece and another seven in Italy. The Home Secretary has asked Kevin Hyland, the Independent Anti-slavery Commissioner, to go out to those areas with a child protection officer to see what more can be done for children.

In relation to the UNHCR, of course that has a wider remit around the world for those who are seeking asylum under the refugee convention. We are working very closely with it, particularly on the initiative announced by the Prime Minister in relation to the 3,000 identified by Save the Children as to what more can be done with them. The UNHCR is looking at a solution to that and we are expecting an answer from it in the next couple of weeks.

Lord Paddick (LD): My Lords, I understand what the Minister says about unaccompanied children but what action are the UK Government taking to identify unaccompanied children with family in the UK who are legally eligible for asylum here, not only in Calais but in Grand-Synthe near Dunkirk and numerous other camps in northern France? Surely there are settled families in the UK who know that there are unaccompanied children related to them in these camps in northern France. Surely it cannot be left simply to the French Government and the children to apply for asylum. They are just children, after all.

Lord Bates: That is right. In the Written Statement on 28 January, we announced that we were devoting £10 million to the protection of children across Europe. We have provided additional support, particularly in the camps, to make sure that people get the advice they need. As the noble Lord rightly says, we are talking about children here and I well understand that they need an adult on their side who can work with them, helping and guiding them through the process. We have said that the best route for that is in the first instance that they claim asylum in France and then they can enter that system and get the protection they need. Then when their family are identified in the UK they can be safely transferred to the UK to be reunited with them.

Lord Hylton (CB): My Lords, I apologise for not having heard what the Minister repeated. He was too quick for me. However, as I was in Calais just over a month ago, perhaps I could ask: does he agree that getting information to the relevant people, whether children or adults, is crucial to those who already have close relatives in Britain? Does he also agree that that kind of information would be best conveyed not by officials but by people who are already in this country, who can explain their situation and how to go about family reunion? I hope the Minister will look sympathetically on my amendment about family reunion when we come to Report on the Immigration Bill.

Lord Bates: On the point about family reunion, the French Government are supporting some NGOs that are operating in that area and doing important work in the camps, ensuring that people get access to the type of advice they need. We will make sure that that work continues. The NGOs want to do the right thing. The Government want to do the right thing, both here in the UK and in France. That is why the relationship is so important and why we are working so closely together to ensure that children and families are reunited as soon as possible.

Lord Cormack (Con): My Lords, how many of these children are under the age of 16 and do we have satisfactory reception facilities of a temporary nature before they are reunited with any family members?

Lord Bates: I am grateful to my noble friend for that question. I can tell him that 62% of unaccompanied asylum-seeking children were 16 or 17; 26% were 14 or 15; and 8% were under 14. Of course, in this country the obligations under the Children Act mean that anyone aged under 18 will be taken into local authority care as a result of those duties.

Lord Dubs (Lab): Not long ago four children were discovered in Calais who had parental links here. It took a long time to find those children. Surely we have to make sure that we do not let time pass in the way it did then. Could the Government not publicise very loudly and clearly to the people in Calais and Dunkirk that if there are young people there with family members here they should announce themselves because that is a quick way of getting in here?

Lord Bates: The noble Lord is absolutely right. Without going into the details of a particular case, it was simply a question of process to say that if they had claimed asylum in France, that whole system could have been organised and expedited very quickly indeed. That is the message that we need to get out to people: the way to be reunited with your family in the

[Lord Bates]
UK is to claim asylum in France and rely on the Dublin regulations to ensure that that happens as soon as possible.

The Lord Bishop of Durham: My Lords, can the Minister confirm how tight or loose are the parameters on family relationships under Dublin being used in this? That is one of the concerns of those working on this in the NGOs—how tight or how loose the family ties can be defined as.

Lord Bates: The family ties are tightly defined; I suppose that they are there to avoid any potential risk of wider, extended family being brought in under humanitarian protection. They are defined as siblings or a parent and it is preferable that the children are reunited with the parent, wherever that parent is. That is one argument where the UNHCR has certainly made a strong case for ensuring that children are reunited—and stay—with their families in the region, rather than undertaking the perilous journeys which bring them to Calais.

Lord Roberts of Llandudno (LD): My Lords, does the Minister realise exactly how urgent the situation is? In a census last week, there were 5,497 residents in Calais, of whom 651 were children and 423 were unaccompanied children. France has of course started to clear the southern section of the camp of its 3,455 residents and will then begin on the north section, which has 2,042. What is to happen to these children when the French have cleared it? Will there be any humanitarian extension by the United Kingdom Government? The Minister might listen to just one suggestion. The Government have promised to bring in 20,000 refugees over four years. We will be coming to the end of the first year in May, which means that we should have accepted 5,000 refugees by then. Can he please tell me exactly how many have been accepted?

Lord Bates: Under the Syrian vulnerable persons' resettlement scheme, we set out to say that there would be 1,000 before Christmas. That figure is now 1,200. I am sure it will also be of interest—in particular to the noble Lord, who has always spoken up about the protection of children and will welcome this fact—that half of those 1,200 are children.

Scotland Bill

Report (2nd Day)

6.01 pm

Clause 42: Policing of railways and railway property

Adjourned debate on Amendment 41.

Lord Faulkner of Worcester (Lab): My Lords, on Wednesday night we had an hour-long debate on the role of the British Transport Police in Scotland. A number of issues remain unresolved and may be the subject of further amendments at Third Reading but meanwhile, as far as this afternoon is concerned, I beg leave to withdraw the amendment.

Amendment 41 withdrawn.

Amendment 42 not moved.

Clause 43: British Transport Police: cross-border public authorities

Amendment 43 not moved.

Amendment 44

Tabled by ***Lord Empey***

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

"Oversight arrangements for the British Transport Police in Scotland

(1) The Chief Constable of the British Transport Police ("the Chief Constable") shall appear before the Scottish Police Authority Board on request (including at urgent meetings, with reasonable notice).

(2) The Chief Constable shall appear before the Justice Committee of the Scottish Parliament (or any successor Committee fulfilling the functions of that Committee) on request (including at urgent meetings, with reasonable notice).

(3) The Chief Constable shall appear before the Cabinet Secretary for Justice in the Scottish Government on request, with reasonable notice.

(4) The Chief Constable shall present a report on the work of the British Transport Police in Scotland to the Scottish Ministers at least annually.

(5) The Chief Constable shall present a plan for the work of the British Transport Police in Scotland to the Scottish Police Authority Board at least annually, and a report on the work of the British Transport Police in Scotland to the Scottish Police Authority Board at least annually.

(6) The Chief Constable shall ensure that British Transport Police personnel exercising functions in Scotland have undertaken training on the Code of Ethics for policing in Scotland, and on the disciplinary policy procedures and operational procedures in place for Police Scotland, and the Chief Constable shall take that Code and those procedures into account when exercising his or her functions."

Lord Empey (UUP): My Lords, this amendment was debated last week and I hope the Minister will reflect on the significant debate that we had then. I hope he will take on board the fact that this amendment does no injustice or prejudice to the clauses in the Bill. He agreed to reflect on matters, and I reserve the right to look at this again at Third Reading. In those circumstances, I shall not move the amendment.

Amendment 44 not moved.

Clause 45: Onshore petroleum: consequential amendments

Amendment 45

Moved by ***Lord Dunlop***

45: Clause 45, page 47, line 17, leave out subsection (5)

The Parliamentary Under-Secretary of State, Scotland Office (Lord Dunlop) (Con): My Lords, Clause 44 devolves power to the Scottish Parliament for regulation of licences to search and bore for petroleum in the Scottish onshore area. Clause 45 transfers the functions of the Secretary of State to the Scottish Ministers. However, as consideration payable for such licences is to remain reserved to Westminster, Clause 45(8) retains the power of the Secretary of State to make model

clauses on the consideration payable for a licence granted by the Scottish Ministers, and on matters related to the keeping of accounts and the measurement of petroleum.

Amendment 46 would revise Clause 45(8) to ensure that the Secretary of State's enforcement ability in relation to such reserved matters is preserved for licences in onshore Scotland. This will be achieved by maintaining the Secretary of State's current power to cancel licences in onshore Scotland, applicable only for infringements in relation to consideration payable for a licence, the keeping of accounts and the measurement of petroleum related to consideration and taxation. Nothing in this amendment changes the powers being devolved to the Scottish Parliament. A definition of "appropriate Minister" under Clause 45(5) is removed, as this is redundant in light of Clause 45(17). I therefore beg to move Amendment 45.

Lord Wallace of Tankerness (LD): My Lords, I shall speak to Amendment 47 and others in this group which are in the name of my noble friend Lord Stephen and myself. Amendment 47 would in effect devolve legislative competence for consents for electricity generating stations and overhead lines to the Scottish Parliament. The position at the moment is that the Scottish Government have executive power to grant development consent for generating stations of 50 megawatts capacity or more and overhead lines of 20 kilovolts nominal voltage or greater. However, the Scottish Parliament does not have legislative power to reform the law in relation to such development consents. This is the only type of development that the Scottish Parliament does not have legislative power to regulate.

As I have indicated, such consents are governed by Sections 36 and 37 of the Electricity Act. This legislation, which goes back to 1989, is outdated. In fact, it is sufficiently outdated that, in the mean time, in England and Wales, it has been changed so that applications for development consent are dealt with under the Planning Act 2008, a much more suitable system. In Scotland, it has been described as effectively a legislative orphan. The Scottish Parliament has no power to reform it, and when the United Kingdom Parliament reformed it in respect of England and Wales, the opportunity was not taken to reform it in Scotland. Moreover, it is my understanding that the draft Wales Bill is devolving power to the Welsh Parliament, as it will be known, to legislate on consents for almost all energy development there. The aim of this amendment is therefore to devolve to the Scottish Parliament legislative power to reform the system of development consenting for energy infrastructure. The generation, transmission and distribution of supply of electricity is presently reserved although, as I said, the actual power to grant consents has been devolved.

This issue has some practical consequences in the context of the Energy Bill, which is currently in the other place. I was advised last week that a development in the south of Scotland, which I think is of about 65 megawatts, is therefore subject to the present regime under Section 36. However, if the same development had been just several miles further south in Northumbria, it would have been the responsibility of the local authority. If the local authority had refused it in England and Ministers had called it in, the grace period that the Government proposed for onshore wind farm consents would have kicked in. However, that does not cover the situation in Scotland given that it is already subject to ministerial fiat there, so there is a mismatch in practical terms. I apologise that this gap was drawn to my attention after Committee but I have certainly made the noble Lord, Lord Dunlop, aware of these concerns. He has had some notice and I hope that he may be able to give an encouraging reply.

The other amendments, to some extent, go over the ground that we covered in Committee. I appreciate that the Minister has met me since then and we have discussed these amendments. The Government argue that there is already adequate statutory provision for consultation, and the Minister asked why the industry was not satisfied and agreed to meet the industry to find out. My understanding is that, in the event, negotiations on the fiscal framework took over. That is perfectly understandable—there is no criticism there. However, his officials did meet the industry.

The current position is in spite of the fact that a commitment followed a request in the Smith commission for further consultation. Indeed, in the initial response to the Smith commission, the Government's Command Paper stated:

> "The UK Government will work with the Scottish Parliament and Scottish Government to devise a proportionate and workable method of consulting the Scottish Parliament on the strategic priorities set out in the Energy Strategy and Policy statement".

However, the Government's position now is that this is not necessary and that there is already a statutory regime there under the Energy Act 2013.

The fact that the industry remains unsatisfied is of some concern. Notwithstanding new Section 90C(4), which states,

> "a 'renewable electricity incentive scheme' means any scheme, whether statutory or otherwise",

people in the renewables industry have formed the impression that any consultation with Scottish Ministers is likely to be triggered only by legislative changes. It would therefore be helpful if, in responding to this debate, the Minister could indicate the overarching legal basis for the contract for difference regime being set out in primary legislation, while the main detail as to how it will operate is contained in statutory instruments and any changes to these statutory instruments would trigger the consultation in terms of this Bill and the Energy Act.

The experience of the accelerated closure of the renewables obligation for onshore wind, which went ahead with, I think, minimal consultation with Scottish Ministers, has given rise to the concerns within the industry. It would be useful if the Minister could indicate whether the position with regard to any order to remove specific technologies from the contract for different regime is something about which Scottish Ministers would be consulted. There is no obligation on the Secretary of State to consult on the budget notice issued in advance of each allocation round. However, there is a need to consult Scottish Ministers on other aspects of the contract for difference mechanisms, for example on setting the new administrative

[Lord Wallace of Tankerness]
strike prices, and it would be helpful if the Minister could perhaps give some clarity on how he sees that operating in the future.

Officials seem content that the issue addressed by Amendment 55 is dealt with adequately under existing provisions, but the view is that the improved consultation mechanism would have been better if a Scottish member could have been appointed to the Gas and Electricity Markets Authority. Again, this is a matter that the Smith commission flagged up. The Bill does a similar thing for Ofcom, and perhaps the Minister could indicate how he intends to improve the consultation and whether there is any further mechanism through the GEMA board which would meet the industry's concerns.

Finally, one of the amendments gives Ministers the power to bring forward a scheme which effectively would devolve contracts for difference to Scottish Ministers. I stress it is a scheme which UK Ministers could devolve, so the concerns that this could lead to a bigger levy on consumers across the United Kingdom would not necessarily come through. The specific point here is that there is concern in the industry that, under the next tranche or round of contracts for difference, onshore wind may not be included under the technologies, notwithstanding that onshore wind has been at £82.50 per megawatt hour for 15 years, index linked, while offshore wind has been at £114.40 per megawatt hour for 15 years and nuclear is index linked for 35 years at £92.50. There is a very strong argument that Scotland has a considerable abundance of resource in onshore wind and that it could be developed there. This is not in the Smith commission, but had it been known that the Government were going to change the rules on the renewables obligation for onshore wind when the commission was sitting, it may well have made such a recommendation, because it would have been entirely consistent.

I simply remind the Minister that in the Scotland analysis paper for energy, the then Government said:

"The UK Government is now introducing the Contracts for Difference scheme, which will provide long term support for all forms of low-carbon electricity generation. These contracts provide industry with the long-term framework to make further large scale energy investments at least cost to the consumer".

I stress the words "all forms", which includes onshore wind. I am sure the Minister would like to take the opportunity to say that the present Administration will stand by the commitment that the previous coalition Government presented to the Scottish people in the run-up to the referendum. I hope the Minister will be able to give us some reassurances when he comes to reply.

6.15 pm

Lord Dunlop: My Lords, the noble and learned Lord, Lord Wallace, spoke to a number of these provisions when we considered this matter in Committee. He made some observations about the clauses and I have met him to discuss his thoughts on these areas, as he said. I am also grateful to him for withdrawing the amendments he tabled regarding heat. Again, we spoke about that issue and I was glad I was able to reassure him on the position.

In Committee, we discussed consultation on renewable heat incentive schemes, Ofgem's *Strategy and Policy Statement*, and transferring executive powers related to contracts for difference and feed-in-tariffs, which the noble and learned Lord advocates. Similarly, on Ofgem's energy strategy and policy statement, statutory arrangements are already in place. That remains my position. However, although I do not agree with the amendments, I am grateful that the noble and learned Lord has brought them before the House. As he mentioned, I know that Scottish Renewables have a particular interest in how Ofgem's statement is produced, and therefore it is helpful to remind the House that these arrangements exist. I was due to meet Scottish Renewables recently but had to postpone the meeting. I very much hope to meet it in the near future and I commit to continuing the dialogue to see how we can improve all aspects of consultation. If the noble and learned Lord will allow me, I will write to him further following those discussions, to see what improvements can be made.

Turning to Amendment 56, I have outlined to the noble and learned Lord why I do not agree with his proposals in relation to contracts for difference and feed-in tariffs. That is not just because they go beyond the Smith agreement but because both CFDs and FITs are GB-wide schemes and do not operate in a regionally specific way. We have a GB-wide, integrated energy system. The costs of both CFDs and FITs are spread across all GB consumers, which helps to keep down the cost ultimately borne by bill payers. If the Scottish Minister were to set separate rates, or directly award CFD contracts, this would create distortions in the market as well as being a duplication of effort. That could also result in decisions taken in Scotland imposing costs on electricity consumers across Britain.

The Scottish Government have the power to set different renewables obligation bands for specific technologies, but the CFD scheme generally awards contracts through a competitive auction open to GB-wide generation. This ensures that for each particular technology grouping only the most cost-effective projects receive support. Moving to a regional allocation would be likely not only to increase the overall costs of meeting our renewables and decarbonisation targets but to lead to an increase in supplier costs being passed on to consumers across GB. I understand that the noble and learned Lord may not accept this argument, but I do not agree that this is a sensible change to make.

I hope I can be more encouraging on Amendment 47, which would introduce a new clause on "Consents for electricity generating stations and overhead lines". I am grateful to the noble and learned Lord, Lord Wallace, for the clearly thoughtful consideration he has given to this. He expressed the issue very cogently in his remarks, but I am afraid at this stage I am not able to accept it as an amendment to the Bill. However, I commit to him that I am prepared to consider this matter further, outside of the Bill. I am sympathetic to the point he raises and therefore would like the opportunity to consider it further, including the planning points that he raised and the existing balance between executive and legislative competence in this area. Officials in the Department of Energy and Climate Change have already

raised the issue with the Scottish Government. Energy consenting is a complicated area and one where any change merits detailed consideration to ensure that any agreed policy is delivered. Far be it from me to prejudge that consideration but, if the proposal were found to have serious merit, there are legislative avenues by which we can take it forward, such as a Section 30 order under the Scotland Act 1998.

Therefore, I hope that the noble and learned Lord will allow me to consider the matter further outside the Bill. I will of course be happy to update him on further discussions. On that basis, I urge him not to press his amendment.

Amendment 45 agreed.

Amendment 46

Moved by ***Viscount Younger of Leckie***

46: Clause 45, page 47, leave out lines 24 to 33 and insert—

"(1A) The Scottish Ministers may not make regulations under subsection (1)(e) prescribing model clauses that may be prescribed under subsection (1B).

(1B) The Secretary of State may make regulations prescribing model clauses on the consideration payable for a licence granted by the Scottish Ministers, and the following so far as they relate to such consideration—

(a) the measurement of petroleum obtained from the licenced area (including the facilitation of such measurement);

(b) the keeping of accounts;

(c) cancellation of a licence by the Secretary of State if there has been a failure to pay consideration or to comply with a clause on a matter falling within paragraph (a) or (b).

(1C) Model clauses prescribed under subsection (1B) shall, unless the Secretary of State thinks fit to modify or exclude them in any particular case, be incorporated in any licence granted by the Scottish Ministers."

Amendment 46 agreed.

Amendment 47

Tabled by ***Lord Wallace of Tankerness***

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

"Consents for electricity generating stations and overhead lines

(1) Section D1 in Part 2 of Schedule 5 to the Scotland Act 1998 (electricity) is amended as follows.

(2) For the heading "Exception" substitute—

"Exceptions

Consent for the construction, extension or operation of electricity generating stations.

Consent to install or keep installed overhead lines.

The grant of any ancillary consent or right including—

(a) regulation of public rights of navigation in respect of offshore installations for electricity generation and transmission;

(b) establishment of a safety zone in respect of offshore installations for electricity generation and transmission;

(c) decommissioning of offshore installations for electricity generation and transmission;

(d) compulsory acquisition of land by holders of licences under Part 1 of the Electricity Act 1989;

(e) acquisition of wayleaves by holders of licences under Part 1 of the Electricity Act 1989.""

Lord Wallace of Tankerness: My Lords, in light of what the Minister said and his willingness to continue to engage and look at this further, I hope that we can get to a sensible outcome, so I do not wish to move the amendment.

Amendment 47 not moved.

Amendments 48 to 54 had been withdrawn from the Marshalled List.

Clause 58: Renewable electricity incentive schemes: consultation

Amendment 54A not moved.

Amendments 55 and 56 not moved.

Amendment 56ZA

Moved by ***Lord Forsyth of Drumlean***

56ZA: Before Clause 13, insert the following new Clause—

"Approval of the fiscal framework

Nothing in this Part shall have effect until each House of Parliament has passed a motion expressing its approval of the agreement between the Scottish Government and the United Kingdom Government on the Scottish Government's fiscal framework."

Lord Forsyth of Drumlean (Con): My Lords, I shall speak also to Amendments 57AB, 57AC, 68, 68A and 68B standing in my name. Amendment 56ZA is a probing amendment giving us an opportunity, for the first time, at 20 past six at night, in the final stages of the Bill, to discuss the fiscal framework. This will be the first opportunity for either House of Parliament to discuss this important measure. The amendment simply states that the proposals for giving the Scottish Parliament income tax powers should not have effect until each House of Parliament has had an opportunity to discuss the fiscal framework.

Amendment 57AB provides for the same matter in respect of the welfare provisions in the Bill. Amendment 57AC provides that a statement should be published on what exactly the Scottish Government have spent the £200 million on which, under the fiscal framework, is being provided to them as a one-off payment to implement the powers, and the £66 million per year being given to them to support the additional powers being provided to them. Amendment 68, on which, in the absence of an indication from the Minister that he is prepared to accept it, I intend to test the opinion of the House, simply states:

"None of sections 1 to 68 may come into force until … the Secretary of State has laid before each House of Parliament a fiscal framework setting out the arrangements and institutions underpinning the tax and spending powers included",

and that,

"the framework has been approved by resolution of each House of Parliament".

First, I thank my noble friend for the courteous and helpful way in which he has supported us in trying to do our job in this place, which is to scrutinise the fiscal framework. I know of the difficulties that have been caused by the lack of agreement between the Government and the Scottish Government on these matters, but I have to say that this is fundamental to the Bill, and it seems to me that the fiscal framework should be approved by both Houses of Parliament.

[Lord Forsyth of Drumlean]

I found myself spluttering over my WheetyBangs when I was having breakfast yesterday reading the *Sunday Times*—it was probably only in the Scottish edition. Mr Jim Gallagher was a very distinguished Scottish Office civil servant indeed. I think I am right in saying that he was private secretary to my noble friend Lord Lang and, previously, Sir Malcolm Rifkind, and went on to be in charge of the Constitution Unit in the Scottish Office, and he is held in high regard by people on all sides of this House. I was very surprised to read his verdict in the *Sunday Times*, which I shall share with the House. He said:

"The compromise the Scottish government made is that the deal is not eternal. It will be subject to review. The compromise the Treasury made is that they handed over the money … The Treasury gave the Scottish government a deal it couldn't turn down. How it will explain this to English MPs I have no idea, but that is George Osborne's problem. From a purely Scottish perspective, you have all the advantages of tax devolution and very few of the risks".

In the same article, the *Sunday Times* reported that, "According to well-placed Westminster sources, the deal between the Scottish and UK Ministers was struck amid Tory fears that sticking with the Treasury offer that could have left Scotland £3 billion worse off over a decade would have hurt David Cameron's chances of winning the June EU referendum". It strikes me as extraordinary that something as important as the future financing arrangements for the whole of the United Kingdom should be decided in this way and, indeed, that the agreement that has been struck is so unfair to other parts of the United Kingdom. We are talking in the Scotland Bill about trying to provide a permanent and stable arrangement for the future governance and funding of the United Kingdom.

If I may be permitted to make one political point, it is extraordinary, is it not, that in less than a month, had the Scottish people not voted by an overwhelming majority to reject independence, we would be experiencing Scottish independence day, which was set by the former first Minister, Alex Salmond, as 24 March 2016 What a mess we would be in with the oil price of $31. There would be a hole of billions of pounds in the Scottish Budget arising from the loss of oil revenues and other disastrous consequences. Fortunately, we in Scotland are part of the United Kingdom and have the security of the United Kingdom around us.

Therefore, I find it quite extraordinary that in the fiscal framework, the Government have agreed to give the Scottish Government £200 million in a one-off payment to meet the administrative costs of the additional powers contained in the Bill before us. Two hundred million pounds was what the First Minister was telling us throughout the independence campaign for the referendum would be the entire costs of setting up an independent Scotland. It is exactly the same figure: £200 million. Yet they are getting £200 million for taking on responsibility for the powers included in the Bill. I have no idea how that figure was arrived at, but as a taxpayer, I would like to know how it is spent, and one of my amendments refers to the fact that there should be an account for that.

In addition, under the fiscal framework, they are being given an extra £65 million every year, on a continuing basis, to administer the new powers. Again, one wonders why that is necessary, how the figure was reached and whether there will be any accountability for spending it. As I indicated at the time of the Statement, the First Minister appears to have been bought and sold for English gold. Those who remember their Burns will know that it refers to a parcel of rogues in the nation, and the SNP is a parcel of rogues in the nation. They told the country that there would be a one-off referendum and that it could all be done for £200 million, but now in secret they have been passing the begging bowl to my noble friend and requiring huge sums of extra money on the basis that it is needed to survive in the union. Thank goodness they did not get their way, break up the United Kingdom and leave Scotland exposed to the financial difficulties—now apparent even to them—that would have resulted.

This fiscal framework makes a fundamental error. I served with my noble friend Lord Lang and others on the committee established by the late Lord Barnett to deal with what he regarded as a great embarrassment—that his name was associated with a formula that he believed was unfair to the rest of the United Kingdom, and to Wales in particular. We looked at the Barnett formula and concluded unanimously, in a report that stands the test of time, that we should have a system that treated all parts of the United Kingdom fairly, was based on needs and had transitional arrangements for the implementation of the changes for losers and winners. That has been ignored by Governments for political reasons—I understand that—by Governments on my own side and on the other side. I understand the political reasons why it has been ignored, but I cannot understand why, in this fiscal framework, it has been agreed that the Scottish Government will have a veto on any change to the Barnett formula in future.

6.30 pm

The arrangements under the fiscal framework say that, after five years of this deal, there will be an independent review. We are not told how independent it will be, how the review will be established or what its terms of reference are—and perhaps my noble friend could explain that in responding to these amendments. Then the recommendations will be subject to the agreement of both Governments. That is Whitehall-speak for saying that the Scottish Government will have a veto. So there is no ability, if the agreement is carried forward, to get rid of the Barnett formula and have a formula that is fair to all parts of the United Kingdom, because the Scottish Government will have a veto. As the Barnett formula is so generous to Scotland, I would be very surprised indeed if the Scottish Government are keen on moving away from Barnett, for that reason.

For those who have not had an opportunity to study the fiscal framework as it was set out, I got my copy at nine o'clock on Friday from the Vote Office. I was most grateful to the officials from the Treasury who gave me a briefing on Friday morning and to the officials and my right honourable friend Greg Hands, who gave a briefing today at lunchtime to take us through the fiscal framework. I have to say that the Statement, which we had on Wednesday, seemed to consist of, "Haven't we all done terribly well? We'll tell you what the details are shortly". The document that has been circulated leaves a whole range of unanswered

questions. On how the mechanism will operate, the relevant paragraph is this—and I shall read it to noble Lords so that they are all absolutely clear how this funding is going to work. Paragraph 17 says:

"For a transitional period covering the next Scottish Parliament, the Governments have agreed that the block grant adjustment for tax should be effected by using the Comparable Model (Scotland's share), whilst achieving the outcome delivered by the Indexed Per Capita (IPC) method for tax and welfare. This will ensure that the Scottish Government's overall level of funding will be unaffected if Scotland's population grows differently from the rest of the UK".

That is very clear, is it not—easily understood? It means that, had those arrangements been in place since 1999, when the Scottish Parliament was established, Scotland would have got the Barnett consequences, 20% more per head relative to England, plus an additional £6 billion. It is more generous in its impact on Scotland—or would have been, looking back.

Secondly, if I go back to Second Reading in the House of Commons and listen to the reasons put forward for this whole adventure, I hear that it was important that the Scottish Parliament should be responsible for raising the funds that it spent. That was the argument—and with that would come accountability. But what we have in this fiscal framework is a bit of an adjustment, because the Scottish Government will be protected from population changes, so if the population falls relative to that of England—and the additional amount under Barnett is population-related—they will be protected and the English taxpayer will bail them out.

Throughout the Statement and the Government's comments publicly on this matter, they have talked about having a system of funding that is fair to all taxpayers, in England, Wales and Northern Ireland as well as Scotland. But they must know that fairness is compromised by this arrangement, first, because the income tax yield in Scotland, as the document makes clear in paragraph 18, is less, at 87.7%. So the agreement compensates Scotland for having a lower tax capacity than the rest of the United Kingdom. While they will effect increases under the Barnett formula, because the rest of the UK revenue is going up, the reductions in the block grant will result from lower tax revenues. It is estimated that that will provide Scotland with an extra £350 million in 2020-21. The adjustments to the population are likely to remain an additional benefit.

None of us has had any time to consider this matter properly. I am most grateful to Professor David Bell from the University of Stirling, who is the adviser to the Economic Affairs Committee, which did the report on the fiscal framework. Many noble Lords will know of him; as far as I know, his politics are pretty neutral and he is very distinguished. This is what he has to say about the fiscal framework:

"Scotland's block grant will be calculated using the 'Comparable Model' … This was proposed by Greg Hands in his letter to the Scottish Affairs Committee of February 12, 2016 … The logic behind it is that Scotland's BGA is increased by its population share of tax increases in",

the rest of the UK,

"adjusted for Scotland's lower per capita income tax revenues. (Income tax revenue per person in Scotland is 87.7% of that in the UK as a whole). The adjustment for Scotland's lower tax capacity implies that the 'taxpayer fairness' criterion will not be met by the agreement. There will continue to be a net transfer from",

the rest of the UK,

"to Scotland when an increase in rUK tax revenues is allocated to increased spending on 'comparable programs' with Barnett consequentials for Scotland. This is because Scotland will receive a payment through the Barnett formula that ultimately depends on rUK's higher per capita tax revenues, but the reduction in its block grant will result from Scotland's lower per capita tax revenues".

I could go on—the advice is contained on the website of the Economic Affairs Committee, and I urge everyone who is interested in this to look at it. Basically, what is happening here is a deal has been struck that is not fair to the whole of the United Kingdom; it has been done in secret, and there has been no opportunity for both Houses to discuss it—and there are some anomalies. For example, paragraph 16 says:

"For welfare, and all other spending unless stated otherwise in this agreement, the chosen method will be the Barnett formula".

If we look at the welfare budget as determined by the Barnett formula—just to show that I am being even-handed—if that had applied from 1997 to 2014, welfare spending in Scotland would be £147 million less. But paragraph 17, which I read earlier, refers to,

"the outcome delivered by the Indexed Per Capita … method for tax and welfare",

which contradicts what it says in paragraph 16. How is welfare going to be funded? Will it be through the Barnett consequences, or will it be adjusted upwards—and, if it is the Barnett consequences, what happens to the gap that would otherwise appear?

I am conscious that time is getting on and that I have been speaking for 18 minutes on these amendments, but there are a number of other issues in this fiscal framework which remain something of a puzzle. Throughout the conduct of this Bill, I have repeatedly asked Ministers, the noble Lord, Lord Smith, and anyone else who might have an opinion how the second no-detriment principle will work. Paragraph 45 states:

"Specifically, where either government makes a policy decision that affects the tax receipts or expenditure of the other, the decision-making government will either reimburse the other if there is an additional cost, or receive a transfer from the other if there is a saving".

I read that as meaning that if the Government in Scotland cut the airport tax on Edinburgh Airport and Glasgow Airport, as they currently plan to do, and people no longer travel from Manchester Airport, Newcastle Airport or wherever, the Scottish Government should send a cheque to compensate people south of the border for the loss they have incurred.

A Noble Lord: Some hope.

Lord Forsyth of Drumlean: I tend to agree. I want to know how this will be calculated, how it will be enforced and what are the powers to do so.

Then the agreement goes on to make a change from the Smith proposals. Paragraph 46 states:

"These financial consequences of policy decisions have been termed policy spillover effects".

"No detriment" has now become "policy spillover effects". Paragraph 47 states:

"The main categories of these can be divided into … Direct effects—these are the financial effects that will directly and mechanically exist as a result of the policy change (before any

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associated change in behaviours); and … Behavioural effects—these are the financial effects that result from people changing behaviour following a policy change".

I asked the Chief Secretary to the Treasury about this today. The example the noble and learned Lord, Lord Wallace of Tankerness, has used and I have used is from when I was in government. We decided in Scotland not to privatise water, but in England it was privatised and we lost the Barnett consequences of that. Does that mean that under the new arrangement of no detriment, where the Government south of the border decided to have a policy of funding water privately, not through the taxpayer, as a result, a cheque would have to be sent north of the border to compensate them for this policy under the no detriment or policy spillover effect that arose? "Spillover" is actually quite good in the context of water privatisation. Does it mean that? The Chief Secretary looked slightly puzzled and said, "No, of course it doesn't". Why does it not? Where does it say that? How is this defined? Nowhere is it defined.

Here we are, at the 11th hour, discussing the fiscal framework. Everyone is rather confused about how it is going to operate. Everyone is wondering how on earth the veto which has been given to the Scottish Government will operate. As I am sure at least one party will come to its senses at some stage and decide that we need a fair system for funding the United Kingdom, what happens if a party is elected on a manifesto which provides for replacing the Barnett formula with one based on needs or some other system and the Scottish Government say, "Hang on a second. We have an agreement that you cannot change it without our consent"? Then where are we? I have no doubt that the Minister will say that he believes that people will be guided by the results of an independent review. If he says that, I will say to him that he has not seen how the Scottish Government operate or how the Scottish nationalists operate. That is not their way of doing things, as I am sure many Members of this House would agree.

My simple request to the Minister is that he accepts the sunrise amendment which gives an undertaking that this House and, more importantly, the elected House—the House of Commons—have an opportunity to discuss this fiscal framework and to consider the impact on Northern Ireland, Wales, the north of England and elsewhere. It is far reaching and fundamental, and it is not acceptable that this should be agreed in secret and given out in dribs and drabs with little time for the House to consider it or for people outside to consider it and advise Members of both Houses on the way forward. I beg to move.

6.45 pm

The Deputy Speaker (Lord Haskel) (Lab): My Lords, I have briefly to interrupt to give the following correction. The result of Division No. 1 on the Welfare Reform and Work Bill was announced incorrectly as Contents 289, Not Contents 219. The correct figures were Contents 286, Not Contents 219.

Lord Wallace of Tankerness: My Lords, I shall speak to the amendment in this group in the name of my noble friend Lord Stephen and myself. I am sure the House is grateful to the noble Lord, Lord Forsyth, for raising this important debate on the fiscal framework. It is long awaited. Although we had a very good debate in Committee, it was a bit like "Hamlet" without the Prince of Denmark; it was about the fiscal framework without the actual fiscal framework agreement. At least we can now have a debate on this important part of the architecture of Scottish governance following the Smith commission's proposals in the light of the agreement which was published at the end of last week.

The amendment which my noble friend and I have tabled is to address the mechanism for the review of the fiscal framework. The Smith commission said that it was important that there was a review, and in Committee we moved an amendment to establish a review. We have tried to revise that amendment in the light of the agreement as we now see it.

When the Minister replies, it would be helpful if he could give us some indication of how the Government understand the review and the mechanisms. The Chief Secretary to the Treasury, Mr Greg Hands, was right to point out that there is a distinction between the review and dispute resolution. I am rather intrigued by the fact that in the agreement the review is referred to in paragraphs 20 to 23 and again in paragraphs 111 to 113, some of which appears repetitious and almost as if there is something uncertain about it. It is as if the more often you say it, it might just happen. Perhaps the Minister will tell us if there is anything we should read into the fact that it was felt necessary to repeat some of the proposals with regard to the review at a later stage.

The First Minister of Scotland in her Statement to the Scottish Parliament last week seemed to indicate—I sat and listened to it—that there could be a veto over the Scottish Government accepting anything which was not to their advantage following the review. Indeed, paragraph 112 states:

"It will be open to either government to propose changes to the fiscal framework from",

the point of the review or the end of 2021, and:

"The fiscal framework does not include or assume the method for adjusting the block grant beyond the transitional period".

The Chief Secretary seemed to say today that it was "our model", which I assume to mean Her Majesty's Treasury's model, whereas the transition period was the Scottish Government's transition period. So—this is a question which the noble Lord, Lord McConnell of Glenscorrodale, asked last week when the noble Lord repeated the Statement—what is the default position? Is the default position the Treasury model, or is there in fact a veto? What happens if there is not agreement following a review? One was left with the impression that it is a bit, "it'll be all right on the night". Those of us who have seen the negotiations with the Scottish Government know that it will not necessarily be all right on the night. They may well take things up to the brink.

Under Section 64 of the Scotland Act 1998, the Scottish Consolidated Fund is established, and subsection (2) states that the Secretary of State shall pay sums into the Consolidated Fund, but the sums are not predicated by any agreement or formula, and certainly are not predicated by the statute. I imagine

that if all else failed, the ball would be at the feet of the Secretary of State, who has to pay money into the Scottish Consolidated Fund. Perhaps the Minister could indicate how, in the event of impasse and of no agreement being reached, the UK Government, particularly Her Majesty's Treasury, see that sum to be paid into the Scottish Consolidated Fund being arrived at, given that it is actually the Secretary of State's decision and, according to statute, is not in any way fettered. It is important that we get some clarity about what should happen.

Lord Forsyth of Drumlean: Is it not clear throughout? Paragraph 52, regarding a dispute over the no-detriment principle, says:

"Without a joint agreement, no transfer or decision will be made",

while paragraph 103, on dispute resolution, says:

"If no agreement can be reached",

between the Governments,

"then the dispute falls—there would be no specific outcome from the dispute and so no fiscal transfer between the Governments".

Lord Wallace of Tankerness: My Lords, I noted earlier, with regard to paragraph 103, that it surely cannot be conceivable that the funding would dry up. The House is therefore owed an explanation as to precisely what lies behind paragraphs 52 and 103 of this agreement.

The proposal that my noble friend and I have tabled is that there should be a review, which should be informed by a commission. The commission should be three persons from the Office for Budget Responsibility advisory panel, to be appointed by the OBR's chairman, therefore taking it even more than arm's length away from the Government, and there also should be membership of a Scottish professional body—it could be the Institute of Chartered Accountants of Scotland or CIPFA—to be agreed by Her Majesty's Treasury and Scottish Ministers, whose members should be appointed by the senior office-bearer of that body. Again, that is an attempt to put it at one remove from the Scottish Government. It would be a genuinely independent body that would inform the review about how the fiscal framework had worked.

We go further than that by saying that no person appointed to the commission should have been a member of any political party for five years prior to accepting membership. Consistent with the fiscal framework, the report should be laid no later than 30 November 2021 and submitted to both Houses of this Parliament, the Scottish Parliament, the Chancellor of the Exchequer and Scottish Ministers.

All that we find out in the fiscal framework agreement is that the arrangements for review, including how independent they will be, should be left to the Joint Exchequer Committee. We may feel that in order to be reassured, it is not unreasonable for Parliament to set some parameters for how the independence of that review body will be established. The amendment is therefore intended to probe just what Ministers have in mind with regard to the working out of that review, and indeed to answer some of the questions about what happens in the event of a failure to reach agreement on the review. There are important questions to be answered, and I look forward to the response of the Minister.

I am sorry, is the noble and learned Lord, Lord Hope, waiting to intervene or to ask a question?

Lord Hope of Craighead (CB): I was hoping to follow the noble and learned Lord.

Lord Wallace of Tankerness: That is fine. I hope that the Minister will be able to fill in the gaps when he comes to reply to this important debate.

Lord Hope of Craighead: My Lords, I would like to pursue the points made by the noble Lord, Lord Forsyth, and the noble and learned Lord, Lord Wallace of Tankerness, about dispute resolution. As a lawyer, one tends to look to the dispute resolution bits, because they are the things that matter to us, to see that there is actually an effective mechanism for that, rather than at the fiscal parts, which I am content to leave to others.

Would the Minister care to look at paragraph 46, which the noble Lord, Lord Forsyth, identified? It contains the definition of "policy spillover effects", which is where either Government make a policy decision that affects the tax receipts or expenditure of the other. If that happens then there is a spillover and a spillover effect. In paragraph 98 we enter the dispute resolution system, which applies to, among other things,

"All disputes arising from the consideration of direct and behavioural spillover effects, including both gains and losses".

So this particular group of paragraphs deals with the resolution of the dispute. We can see how it works: first, if it cannot be settled at working level then it becomes a disagreement and is referred to senior officers at director level or above, including consideration at Joint Exchequer Committee official level too. If that does not work, the matter becomes not a disagreement but a formal dispute. It is then referred to Ministers to be raised and discussed at a meeting of the JEC.

We then move to paragraph 100, and so far we are working down the line of complete impasse:

"If … there is a dispute that cannot be resolved between Ministers, there is an automatic pause placed on the disputed finances, i.e. no decisions … can be taken by either government in relation to the disputed amount until the dispute is resolved".

That seems a strange system, given that revenues either way are crucial to the running of the country. To have a dispute simply frozen in that way is very strange. The formula goes on a little further, because if that happens then the Governments are to draw up a statement of fact on the dispute, and technical input may be sought to ensure that the facts are correctly stated. It will then be considered by both Governments, who commit to using their best endeavours to resolve the dispute.

However, the agreement says in paragraph 103:

"If no agreement can be reached then the dispute",

fails—or rather "falls"—and, as the noble Lord, Lord Forsyth, pointed out,

"there would be no specific outcome from the dispute and so no fiscal transfer between the Governments".

What puzzles me further is paragraph 104, and maybe the Minister can help here:

"If either Government wishes to pursue the dispute further"—

[LORD HOPE OF CRAIGHEAD]
let us imagine that the UK Government are anxious to do that—

"it can be referred to the 'Protocol on the Resolution and Avoidance of Disputes' attached to the Memorandum of Understanding between the UK government and the devolved administrations".

I do not know where the memorandum is—it is not in the Printed Paper Office, as far as I know—and it is also said to be subject to review. So there is a cloud of uncertainty over exactly what paragraph 104 means and how fixed it is as a system for resolving these disputes.

If one is entering an area like this where it is plain that there will be political arguments on either side that may lead to a complete impasse, it is crucial that there should be a system for the resolution of disputes; otherwise one is left with a situation where no transfer takes place although one side is calling for it and the other is not. How can the system be left in that situation, hanging in the air without anyone to decide it? Can the Minister inform the House about that? It has a direct bearing on the amendment by the noble Lord, Lord Forsyth.

Lord Lang of Monkton (Con): My Lords, we all slightly feeling our way in the dark in this debate, and that is very unfortunate because the fiscal framework is crucial to the future not just of the Government of Scotland but of the Government of the United Kingdom, and indeed to the stability of the UK and holding it together in the face of the assault coming from the Scottish nationalist Government in Scotland.

One would not have thought that we were feeling our way in the dark, though, from the absolutely masterly exposition by my noble friend Lord Forsyth of Drumlean, who laid out the issues with great clarity and considerable force and raised a number of very important points to which we have not yet had an answer. I share his view on almost everything that he said, and he has helped me to share it more clearly than I did before.

I shall focus on one fairly simple issue as I understand it—although here, too, we are in the dark—namely, the way in which the implementation of the financial assistance that is to be given to the Scottish Government over the next five years on the population issue will be put into force. I should start by saying that, yes, I welcome the fact that a deal has been done because it is a political situation that we also have to consider, as well as the proprieties, the economics and the constitutionality. Having a deal done means that the Bill can come into force and the Scottish Government can be put in the position of becoming accountable to a greater degree for their actions, possibly exposing themselves to the shortcomings of their policies and attitudes.

As I look at it, in the context of the Scottish block and the Barnett formula, there seems to have been a finesse of a somewhat insidious nature and we need to try to get to the bottom of it. I am perhaps thought pedantic because I do not like to hear the whole financial settlement in Scotland referred to as "Barnett". Barnett is a very small part of it which simply deals with the annual increases that are added to the very substantial Scottish block, and the effect it has on those increases is, by an infinitesimal and unreliable amount, to reduce what comes to Scotland from what it otherwise would have been under the old Goschen formula, when the Barnett formula did not exist. I will not bore the House with the reasons why; I could do so but it has never had much impact on people before so I will ask your Lordships to take my word for it.

7 pm

However, I am concerned about the Scottish block, which is not a very creditable basis for funding any country either. It is the sedimentary accumulation of more than a century of separate financial settlements, year after year, plus a lot of in-year adjustments, where Secretaries of State or other pressure groups have secured extra funding for Scotland because of its special circumstances—and there were indeed very special circumstances at certain times in the past. However, once everything has accumulated on to that Scottish block it stays there for ever, and the new baseline embodies all those increases that have accumulated over the years. That is how the 20% overspend has come about, so that Scotland now gets about 20% more per head than England.

The one redeeming feature of the Scottish block is that from the very outset it was population-based. We got a per capita percentage that was the same as the percentage granted in England. Barnett changed that, converting the percentage to a cash figure when it came to Scotland because a percentage on a higher baseline—here I am explaining how it works after all—would deliver a higher cash figure in Scotland than the same percentage would deliver in England. Clearly that was unfair, and Lord Barnett, as the chief secretary under pressure, managed to secure a deal that gave Scotland slightly less than it would have had otherwise although he still gave it a credible figure because it was directly comparable in cash terms with what was being given to England.

However, that simple and straightforward population formula has been destroyed or very severely damaged by the deal that has taken place. The one buttress of the integrity of the block is abandoned in favour of a deal to compensate Scotland for imaginary, non-existent people, which is very curious. We recently passed an Act of Parliament concerning individual electoral registration, the purpose of which was to find phantom people and delete them from the registers. Now we seem to be doing that in reverse. Can my noble friend explain to me how that is justified?

I understand that if the UK Government take a decision that affects the revenue stream in Scotland, the doctrine of no detriment will kick in, but populations are not political decisions—they are facts. The population is known, the decline or increases are roughly predictable, and there is no case for a subsidy for demographic risks, which do not flow from government actions. However, since it will bring extra billions of pounds to Scotland over the next five years, that must be a detrimental event for the rest of the United Kingdom. It may be described as "per capita indexation" but in reality it can be justified only as a political bung.

My noble friend the Secretary of State said in another place last week that,

"the sum being delivered to the Scottish Government is exactly the same as would have been delivered under the Barnett formula".—[*Official Report*, Commons, 24/2/16; col. 306.]

Setting aside where I differ on the definition of what the Barnett formula does, I simply do not understand how that can happen. If money is being brought to Scotland that would not otherwise have been justified because the population is not what it is pretended to be, how can the rest of the United Kingdom not be disadvantaged by the equivalent of that sum? Anyway, if nothing else, it is at least interesting to note the sudden conversion that this represents of the Scottish National Party to the principle of pooling and sharing. It is a little unfortunate that it did not realise the value of it earlier and in other fields. However, kicking the can down the road, as this deal does, is not a solution to the problem of weaning the Scottish Government off separation.

The Bill was intended to introduce accountability for spending, and this measure undermines that. It was intended to remove the grievance culture but this measure will revive it when the Scottish Government try to enshrine it permanently five years hence—I agree with the noble and learned Lord, Lord Wallace of Tankerness, that there is a lot of vagueness about how that will be handled, and it cannot possibly be to the advantage of good government or democratic accountability. The Bill also perpetuates the dependency culture that constant protection from the consequences of their own actions has enshrined over the years in the devolved Parliament. It may secure the implementation of the Bill, which is desirable, but it does not secure very much else.

Lord Empey: My Lords, I said earlier that I considered the terms of the Smith commission to be effectively a treaty. Nothing I have heard last week or this week has changed my mind on that.

Can the Minister clarify a couple of things? A borrowing power for revenue shortfall is included in the framework. Certainly in Northern Ireland, if we had money left over, we used to be able to roll it over, but that was severely restricted, down to one year. On the point that the noble Lord, Lord Forsyth of Drumlean, made, about the spillovers and the behavioural changes, is that borrowing power designed to deal with the unintended, and perhaps unforeseeable, consequences of behavioural change; for instance, on welfare, which may not have been anticipated—some of it could have been weather-related or there could have been other sorts of issues—and is that borrowing power designed effectively to operate as an insurance policy to keep the wheels going until a review can take place, or are the spillover arrangements effectively an insurance policy against mistakes that are made so that the Scottish Government will not run out of money? What will the borrowing limit be, both for revenue and capital expenditure? Will it be tolerable for capital moneys to be converted and used for revenue? All these things are important, because it has already happened. I understood that there used to be a complete ban on that happening but it has happened, and I wonder where this process is going.

I understand that all the devolved Administrations are now able to borrow from the Treasury through the loans fund. Are there limits on this? The borrowing that occurs in Northern Ireland is becoming very substantial. By the end of the next financial year or maybe the year after it could go up to £3 billion, and £700 million of that is to pay off 20,000 workers because they did not take any precautions and start four years ago to gradually run down the number of civil servants that they knew they did not have money for. Their budgets were provided for them by the Treasury in 2010 and they knew about it four years in advance. Now they are borrowing £700 million to make 20,000 people redundant. I understood that the Treasury was very protective of the national cash limits, but it seems to have lost the plot and is now permitting devolved Administrations to borrow, and there do not seem to be any limits.

Lord Forsyth of Drumlean: My understanding is that it is proposed that the Scottish Government will be able to borrow money on the money markets and issue bonds, and will thus have more expensive borrowing than is available to the UK Government, which is another thing that is difficult to understand.

Lord Empey: I can say to the noble Lord that we raised several times with the Treasury the question of issuing bonds for capital projects. Some people in America who wanted to be helpful said that they would be interested in providing resources. However, the Treasury blocked that on the basis that it would have to go on to the national debt because, unless it was ultimately guaranteed by the Treasury, there would be less likelihood of investors coming forward to take over the bonds. Therefore, the national Government would be required to guarantee the debt. I do not know whether the Treasury is no longer concerned about things going on to the national debt but that used to be the big thing that it wanted to ensure was adhered to. Is the situation here that the Scottish Government's decisions are effectively being insured? If so, I assure the Minister that there will be others knocking on the door for that insurance policy.

Lord MacGregor of Pulham Market (Con): My Lords, I can speak fairly briefly on this occasion because my noble friend Lord Forsyth put the whole case brilliantly and compulsively. I have sympathy with my noble friend the Minister because he has been put in the almost impossible position of having to defend what is, frankly, the indefensible. That is not his fault. I also understand why it has taken so long to reach an agreement on the fiscal framework. It was obviously comprised of many difficult matters, which is precisely why we ought to look at it in much greater detail than we are going to be able to do.

The framework covers a whole range of important matters, which both Houses should be able to look at in detail, yet the other place was not able to do so and we are having the most minimal consideration of it, which is fairly disgraceful. We are not going to be able to go into any detail tonight because we have only just seen the fiscal framework. We were told that we would be able to have a briefing on Friday, but it was postponed until today. We had a briefing at lunchtime today on a whole range of matters, with a lot of criticism and concern being expressed, and those concerns ought to be looked at in both Houses. I stress that, as others have said, this will affect not only Scotland; there are

[Lord MacGregor of Pulham Market]
huge implications for the rest of the United Kingdom, which I shall mention briefly in a moment.

One point that I want to take up is the Barnett formula. I know that there is a slight difference between my noble friend Lord Lang and me on that but I think that we have come to the same conclusion in the consideration of this Bill, as he explained very clearly. I have always been very unhappy about the Barnett formula. I was on the Finance Bill Committee in the House of Commons when the Barnett formula was first created. I remember it well. It was at the time when the then Chancellor of the Exchequer, Denis Healey, made a sudden departure one lunchtime to beg for loans from the IMF. Poor Lord Barnett had to deal with all that as well as a very long and difficult Finance Bill, which included various things such as the capital transfer tax. In sheer desperation he invented the Barnett formula to get himself out of some real difficulties.

We all know that the late Lord Barnett felt that the formula should have gone long ago. It should have been replaced by a formula based on need, as Select Committees from both Houses have recommended in the past, and that seems to be the fair way to go. I heard what my noble friend said but, whichever way you try to demonstrate that the Barnett formula is based on need, it is not, yet it remains an integral part of the fiscal framework and, as I said, it has substantial implications for the rest of the UK—so obviously the north-east of England but many other parts, as well as Wales. It has implications for East Anglia, where I was an MP for 27 years. I remember that there was considerable concern about some of the implications of the Barnett formula for East Anglia. Many MPs now will have very serious concerns about the way in which the framework has been drawn up and how it affects them.

The concerns over the fiscal framework relate not only to the Barnett formula. I was very grateful to my noble friend and the Chief Secretary, who offered a briefing on the fiscal framework today, but the result of that was that many of us had even more concerns and misgivings than we had had when we went into the room. The borrowing powers aspect of the framework has to be debated in this House, and there are many other examples that we could give.

I understand why the Government want to get the Bill on to the statute book before the Scottish election, and my noble friend Lord Lang referred to some of the political aspects, but it is not our fault that this key part of the Bill has come so late in the proceedings. From my long experience in both Houses—as Leader of the House in the Commons, I was responsible for the legislative programme at one stage—I cannot recall any occasion when one of the most critical parts of a Bill has received only the most cursory examination in this House and none in the other place. I support Amendment 56ZA because I think that it would enable us to carry out that examination.

7.15 pm

Lord Higgins (Con): My Lords, along with Burke, I have always believed fundamentally in representative parliamentary democracy, and therefore I have always had severe doubts about referendums. Nothing in the debates that we have had this evening has convinced me otherwise. Indeed, that may turn out to be so in the context of the European Union as well.

The way in which this matter has been handled seems deeply disturbing. A deal is being put forward that is clearly grossly unfair, and I do not think that it would be right for any English Members of Parliament to go along with it. What is absolutely certain is that they ought to have a chance to debate the matter and vote on it, because then they could be held to account for the consequences of the deal which has now been done as a result of statements made during the referendum campaign and as a result of what I can only describe as the "morning after the night before" speech by the Prime Minister.

We have been pushed into a situation where things are being rushed through. There has been no discussion in the other place about the central feature of the deal. We are discussing it only now, on Report, with the dispensation that we can speak more than once and adopt a system of debate close to the Committee stage system, but without having the opportunity for a stand part debate, for example. The whole thing is being rushed through highly unsatisfactorily.

The House should be grateful to my noble friend Lord Forsyth, who has set out the arguments with extraordinary clarity. It ought to be obligatory reading for everyone in the House of Commons, and it is absolutely essential that they should have an opportunity to debate this matter, even at this late stage, so that they can be held accountable for the decision that is reached. I agree with every word that my noble friend said and with all the doubts expressed by every other speaker in this debate, and I very much hope that my noble friend will press his amendment to a Division. If need be, we may have to revert to other aspects of the matter at Third Reading.

We must take this opportunity to give the House of Commons a chance to debate something which is far more important than almost any other issue and of lasting importance, as my noble friend spelled out, in terms of the deal containing a veto relating to reconsideration of the issue in a few years' time. We really must make sure that the House of Commons has a chance to debate this matter.

Lord Cormack (Con): My Lords, following my noble friend Lord Higgins, I add my support for my noble friend Lord Forsyth. We are in danger of forgetting that this is, as the noble Lord, Lord Empey, said, a treaty between the sovereign Government of the United Kingdom and the Government of Scotland, who, we must recognise, are composed of a party whose sole raison d'être is the destruction of the United Kingdom. That is a perfectly legitimate view to hold, but that is the view it holds. We have here a document that, as my noble friend Lord Higgins has just said, is of enormous, far-reaching significance, and it has to be debated in Parliament in some detail.

In another context, a few weeks ago some of us remarked that Governments are accountable to Parliament and not Parliament to Governments. Here, the Government have come to an agreement and are

expecting us to more or less put it through on the nod. It has very far-reaching implications. My noble friends Lord Lang and Lord MacGregor of Pulham Market have both made powerful, brief speeches indicating how vital it is that this matter be properly discussed.

It is the fault of no one in this Chamber that we have had to wait so late for this document. We have not had the chance properly to analyse it. It is full of extraordinarily vague statements and, at the end of the day, a review which will be entirely at the whim of the Government of Scotland, rather than the Government of the United Kingdom. I believe passionately in the United Kingdom, and equally passionately in parliamentary democracy. Neither is being served by debating this far-reaching document in such an unsatisfactory manner. I very much hope that, even at this late stage, my noble friend the Minister will acknowledge that each House of Parliament should have the opportunity to debate this document at some length. At the end of the day, it will probably be endorsed. But then, as my noble friend Lord MacGregor said, it will have been endorsed by Parliament and we will have a degree of responsibility for it.

This is a mess. It is a wholly unsatisfactory situation. We are deeply indebted to my noble friend Lord Forsyth for the calm and analytical way in which he spoke in moving his amendment, which deserves considerable sympathy and support.

Lord McCluskey (CB): My Amendment 67A is in a different group but, with respect, because it deals with the Barnett formula it ought to be considered at this stage. It raises the general question of the formula, as did its predecessor, which contained a reference to the Government's obligation to publish the Scottish fiscal framework.

The Barnett formula runs through the whole document—rather like dry rot in a south Edinburgh house I used to live in. It cost an awful lot to put that right, and I dare say it will cost an awful lot to get this right.

The noble Lord, Lord Forsyth, referred to getting the briefing. I saw the document on Friday, and I came to today's very useful briefing with, like President Wilson, 14 points. However, I did not dare raise the 14 points because many people were anxious to speak and we had very limited time. I do not propose to raise them all now, and I am happy to note that many have been dealt with by others, but there remains one rather important one.

This Scottish fiscal framework is recognised by everyone as being fundamental to the whole Bill. The entire Bill rests upon the Smith agreement, which was reached in nine weeks. It took nine months to frame the fiscal framework. The Smith agreement was reached by 10 elected Scottish politicians—Members of the Scottish Parliament. They included representatives of the Labour Party, the Liberal party and the Greens, none of whom, as far as I can see, have been consulted at all about the Scottish fiscal framework, and certainly not in the formal consultations. It is a very odd situation. This document has been produced between the two Governments, after nine months, and it contains things that are simply not in the Smith agreement.

For example, we talk about "no detriment". I never knew what it meant, and I am happy to say that I was not alone in my failure to understand. The committee of the House of Lords that looked at it could not understand the second detriment, and even the noble Lord, Lord Forsyth, for whom one has the highest regard, was not able to understand it. He asked in vain if anybody would explain it to him, and we are still waiting for an explanation. Now, the paper has come up with something that was not considered by the Labour Party, the Liberals or the Greens: division of detriment into direct detriment and behavioural detriment. Last week, we were told about not behavioural detriment, but indirect detriment. All those concepts have come up to fill out the notion of no detriment, which no one has yet been able to explain.

I want to pick up one or two of the points that have been made, just to show my support for the approach of the noble Lord, Lord Forsyth. Paragraph 7 of the document states that,

"the … block grant will continue to be determined via the operation of the Barnett Formula".

That seems to fly in the face of what the noble Lord, Lord Lang, said, but that is what the document says. House of Lords paper No. 55, *A Fracturing Union?*, states:

"The Formula contains no mechanism to correct any unintended consequences being built permanently into the baseline".

That surely means that Scotland continues to get the benefit of built-in unintended consequences for at least five years, and perhaps in perpetuity, given the remarks made by others about the arrangements at the end of the five years.

The document continues:

"For welfare … and … other spending"—

nothing to do with the Barnett formula, at the moment—

"the chosen method will be the Barnett formula".

Does that mean that, in respect of the devolution of welfare payments, the block grant will be adjusted to give Scotland the benefit of the unintended consequences of the operation of the Barnett formula?

We talk about the unintended consequences, but it is entirely foreseeable—

Lord Higgins: It is intended.

Lord McCluskey: Forgive me—yes. The document that talks about the unintended consequences is the House of Lords document.

One thing is foreseeable: that the Scottish population will decline in relation to the UK population because, as the noble Lord, Lord McFall, pointed out, that has been the position for hundreds of years. In law, or certain branches of it, if you can foresee the consequences of your actions, you are deemed to intend them.

I do not want to go through all my 14 points, but I have the greatest difficulty in understanding paragraphs 15 to 19. I do not understand what is meant by "Income tax, 87.7%"—per cent of what? These things are rather difficult, and they are not explained. Not being an accountant, I am unable to follow entirely what is going on.

I repeat the point that was made a little earlier: if Scotland's population declines in relation to that of the rest of the UK, the funding will not go down

[LORD MCCLUSKEY]
under this document. Funding per capita is bound to rise; that is just inevitable. So I do not see how we can have "no detriment" to Scotland without causing detriment to other taxpayers throughout the United Kingdom.

On a point of detail that I hope will be echoed by my noble and learned friend Lord Hope of Craighead, the courts and tribunals are dealt with in paragraph 28. There is no agreement, apparently, as to who is to pay for the Supreme Court. I am not sure whether it is regarded as a court in Scotland or a court in the United Kingdom. That is a small detail.

I have little more to say. However, I do not understand how the £200 million figure and others related to it can possibly be justified. They are certainly not justified within the document.

My other amendment relating to this issue concerned the independent scrutiny of these matters in Scotland. However, this is now going to be dealt with by a government amendment and I give notice that I will not seek to move Amendment 67.

7.30 pm

Lord Hope of Craighead: My Lords, in view of the difficulties to which the noble and learned Lord has drawn our attention, does he agree that clarity and dispute resolution is absolutely crucial? This issue is ripe with areas that will give rise to dispute of various kinds and it cannot be left in a position where there is no mechanism for deciding them.

Lord McCluskey: My Lords, that was my 14th point. My notes state that the arrangements for resolution of these disputes read like the draft of a script for a BBC drama that would put "War and Peace" to shame.

Lord Campbell of Pittenweem (LD): My Lords, I have been provoked to make a contribution arising out of the nature of the debate. I hope it is not a question of piling Pelion upon Ossa for yet another lawyer to offer what may be an obstacle. The right of judicial review may apply in circumstances where either of the two institutions makes a decision that does not pass the test of reasonableness. If there were such an application for judicial review in relation either to the conclusions or to the implementation of the conclusions of this agreement, that would certainly bring the validity of the agreement under considerable scrutiny.

Others have referred to the imperfect nature of dispute resolution. In the worst case the Supreme Court, which has just been referred to, could find itself engaged in these matters. That is more akin, of course, to a Supreme Court in the United States rather than the one we consider here. Therefore, there might be fundamental constitutional implications and unintended consequences from what is proposed.

The Earl of Kinnoull (CB): My Lords, I want to come in on a similar theme and echo the earlier words of the noble and learned Lord, Lord Hope of Craighead. At roughly one o'clock last Monday my email system received a helpful letter from the noble Lord, Lord Dunlop. I thank both Ministers, who have been unfailingly courteous and very helpful in these extraordinary circumstances. That was said earlier and I wish to say it as well. The letter I received at one o'clock on 22 February was extremely complimentary about the negotiating position of the Government. It enclosed a letter to Pete Wishart. Paragraph 3 of that letter said:

"The UK government agrees with the Committee that the Indexed Per Capita … model would '*breach the second no detriment principle, that of taxpayer fairness*'. This model would see Scotland benefitting from an ever-increasing share of income tax from the rest of UK, irrespective of the Scottish Government's policy decisions or relative economic performance".

That is clear.

The following day—less than 24 hours later—we were told that the fiscal framework had been agreed. Paragraph 17 of that states:

"For a transitional period covering the next Scottish Parliament, the Governments have agreed that the block grant adjustment for tax should be effected by using the Comparable Model (Scotland's share)"—

that sounds okay—

"whilst achieving the outcome delivered by the Indexed Per Capita … method for tax and welfare. This will ensure that the Scottish Government's overall level of funding will be unaffected if Scotland's population grows differently from the rest of the UK".

I know this point has already been put to the Minister but I put it forcefully again and ask whether those two paragraphs can be reconciled clearly for the House so that we can understand what happened. I suspect that, quite simply, the white flag was run up to conclude negotiations for political expediency.

I now turn to the review clause and to the point made by the noble and learned Lord, Lord Hope. Paragraph 23 states:

"The two governments will jointly agree the method as part of the review. The method adopted will deliver results consistent with the Smith commission's recommendations, including the principles of no detriment, taxpayer fairness and economic responsibility".

That means essentially that all one has managed to do is to kick the hand grenade six years down the line. It will blow up and there will be a terrible constitutional crisis in Britain. I agree with the noble Lord, Lord Campbell of Pittenweem, and other noble Lords that we need to head this off at the pass. I urge the Minister and the Government to do something about this issue before the Bill goes on to the statute book.

Lord Kerr of Kinlochard (CB): My Lords, I, too, am very concerned about the review provisions. The noble Lord, Lord MacGregor, was absolutely right in what he said about the Barnett formula and I agree with every word. Of course it should be needs based. However, I fear that that pass is sold. It was sold in the vow; it was sold before Smith even started. It is a great mistake and very damaging but we are where we are.

I am struck by the same point that the noble Earl addressed on paragraph 17. We are saying there that in the fiscal framework talks both parties have agreed that the right block grant annual indexation mechanism should be the comparable model, but they have agreed that it will not be used up to 2021; the wrong one will be used. Then comes the review, with no terms of reference set out, and the decision-making machinery in the review is that both Governments have to agree. As the French say, rien ne dure plus que le provisoire—nothing lasts longer than the temporary. I am afraid

that the can is being kicked down the road not only until 2021 but as far as the eye can see. That is a serious mistake.

I agree with the noble and learned Lord, Lord Hope, on the dispute settlement mechanism, which, on the face of it, simply does not make sense—ending up with, "if they do not agree there will be no fiscal transfer". What is that? Is it a nuclear weapon in the hands of the Government so that the whole thing stops? Is it a plausible nuclear weapon? Is it a credible deterrent? I do not think so.

However, we are where we are. I greatly sympathise with the noble Lord, Lord Dunlop, who handles these matters very well, but what are we expecting him to do? Are we expecting him to tell us tonight, "Okay, we will change the fiscal framework because the House of Lords does not like it"? I do not think he can quite do that, though his skills are legendary. However, the noble Lord, Lord Forsyth, may have the answer in Amendment 68—not the amendment to which the noble Lord, Lord Higgins, drew attention—which suggests that it would be a good idea that both Houses of Parliament should have a chance to have a serious discussion about the fiscal framework.

As a Scotsman, I admit that I am torn. When Mr Hogg passed the ball successfully in the last minute against the Italians and the Scots finally won a game, I was very pleased. It looks as if Mr Swinney is the Hogg of this particular match. There are consequences for the United Kingdom, for Northern Ireland, for Wales and for the north of England, so the UK Parliament should address the fiscal framework before the Scotland Bill goes on to the statute book. If the noble Lord, Lord Forsyth, were to press Amendment 68, I would be inclined to go with it.

The Earl of Caithness (Con): My Lords, we are in a mess. It is a very sad occasion when you get a situation like this where the pass has been sold. What is most interesting about the debate is the number of Scots who are questioning this because it affects adversely the rest of the United Kingdom, and I add my name to that list. I have never before attended a debate in this House, in the many years that I have been here, which has involved so many Scots who are all on the same side against an agreement that is beneficial to Scotland. Let us make it absolutely clear: Scotland had a very good deal before the present devolution agreement and it now has an even better deal. It will rank as one of the great victories that the Scots have achieved over the English Government. It is the UK Government in this case, but as far as the Scots are concerned, it is the English Government.

At the meeting this afternoon my noble friend Lord Dunlop said that this is a significant agreement which provides the opportunity to end the blame game. Actually, nothing could be further from the truth. This will not end the blame game—the blame game will continue. All of us who have been brought up in Scotland know full well that whatever the UK Government concede to the Scots Government, particularly the Scots nationalist Government, it will never be enough. The blame will continue.

We have an interim agreement but a permanent agreement. The interim agreement has handed over the grenade, as the noble Earl, Lord Kinnoull, said, to go off five years or five and a half years down the road. No one is going to want to handle that grenade, and as the noble Lord, Lord Kerr of Kinlochard, said, it will be passed on again. So we have a false but permanent agreement which is of huge detriment to the rest of the United Kingdom.

Lord McCluskey: Perhaps the noble Earl will permit me to ask him a brief question arising out of what he has said. If those of us who reside in Scotland are going to benefit so much, as we all think we are, should we be declaring an interest in speaking in this debate?

The Earl of Caithness: My Lords, having recently moved from Scotland to London, I will leave that to the noble and learned Lord, but I would certainly declare an interest—not that the Scottish Government in Edinburgh are remotely concerned with what happens in Caithness; they are much more concerned with the central belt. I do not think that Caithness is going to benefit very much.

I raised at the meeting hosted by my noble friend this afternoon the question of the tangential consequences of the no-detriment principle. It was quite clear that the Chief Secretary thought that this was a grey area. Let us take the example mentioned earlier by my noble friend Lord Forsyth and myself, of air passenger duty and the Edinburgh-Glasgow axis against the Manchester-Newcastle axis. If consequences flow from that, they are going to be very hard to prove, and, quite frankly, as far as I could determine, the Chief Secretary was not terribly interested in them. But if they can be proved by one side, we then get into the question of the resolution mechanism. The lawyers in this House have clearly shredded the mechanism that is before us, so we are now in an even worse situation in that we have a mechanism that is not going to work satisfactorily from the legal point of view; that will be difficult to implement in the first place; and that could be highly prejudicial to the north of England and other areas in the rest of the United Kingdom.

I have some sympathy with my noble friend on the Front Bench. I have been in his position when the whole House was against me and the only people on my side were those who were sitting to my right and to my left. That is the situation today. However, I would ask him to take this away and try to implement something of what my noble friend Lord Forsyth has requested. Of course this has to be a political deal in the end, but it is one that the United Kingdom Government have lost and the Scottish Government have won.

7.45 pm

Baroness McIntosh of Pickering (Con): My Lords, I have a great deal of sympathy with the arguments put forward by my noble friend Lord Forsyth, as I do for those put by my noble friend Lord Caithness as regards the cross-border implications. As a Scot by birth and resident in the north of England for the past 18 to 20 years, the air passenger duty alone has enormous implications; those points have been well made.

The noble Lord, Lord Kerr, asked: what can we ask the Ministers on the Front Bench to do? They have been immensely helpful and have been bending over

[Baroness McIntosh of Pickering]
backwards to answer many of our queries. But to have a Statement and a debate last Wednesday on a document that was available only on the Thursday certainly posed great difficulties for those of us who have legitimate questions to ask. We had a briefing earlier today on the question of fiscal scrutiny. I am a newcomer to the Chamber, but I believe that the main thing that your Lordships' House does extremely well is to scrutinise the legislation that comes before us. I believe that it would be hugely remiss of this Chamber not to scrutinise the fiscal framework, which as I say has been put before the House only in the past week.

We are being asked to take it on trust that the Scottish Government will table an amendment that will allow the Office for Budget Responsibility to have some force in this process in the Scottish Parliament. But what if that amendment is not forthcoming? The present complexion of the Scottish Parliament and the Select Committees that would normally perform the scrutiny of this and other parts of the Scotland Act, as it will then be, is by and large SNP; they are populated by a large majority of Members of the Government from that party. I cannot believe that the scrutiny will actually take place in the Scottish Parliament to the extent that we would wish to see.

I have some sympathy with Amendment 56ZA for the simple reason that we would be failing in our duties if we did not subject the fiscal framework and other parts of the Bill to scrutiny by your Lordships' House. The noble Lord, Lord Kerr, asked what we are asking Ministers to do. I do not think that we wish to delay. It would not be in the interests of your Lordships' House or of Parliament to delay the adoption of this Bill, but we owe it to the people of Scotland and the people of the United Kingdom to scrutinise the fiscal framework and those remaining parts of the Bill of which we have not previously had sight.

Lord Turnbull (CB): My Lords, after long negotiations we have arrived at an outcome that was pretty predictable. Scotland has taken the approach of "What we have we hold" and has very largely succeeded in that. The UK Government have followed the philosophy of Mr Wilfred Pickles: "Give 'em the money, Mabel". It all takes as the starting point the Barnett formula with all its faults. Reference has been made to the fact that there is no provision for needs. Scotland has a substantially greater GDP per head than Wales and, indeed, all the regions of England except London and the south-east, but its public spending per head is substantially higher. All efforts since 2009 to tackle the concept of needs have foundered.

The other flaw, as described by the noble Lord, Lord Lang, is that this is incremental rather than based on levels. At the end of each spending round there is a calculation of the increase in spending in English departments and a population share is applied to Scotland. The population of Scotland has for many years been growing more slowly, so that share, within the Barnett formula, should gradually decline over time. The problem is that it is adjusted, I believe, with a considerable lag, resulting in Scotland always being overpaid as the population is calculated as being higher than it is. Is a bit like the old payrolls of the print unions before reform.

It is a bit like PAYE. If you get a tax code from your inspector, and then it turns out at the end of the year that you have not paid enough tax, he does not one but two things: he adjusts the tax code to capture what he thinks will be the right amount of expenditure for the coming year, but he also adds a bit more or takes a bit more off the tax code, to ensure that the past excess was recovered. Of course, in the Barnett formula, that second adjustment never takes place.

I am getting to the important area of lack of clarity. We are told that, on the one hand, there has always been in its 30-odd years an element of applying a population share. The Barnett formula accepted that that would decline over time. Then there is the sentence about protecting Scotland against population risk. There are two interpretations of this, which have very different outcomes. The first is that you do the Barnett formula in the normal way, including the calculation of a population share. Then you come to the BGA—the block grant adjustment—which is on the basis of a per capita change in tax. In other words, a population element that is frozen applies only to the block grant. If it means that the adjustment on the expenditure side has also been frozen, it is not simply perpetuating the Barnett formula as we have known it, it is making it more generous. We need to know which it is. One is what we would always expect to be the outcome of these negotiations, and the other is an outrage. That ought to be explained to us.

One feature of this is that the balance of risks between Scotland and the rest of the United Kingdom has been changed to some degree. Scotland has been set a challenge. If it is to maintain the block grant at the rate that it would have grown had the Barnett formula never been changed, it now has to increase tax per head at least as fast as in the rest of the United Kingdom. That is taking the population out of that bit of it. That is quite a considerable challenge. What I think is happening here is that we are entrenching an existing privilege. It is preserving the unfairness to the other devolved Administrations and the English regions. Maybe we have the prospect that it will not get any worse, but that all depends on the answer to the question about whether the population share on the expenditure side is also being frozen.

A point was made about borrowing. I think the answer is that under an amendment that was originally tabled by my noble friend Lord Kerr, but has now been effectively adopted by the Government, limits will be set. It is recognised that the borrowing of Scotland is part of the borrowing of the United Kingdom. Whether the Government explicitly say it is guaranteed, effectively it is.

My conclusion is that we have been blackmailed by threats of a second referendum if the Smith commission was not implemented in full. We need to lose our fear of the second referendum because it is now apparent that, having been sold a prospectus that Scotland could afford to go it alone with no great detriment to its economic prospects, with oil at $110 per barrel, it cannot do it with oil at $33 a barrel. In effect, it would be voting for bankruptcy. I suspect that a lot of this stuff is bluff and in future negotiations we should not be intimidated by it.

Lord Hollick (Lab): My Lords, we have arrived at a rather unsatisfactory situation. We were given the fiscal framework at the end of last week. We have seen no worked examples and have had no opportunities to scrutinise the framework in any detail. The Economic Affairs Committee spent some months evaluating all the aspects of the fiscal framework and, in particular, the various methods that could be used to adjust the block grant. None of them was perfect. Indeed, it was extremely difficult and we concluded that to meet both the requirement for fairness with reconciling the Barnett formula and the various elements of the fiscal framework, somebody would lose out.

The provisional conclusion is that the rest of the United Kingdom will lose out. Our specialist adviser, Professor Bell, spent the weekend trying to unpick and understand the fiscal framework. He concluded, based on the fact that although the Government agreed that the comparable method to calculate the annual block grant should be used, that will in fact not be used. Instead, as we have heard from a number of speakers, the per capita method, which ties the reduction in Scotland's block grant to the rate of growth of per capita tax revenues in the rest of the UK will be used, but it will be adjusted for the rate of population growth in Scotland.

What does that all mean? It means that, either way, Scotland wins. That seems to me to undercut the whole principle of further devolution whereby you have taxes and take responsibility for how they are spent and how the economy grows. Scotland is essentially having its cake and eating it. As far as the impact of choosing not one but two different methods, which can sometimes contradict one another, to settle the block grant, we have a position of great confusion. That position of confusion will apparently last for five years. Our specialist adviser, Professor Bell, calculates that assuming that tax revenue per capita grows at 4% per annum in both Scotland and the rest of the UK over this five-year period, the Scottish block grant will be £280 million per annum larger by 2021, due to the application of the per capita rather than the comparable method. Further, the comparable method will cost the rest of the UK taxpayers £350 million more in 2020-21 than the levels deduction, which is another method of calculating this, would.

In other words, more than £600 million appears to have moved across the table from the rest of the UK to Scotland, so this is a triumph of negotiation by Scotland and congratulations to them. However, the political consequences are grave for those parts of the UK which, under the Barnett formula, already receive less than they would certainly be entitled to on a needs basis. This creates, quite naturally, for the north-east, south-west, East Anglia, and other parts of the UK a very unsatisfactory position and a very strong case for a complete review of how funding is allocated, particularly in England, which we are seeing is now going for much greater devolution.

The devolution train has left the station for Scotland and is leaving the station for other parts of the UK, but the funding formula to cope with that is frankly broken. It needs to be looked at. Naturally, as I think I inferred from the comments of the noble Lord, Lord Empey, other nations will look carefully at the settlement to see whether there is something in it for them.

It is a mess. I will leave it to the noble Lord, Lord Dunlop, to decide how we will get out of it, but frankly I believe that the tactics that have been used by the SNP to force this—I can understand the politics and the desire to have this all settled before the elections—have left us in a very unsatisfactory position.

Just one more thing: earlier speeches referred to paragraph 17 of the framework agreement, which says that,

"the block grant adjustment for tax should be effected by using the Comparable Model (Scotland's share), whilst achieving the outcome delivered by the Indexed Per Capita".

I interpret this as being an annual discussion of what the arrangements are. We are kidding ourselves slightly if we think that this will go on for five years and we are in a stable state. This will have to be reviewed each year, year in, year out. Passing a fundamentally important piece of constitutional legislation in the absence of proper scrutiny and debate in both Houses makes this a very black day.

8 pm

Lord McFall of Alcluith (Lab): My Lords, even if one were dozing during this debate, there would be no doubt how the House felt on the issue. I note the comment of the noble Lord, Lord Kerr, that the debate on the Barnett formula is lost. We must realise that situation. I shared a flat near Joel Barnett for many years. Joel never tired of telling me that the Barnett formula was introduced in 1978 to settle a relatively minor dispute in devolution so that he would get "them" off his back. He used a profane word that I will not use in this House. However, since 1978 that formula has stuck.

When I was in the other place, the noble Lord, Lord MacGregor, manfully defended the Treasury but still was very generous with the Barnett formula. The noble Lords, Lord Lang and Lord Forsyth, as Secretaries of State for Scotland, skilfully manoeuvred the Barnett formula in Scotland. I had to sit on the Opposition Benches and admire their chutzpah on that particular issue. That is the politics of the situation now. Sadly, in many ways the political bandwagon has moved on but the analytical one is behind it.

At the end of last week, the First Minister said that there was not a penny of detriment to Scotland. She spat that out but every Scottish party in the Scottish Parliament agreed with her. The noble Lord, Lord Forsyth, mentioned in adulatory terms Professor Jim Gallagher. I looked at Jim Gallagher's blog at the weekend. I mentioned that every Scottish party was involved but he said that, in the event, with the fiscal framework,

"the politicians have come to a compromise: one suggested first, publicly at least, by the Scottish Conservative leader Ruth Davidson".

She proposed this, and then the Chancellor, George Osborne, intervened and offered the Scottish Government a safety net for the first five years. That effectively delivers what the SNP Ministers asked for: namely, protection for their tax income in the event that Scottish population declines. That is the reality, so

[LORD MCFALL OF ALCLUITH]
perhaps I am not being ungenerous in saying that maybe the right hand of the Conservative Party does not know what the left hand of the Conservative Party is doing.

Lord Forsyth of Drumlean: Speaking very much for the right hand of the Conservative Party, I think that perhaps the noble Lord did not hear the quote from Jim Gallagher. He said that the compromise the Treasury gave is that it handed over the money. That is what we are talking about: it is not a compromise.

Lord McFall of Alcluith: My Lords, the noble Lord tells us nothing new. I looked at that issue as well. I think I made the point in the last debate here that the two no-detriment principles are irreconcilable. We must try to work out the politics of that at a later date but there is absolutely no doubt of that. Professor David Bell in his submission and the work he did for the Economic Affairs Committee illustrated that very much. In fact, I sat for about three hours looking at that report from the IMF with David Bell and I thought I was back at university. After those three hours, I understood maybe 15% of the whole issue. It is hugely complex—we all agree on that.

I mentioned the issue of the safety net. This is a good deal from Her Majesty's Treasury but after the five years there will be the review. What will the Treasury do at that time? That will depend on how the population looks then and what other political and economic factors are going on. I agree with individuals who say that this is a five-year or six-year proposal. At the end of the day, negotiations must start again. One thing I am interested in here is to see that we develop a narrative as a result of this fiscal framework which will ensure that the grievance mentality is abandoned. Some would say it will not be but there is a possibility of that happening. I will mention that later on in my speech.

For clarity's sake, we see that the Scottish Parliament is supported by, as we said, shared UK resources from Barnett, its own tax revenues levied in Scotland, and a cash supplement from UK resources. That could possibly force all the parties in Scotland to go into what they are offering the Scottish electorate in terms of tax and spend. We have seen it already; today I read it in the *Scotsman* as I was coming down in the plane. For the first time, in many ways, we are getting on to the reality of devolution and have moved on from the process. Sadly, the Labour Party was very much involved there because it was mentioned that devolution was a process rather than an event. That got it wrong. As my old friend Tam Dalyell said, it was like a motorway without exits. Let us try to build the exits as a result of this fiscal framework.

We can go on indefinitely in asking who won the fiscal framework battle. Yes, the Treasury model is being used. We call it levels reduction. Yes, the UK is reimbursing Scotland for any money it would have received under the indexed per capita deduction in place. In effect, one side is happy saying, "The Treasury model is being used". The other side is happy saying, "Yes, it is being used but we ain't going to be disadvantaged because at the end of the day the per capita will be involved". How far has that taken us? It has taken us five years down the road in terms of politics. We will have to come back and see how far it takes us down the road in terms of finance.

There is a big picture here as well, which nobody has mentioned. This will be the biggest ever transfer of powers to the Scottish Parliament. In fact, it will have as much autonomy as it had in 1707. It has demanded both good will and compromise to reach that position.

On that particular point, I commend the Government for their work in this area. However, in terms of the reporting of the fiscal framework, it could be helpful if the Government teased this issue out. The fiscal framework states that the Government will be required to produce reports on the implementation and operation of new powers in line with those produced under the Scotland Act 2010. Will this be done on an annual basis? If not, when will such reports be published? If we are to have an independent review, it should be set up very quickly and should not wait until the last minute, as we had to do with the fiscal framework now, where eight weeks of Smith translated itself into a secret cabal deciding it and then presenting it to us. We should have that transparency so that that independent commission can report to Parliament on an annual basis. By doing so, there will be transparency and individuals can look at it from the two no-detriment principles—particularly the second, of fairness to UK taxpayers.

This is a solution. Is it a neat solution? We can argue about that until the end of the day but there is a political momentum on this issue with the political parties in Scotland. The Government have responded to that. We wish them well in the negotiations.

Lord Higgins: I am most grateful to the noble Lord for giving way. We have had an extremely interesting debate on various aspects of the fiscal framework, but that is not actually what the amendment is crucially about: it is whether or not each House of Parliament should have an opportunity to approve it. That is what we are voting on. Despite all the technical discussion and so on which has been admirably set out and considered, the crucial issue is that the other place must have an opportunity to debate this. It would be absurd if the whole thing goes through without the House of Commons having debated it at all.

Lord McFall of Alcluith: My Lords, I take the noble Lord's point on that but right at the beginning of my speech I made reference to all political parties in Scotland and to the leader of the Conservative Party in Scotland, whose idea this was, which was adopted by the Chancellor of the Exchequer, according to Professor Jim Gallagher. Some people are waiting to say that the unelected House of Lords is stopping a Bill which is in Scotland's interests. So do we go with the intellectual case, which always appeals to me, or do we understand the politics in Scotland at this time? If we have a gap in this fiscal framework where this House can understand what is happening on a year-by-year basis, we should give the Government the benefit of the doubt on that issue because the political force is with all political parties in Scotland. I commend my speech on that point.

Lord Dunlop: My Lords, it is fair to say that this has been a very wide-ranging debate and I thank all those who have taken part. I recall that at Second Reading my noble friend Lord Forsyth said that he looked forward to giving me a Glasgow handshake. As the House knows, he always makes good on his promises.

Before I address the substance of the amendments, I will try to address as many of the points that have been raised as possible, although there have been so many that I cannot guarantee to cover absolutely all of them. My noble friend mentioned Professor Jim Gallagher. Professor Gallagher, who is well known to many of us, also wrote a long article in the *Daily Record*, in which he described the Government's comparable model as an ingenious compromise solution. While it is certainly the case that for a transitional period the UK Government are bearing population risk, I confirm to the noble Lord, Lord Turnbull, that, on the spending side, the population share will not be frozen at the point of devolution. However, this is a transitional period. Even my noble friend Lord Forsyth would prefer to move from the Barnett formula to a needs-based formula. Even in his thinking there is provision for transitional arrangements. Even in the transitional period that is part of this agreement, the Scottish Government bear economic risks. That means that if Scotland's tax per head grows more slowly than in the UK as a whole, that is a risk the Scottish Government will have to manage even within the transitional period.

8.15 pm

How much the Scottish Government will have to pay going forward with this substantial act of fiscal devolution will depend ultimately on the decisions that are taken by them and how well the powers that they will get are used. So if there are fewer people in employment or productivity grows more slowly, or the composition of Scotland's population changes and there is a higher proportion of retired people, those are all risks that the Scottish Government will have to manage.

My noble friend referred to a premise that has been mentioned that, had the comparable model been in operation since 1999, it would have delivered additional funding to Scotland. That is true because Scotland's relative economic performance during that period was strong. Tax per head was rising faster than in the UK as a whole. I ask the House to consider that, if we had not reached an agreement, I am sure I would have been hauled over the coals and the consequences of that would have been crawled over in great detail by this House. What is the counterfactual here? If we had not obtained an agreement, the financial outcome for the rest of the UK would have been no better than under the deal that we have negotiated. A figure of £350 million has been mentioned. It is not a figure that the Government recognise. Therefore, we would not have obtained an agreement that was financially better for the rest of the UK but we would have lost something quite significant—the transfer of these powers and the greater fiscal responsibility sent to the Scottish Parliament. One can only imagine what would happen after the Holyrood election. The whole debate about more powers would be reopened. That would not be in the interests of the UK as a whole or of the stability of the union.

There has been much mention of the Barnett formula and the need to replace it with a needs-based formula.

Lord Forsyth of Drumlean: I entirely accept the Minister's argument that if we were to move to a needs base, or whatever, there would have to be transitional arrangements. However, what about the point that this fiscal framework has given the Scottish Government a veto on any new settlement, which means that the transitional arrangements would become permanent?

Lord Dunlop: I am coming to that point. The idea that it would be easy or straightforward to replace the Barnett formula with a needs-based one—or seek to do so—does not stand up to scrutiny. I have read, with great interest, the report of the House of Lords committee on the Barnett formula, published in 2009. John Swinney, now Deputy First Minister of Scotland, gave evidence to that committee's review and made it absolutely clear that he did not support the move to a needs-based formula. There has been lots of talk about a veto. Another way of putting that is that if you do not have a veto then the UK Government unilaterally imposes something on Scotland. In that situation, we would have to proceed as we have done in this fiscal framework agreement—by negotiation and agreement.

The no-detriment principles have been raised several times in this debate. I have talked directly to people who sat on the Smith commission including the noble Lord, Lord Smith, himself. The commission recognised that these were high-level principles. It was always accepted that the two Governments would have to sit down and decide how those principles were applied in practice. It is not surprising that there is a greater level of detail and a lot of talk about the direct effects, which we want to capture mechanically in the agreement. However, the indirect, spillover effects are very difficult to capture, because of the causality. It is the direct effects which we are seeking to capture in this agreement. Although there is a backstop power to deal with the spillover effects, it will be used rarely. One needs to draw a distinction between the review, where we need to proceed and get an agreement, and the dispute resolution mechanism, which is very much attached to specific issues regarding how spillover effects actually work.

I turn to the review itself. It is obvious and self-evident that this is five years away. The details of the review have still to be determined. I am not going to stand here today and say otherwise, because noble Lords would not accept it. The Government would positively welcome the House of Lords Economic Affairs Committee feeding in its views about how the review should be structured. That would inform the deliberations we will have with the Scottish Government about constructing that review.

Lord McFall of Alcluith: Will the Minister take up the point I made earlier about an annual report on this issue to both Houses, and the Scottish Parliament, so that we get transparency and accountability?

Lord Dunlop: I am very happy to make that commitment. The Government intend to make an annual report to Parliament that will cover how the powers under the Smith agreement are being implemented

[LORD DUNLOP]
in practice. That is fundamental to our approach. Regarding the review, I can confirm what has already been confirmed: there is no default position for it. All the evidence that will be built up over the succeeding five years will be on the basis of the Government's comparable model.

I turn to the prospects of reaching an agreement. This review will be informed by an independent report. We will have had five years of experience of how these powers operate. Instead of seeking to negotiate in the months leading up to an election, this will be a negotiation after an election. Those conditions lead me to believe that an agreement can be reached.

Lord Wallace of Tankerness: The noble Lord has indicated—and the agreement says—that the report has to be received by the end of 2021. What will happen if we are approaching the financial year 2022-23 and there is no agreement? While he is right to say that there is not an election to focus minds, one imagines—although one does not know—that there will not be the passage of a Scotland Bill to concentrate the mind either. Given how close we are to the start of the next financial year, when there is actually a Bill that we hope to pass before the Easter Recess, what happens if that imperative does not exist? What will the position be then? Will it be the transitional arrangements or will it be the Treasury model?

Lord Dunlop: I am not sure I will be able to satisfy the noble and learned Lord on that point because I have learned not to deal in hypotheticals or to speculate about what might happen in five years' time. As I say, I think the conditions that pertain then will be favourable to reaching an agreement and I am confident that we will reach an agreement at that time.

On the amendments relating to the fiscal framework being approved by Parliament, the Government do not believe it would be appropriate to subject the framework as a whole to approval by both Houses. Many aspects of the fiscal framework are administrative, not legislative, and the need to update these aspects requires a degree of flexibility. There is also no precedent for these non-legislative aspects to require parliamentary approval; for example, the block grant adjustment mechanism arising from the power to devolve under the Scotland Act 2012 was not subject to separate parliamentary approval.

Lord Higgins: This is a matter of enormous importance. Would it not be absurd if the central part—the heart—of the Bill were to go forward with the House of Commons not having had any opportunity at all to debate it? It is inconceivable that that should be right. It is really important that the other place should have a chance to express a view.

Lord Dunlop: My noble friend is of course quite right that the fiscal framework should receive detailed scrutiny from this Parliament. I know that this House will play a full part and I anticipate that the House of Commons will do the same. What the House is being asked to do today is to scrutinise and approve one of the most significant aspects of the framework: the capital and resource borrowing powers. The noble Lord, Lord Empey, raised this issue and we will have an opportunity to debate it in detail in the next group of amendments. Dr Angus Armstrong of NIESR told the Lords Economic Affairs Committee that the question of borrowing is,

"the most important question in the whole debate".

In due course, this Parliament will also be asked to approve changes to tax legislation as a result of the fiscal framework and the Smith commission. That legislation will be scrutinised by Parliament in the usual way. Likewise, the legislation required in Westminster to establish the Scottish Fiscal Commission on a permanent footing by means of an order under the Scotland Act will receive scrutiny in both Houses before it is approved. As I said to the noble Lord, Lord McFall, the Government have committed to report annually to Parliament on the operation of the framework. I know that these reports will receive full scrutiny.

At the end of the day, the fiscal framework has been agreed between the two Governments. To introduce a further process at this stage would not only delay the transfer of powers, it would mean that the UK Government—

Lord Wallace of Tankerness: I understood the Minister to say that the establishment of the Scottish Fiscal Commission will require an order of the United Kingdom Parliament. I understood it to be a Bill that was going through the Scottish Parliament to establish the Scottish Fiscal Commission and put it on a statutory basis. Can he elaborate? What would be the content of an order in relation to the Scottish Fiscal Commission that would have to be passed by both Houses of the United Kingdom Parliament?

Lord Dunlop: I think I am right in saying that it does require this Parliament to establish the Scottish Fiscal Commission as a statutory body but I am happy to clarify that in more detail, perhaps in succeeding debates that will deal with this issue. That is certainly my understanding.

Lord Forsyth of Drumlean: Presumably my noble friend is anticipating using the Henry VIII clause for that purpose. Can he just explain to me how it can be right that the Scottish Parliament—in my view, quite rightly—and the Scottish Government have insisted that the fiscal framework should be available to the Scottish Parliament before it gives approval to this legislation but he is maintaining that that should not apply to the House of Commons?

Lord Dunlop: I am not sure that is what I am maintaining. The fiscal framework is available to this House and to Parliament and we are having a debate about it now.

Lord Cormack: My noble friend's answer to the noble Lord, Lord Forsyth of Drumlean, beggars belief. The House of Commons has dealt with this Bill. The only part of this Bill that would go back to the House of Commons would be any amendment passed by your Lordships' House. That is unlikely, for all sorts of reasons. Surely this most important, central element of the Bill, which the other place has not had a chance to look at, should be sent to it so that it can look at it?

Lord Dunlop: My Lords, perhaps I can deal with the point that in some way the Scottish Parliament and the UK Parliament are being treated differently. As the House knows, if the Bill is to reach the statute book before the Holyrood elections, the Scottish Parliament needs time to consider and pass a legislative consent Motion. But to be clear, this is not consent for the fiscal framework itself but consent for the Bill, having seen what the fiscal framework is. This Parliament is in exactly the same position: it is being asked to approve this Bill informed by the publication of the fiscal framework, which we have now done.

8.30 pm

Baroness McIntosh of Pickering: Did I understand my noble friend to say that this House and the other place will be able to debate the annual reports on the fiscal framework, which will have been adopted by the Scottish Parliament, but will not be allowed to debate the fiscal framework itself now? That seems rather bizarre.

Lord Dunlop: I think that we are debating the fiscal framework at this moment. As to whether there will be debates on the annual reports, it will up to each House to decide what debates it wants to have on them and what scrutiny it wants to give. Given the interest in the subject, I anticipate that there will be detailed scrutiny.

Lord Forsyth of Drumlean: I am sorry, but my point to my noble friend is this. The Scottish Parliament will decide whether it is going to give legislative consent to this Bill, which will have the effect of making the Bill reach the statute book. It has the opportunity of discussing the fiscal framework because we now have one.

Lord Higgins: And of approving it.

Lord Forsyth of Drumlean: Yes, it has the opportunity of approving it, whereas the House of Commons has not had the opportunity to do that. What possible justification can there be for not giving the elected Members of the House of Commons the opportunity to consider the fiscal framework, which has implications for the whole of the United Kingdom, when the Scottish Government have quite rightly insisted that they would not give legislative consent without the Members of the Scottish Parliament having an opportunity to consider it? I honestly think that my noble friend has to concede that there has to be an opportunity for the House of Commons to be treated in exactly the same way as the Scottish Parliament.

Lord Dunlop: That is a matter for the House of Commons; it is not a matter for the House of Lords. The House of Commons has decided to pass the Bill through its stages, in full knowledge of what the state of play was on the fiscal framework.

Lord Higgins: It had absolutely no knowledge of what the state of play was on the fiscal framework and it ought to have an opportunity to debate it.

Lord Dunlop: That really is a matter for the House of Commons, and not for this House of Lords. That House has to decide how it wants to deal with these matters and has done so.

Lord Forsyth of Drumlean: Will my noble friend allow me one more time?

Lord Dunlop: I will give way one more time but throughout the passage of the Bill, I think that I have taken every intervention and I really need to make progress.

Lord Forsyth of Drumlean: We are all extremely grateful to my noble friend and very sympathetic to the position in which he finds himself. However, he says that it is a matter for the House of Commons. If we were to pass my amendment then it would go back to the House of Commons, so it is a matter for the House of Lords whether the House of Commons will get the chance to consider it.

Lord Dunlop: For the reasons that I have explained, the Scottish Parliament is giving its legislative consent to the Bill and this House is being asked to approve the provisions of the Bill, so we are absolutely on the same footing.

Turning to the review of the fiscal framework, this is an agreement between Governments and it will be operated by Governments. Ultimately, therefore, the formal review should be conducted by Governments. However, as I have said, there is plenty of room for independent contributions. We have built an independent report into the review process for the first time for Scotland's fiscal framework and, as I have said, I hope that the House of Lords Economic Affairs Committee will contribute its views on how this report should be structured. In addition, there is nothing to prevent other independent voices giving their views to either Government at any stage.

Let me reassure the House on one final aspect of Amendment 57AA. It is already our stated intention to have an independent report for the end of 2021. My expectation is that report will be published, although it will be for the Government of the day to determine that.

Finally, I turn to Amendment 57AC, tabled by my noble friend Lord Forsyth. I fully support the principle behind this amendment, as Governments should be accountable for all the public money that is spent, in whatever context. However, the Scottish Parliament already has an important scrutiny role over more than £30 billion-worth of spending. I therefore think it is primarily for the Scottish Parliament to monitor how the Scottish Government use the funds they will have to implement devolution following the Smith commission. I hope and expect that it will fulfil this role vigorously.

To reassure the House, I point to the scrutiny afforded to implementation of the Scottish rate of income tax following the Scotland Act 2012. The Scottish Parliament has taken on a significant role here, holding the Scottish Government to account. However, this does not mean that the UK Government and this Parliament are without a role. As I have said, we have committed to report annually to Parliament on the operation of the framework. I know those reports will receive full scrutiny. I therefore ask my noble friend to withdraw his amendment.

Lord Forsyth of Drumlean: My Lords, we have had a lengthy debate in which we have covered a lot of ground. However, a number of questions remain unanswered, which makes the case for both Houses to have an opportunity to consider the fiscal framework. I am extremely grateful to the many eminent and distinguished Members of the House who took part in the debate. I will not list them all as we need to get on, but I find it difficult to resist making one point to the noble Lord, Lord McFall. He said that the Scottish Parliament will be in the same position in terms of its powers as it was in 1707, and I will leave the House to speculate on who is playing the role of Queen Anne in that respect. It is, I might gently suggest, a slightly ridiculous position, although the big difference with 1707 is that it was not then dominated by one political party.

When I used to go to European Council meetings, I would always take the advice of the noble Lord, Lord Kerr, when he was in charge of UKRep. I am tempted to take his advice and withdraw Amendment 56ZA, but give notice that I will divide the House on Amendment 68.

Lord Higgins: I entirely take the point which is made about the later amendment, but I merely suggest to my noble friend that the vote will become detached from the debate which we have had now. We could go over the whole process again on the other amendment but that does not seem a very sensible way of proceeding. I would have thought, given the debate, we are much better really taking a decision now.

Lord Forsyth of Drumlean: I always listen very carefully to my noble friend. I therefore beg leave to test the opinion of the House.

8.38 pm

Division on Amendment 56ZA

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8.50 pm

Clause 13: Power of Scottish Parliament to set rates of income tax

Amendment 56A

Moved by ***Lord Dunlop***

56A: Clause 13, page 16, line 14, at end insert—

"(17) Regulations under this section must be made by statutory instrument."

Lord Dunlop: My Lords, I shall speak also to Amendments 56K, 56L, 71AB and 71AC which are tabled in my name. Amendments 71B and 71C have been replaced by Amendments 71AB and 71AC.

Amendments 56K and 71AB set out clearly, consistent with the existing legal framework, new borrowing powers for the Scottish Government. In line with the Smith agreement, the fiscal framework sets out agreement to change the powers available to the Scottish Government for both resource and capital borrowing.

For resource borrowing, a new power will be granted in this amendment to enable the Scottish Government to borrow should their tax revenues decline as a result of an economic shock which adversely or solely affects Scotland. The Scottish Government will be able to borrow up to £600 million per year. To ensure sustainable public finances, the total aggregate amount of resource borrowing debt will be set at £1.75 billion. In addition, the administrative limit on borrowing for forecast error will be increased to £300 million to reflect the volatility of the taxes as well as the welfare responsibilities that are being devolved.

For capital borrowing, we have agreed an increase in the maximum capital borrowing that Scottish Ministers can make. The limit will be increased to £3 billion. Additionally, the annual limit will also be increased. Scottish Ministers will be able to borrow up to 15% of the maximum limit—that is, £450 million a year.

Taken together, the borrowing powers that are increased by this amendment will boost the capacity of the Scottish Government to manage the additional risks to their budget from devolution and to expand their capacity to invest in Scotland.

Amendments 56L and 71AC address independent fiscal scrutiny in Scotland and the UK. Section 96 of the Scotland Act 1998 requires Scottish Ministers to provide information to the Treasury on the forecast when requested. However, since 2010, the OBR produces the UK's official economic and fiscal forecasts. To produce comprehensive and detailed economic and fiscal forecasts for the UK, the OBR needs to produce forecasts for the taxes and spending measures devolved to Scotland. Access to Scottish government information is necessary to produce the Scottish forecasts that feed into the wider UK forecasts.

To date, the OBR has worked closely with the Scotland Office and the Scottish Fiscal Commission to ensure that all relevant information is brought to bear in producing its forecasts for devolved taxes. However, the OECD recommends that independent fiscal institutions have a legislative guarantee that they will be able to access all government information relevant to their forecasts. Adhering to this principle contributes to the institution being able to remain fully independent from Governments.

The recent Ramsden review of the OBR responded to this by recommending that the Government should use opportunities to amend relevant devolving legislation to ensure that the OBR has appropriate access to information, explanation and assistance to carry out its functions. The passage of the Scotland Bill provides an excellent opportunity to amend the Scotland Act 1998 and secure in statute the mutually beneficial information-sharing relationship between the Scottish Government, public bodies and the OBR.

Clause 13 contains the provisions extending further income tax powers to the Scottish Parliament and those relating to the manner and timing of the commencement of those powers. As currently drafted, the Bill allows for the commencement of the powers by way of a Treasury order but does not, as would be usual and was the case in the 2012 Act, stipulate that the order itself must be made by way of a statutory instrument. Amendment 56A adds the stipulation that the order be made by way of a statutory instrument. Making the order by way of such an instrument ensures that the order is a public document, numbered, printed and published by the Treasury Solicitor's Department and laid before Parliament in a manner that facilitates anyone who is interested being able to find it relatively easily.

It was never the Government's intention that the order be made other than by way of a statutory instrument. The Government have tried wherever possible to use the 2012 Act as a template for the current Bill. The clause draws on the wording of the 2012 Act income tax clause. However, while the 2012 Act included a general provision stipulating that all orders be made by way of a statutory instrument, the current Bill does not, so it has been identified that this specific provision is required. The oversight was brought to parliamentary counsel's attention by the House of Lords Delegated Powers Committee, and the committee's report and our response to it set that out in more detail. Both are available to noble Lords. I beg to move.

Lord Sanderson of Bowden (Con): My Lords, I strongly support Amendment 56L, produced by my noble friend. I consider the work of an independent fiscal commission to be vital for the future not just of the Scottish Parliament but of the whole United Kingdom in this new arrangement where so many powers are being devolved. I said at Second Reading that I believed the OBR was a great initiative of the coalition Government, and it was. I am pleased to see in Amendment 56L that, if the amendment is passed, the OBR will have access to the sort of information that it needs to help the Scottish Fiscal Commission come to the right conclusions. I am still smarting from the reports that came out from the SNP just before the referendum that oil was going to be $112 a barrel. If a Government in Scotland are to do their own forecasting and that is the sort of answer that we will receive, no one, but no one, will believe them.

The amendment moves the OBR and the Scottish Fiscal Commission closer together. I have seen a very useful letter from the Chief Secretary to the Treasury

[LORD SANDERSON OF BOWDEN]
to, I think, the committee in the other place. This is what he said about what the committee had said:

"There is a clear consensus"—

that is, a consensus in the Scottish Parliament—

"that forecasting should be done by a body independent of government. We agree with the conclusions of the Finance Committee of the Scottish Parliament and recommend that an enhanced Scottish Fiscal Commission be made responsible for forecasting in Scotland".

My question for the Minister is: how far has the Scottish Parliament gone in legislating in this matter? May I have an assurance that those words will come true and we will have a proper Scottish Fiscal Commission? A commission, of course, is only as good as its membership. Let us hope that its membership is very understanding and knowledgeable, because I believe this to be crucial to the future success of the new arrangements.

Lord McCluskey (CB): My Lords, I am sorry that the Government were unable to adopt something more along the lines of my Amendment 67. The purpose of that amendment was to ensure that there was an independent Scottish Fiscal Commission, and the provisions in it were designed to achieve exactly that. However, I recognise that I could not possibly win a vote if I sought to move that amendment and divide the House.

The other point is that in substance, Amendment 56L does the job as well as one could reasonably expect it to. I am happy to support it in the circumstances and I will not move Amendment 67, but I have one modest question. The point is that subsection (1) of the new clause says:

"The Office for Budget Responsibility has a right of access at any reasonable time".

Note the word "reasonable". The next line says that it is entitled to ask for information,

"which it may reasonably require".

New subsection (2) says,

"which the Office reasonably thinks necessary for that purpose".

I am not sure how that operates, because it was well understood in law that the word "reasonable" was so elastic that it was not precise enough—for example, to found a conviction for not doing the reasonable thing if that is what the statute required you to do. Therefore I am not sure how this is to be policed. If the Office for Budget Responsibility asks for information in the way that is qualified by the word "reasonably" in this new clause, and if the Scottish Government do not agree with its assessment of reasonableness, how is that dispute to be resolved?

9 pm

Lord Higgins: My Lords, I have added my name to my noble friend's Amendment 56A. It would simply insert, at the end of page 16, line 14, the words:

"must be made by statutory instrument".

That amendment and the other amendments which stand in my name all arise from the 15th report of the Delegated Powers and Regulatory Reform Committee. I will quote as briefly as possible from the report, but the committee said:

"The Scotland Office have provided a delegated powers memorandum. We were disappointed with the quality of this document. In a number of cases, the explanation given in the memorandum failed to deal adequately with important aspects of the power, and most of the matters to which we are drawing attention in this Report arise from the fact that the explanation of the power in the memorandum is inadequate".

I will not go on quoting from the Select Committee, but that is the general tone of what it said. In particular, it made a number of detailed criticisms which I have sought to cover by the additional amendments that I have tabled. I would be grateful if my noble friend would be kind enough to say whether he supports the other amendments, all of which seek to implement what was said in the committee's report.

The committee goes on to deal in a little more detail with the subject matter of Amendment 56A. It said:

"To our surprise, there is nothing on the face of the Bill requiring the regulations to be made by statutory instrument. Since it is the invariable practice … we assume this is a mistake".

I therefore seek in these amendments to cover the various points that the Delegated Powers and Regulatory Reform Committee made in its extremely helpful analysis. It would be helpful to know if my noble friend will accept the other amendments as well as Amendment 56A, which appears in both his name and my own.

On Thursday, the committee produced a further report that included remarks it received from the Government, including an apology for the inadequate way in which the proposal was first presented. We could go through each of the amendments in detail but perhaps my noble friend will simply indicate whether he agrees that we need to make the changes that I have put down on the Marshalled List and which implement the committee's report.

Lord Kerr of Kinlochard: I welcome Amendment 56K, which covers borrowing, on which I have tabled Amendment 57. I think that Amendment 56K is a great deal better than my amendment and I congratulate the Government on producing it. For me, it was important that we had on the statute book a clear indication that there would be additional borrowing powers—that seems to be a necessary concomitant of tax devolution—that all borrowing would be in accordance with Treasury rules and that it would be subject to ceilings. All three elements are well met in the Government's amendment.

It seems clear that the UK will be standing behind borrowing in the markets by the Scottish Government—that is, borrowing in line with the statutory requirements of being within the limits and in accordance with the Treasury rules. That has to be clear, otherwise borrowing in the markets will be more expensive for the Scottish Government and therefore for all of us, since it will be part of the UK borrowing programme. I would be grateful if the noble Lord could confirm that my reading of that is correct.

The borrowing section of the fiscal framework document all seems to make sense and the increased limits seem appropriate, except possibly the biggest single increase. There are two elements that cause me a little bit of concern and I would be grateful for the Minister's views. One is the annual limit of £600 million for borrowing in response to a Scotland-specific economic shock. Paragraph 66 of the framework document says:

"A Scotland-specific economic shock is triggered when onshore Scottish GDP"—

I think that it means GDP growth—

"is below 1% in absolute terms on a rolling 4 quarter basis, and 1 percentage point below UK GDP growth over the same period".

I pause on the word "onshore". I am not quite clear when the added value of the North Sea comes into GDP. Is it when it comes onshore? Can the noble Lord elucidate? Would an oil price shock, such as the one that we have just seen, be regarded as a Scotland-specific shock? If not, I see a possibility of debate and dissent down the line.

Secondly, the document tells us that when a Scotland-specific shock is triggered, it may be triggered from outturn data or from forecasts. It says:

"In the event that forecast data shows an economic shock but outturn data does not, no retrospective revisions will be applied to borrowing powers".

I agree with that sentence.

I slightly worry about this. It is odd to define a Scotland-specific shock by its effect on GDP rather than by its own characteristics. If you do that, given that GDP is always subject to revision for a number of years—a point made by the noble Lord, Lord Darling, in our Committee stage debate on borrowing—it seems that, again, you have the possibility of some debate. That is dealt with in a way by using a rolling four-quarter basis for calculating whether Scottish GDP is growing at less than 1% in absolute terms and 1% below UK GDP. Even so, is the Minister quite sure that the best way of defining a Scotland-specific shock is by its subsequent observed effect on GDP rather than by some intrinsic characteristic?

The Earl of Kinnoull: My Lords, I rise to speak to Amendment 57ZA, which is purely a probing amendment that would have appeared in Committee if we had had the fiscal framework. It is designed to allow a bit more discussion about one or two issues.

The borrowing framework within the fiscal framework will of course be precedential and will be a template, no doubt, for other deals with other devolved bits of the United Kingdom. I put it to the Minister that there are great prizes here to be had for clarity and for going into quite exhaustive detail in what can be a difficult area. I should say that before I drafted my wording, which is purely indicative, I had of course not read Amendments 56K and 56L. I echo the words of the noble Lord, Lord Kerr, in that regard. I had to read the fiscal framework on a mobile phone, which is not ideal, at Bristol airport.

I want to discuss two points, the first of which is, can we go into a bit more detail, and where is the extra detail contained? Is it in a memorandum of understanding; has it yet to be decided upon? Such details cannot be simply brushed aside; otherwise, you simply store up arguments and problems for later on.

One issue that occurs to me is how you tot up the level of outstandings. In the capital markets, it is quite normal that the issue price of something is quite different from the principal amount. For a zero-coupon bond, it will be a heck of a lot less. What would one record in those circumstances against the limits, and where is that recorded? I have referred to the multicurrency issue. There is some help on multicurrency review—I did not pick that up on my mobile phone in Bristol airport—but it would be helpful to understand what the deal is on multicurrencies.

I have to say that I found some things a bit confusing. This issue is not dealt with in my amendment, but I refer the Minister to paragraph 68 of the document, which states, rather teasingly:

"The Governments agreed that the Scottish Government should have the option of refinancing, on the same terms, any debt due to be repaid in a year of a Scotland-specific economic shock".

It seems to me that refinancing should be on similar terms, having regard to whatever interest rates are. I would love to have some help there, because almost certainly, the terms would not be the same when it comes to refinancing.

Also, paragraph 70 states:

"On request from the Scottish Government, the resource borrowing limits may be temporarily increased".

There is no real help on the quantum of such an increase, on what "temporarily" means, or on whether the UK Government have a veto over that. It would be very helpful if the Minister commented on those issues.

The big issue, for me, is whether or not the UK is guaranteeing Scottish debt. With a 300-plus year record of repaying every one of its obligations in full and on time, the UK, as a united kingdom, has a unique opportunity to access capital markets at very favourable rates. I do not think that that would apply to an independent Scotland—certainly not in the early years. I would have thought it would be very helpful to Scotland if there was an express guarantee of some sort from the UK; I expressed it in the American format of "full faith and credit". That would help Scotland. It is a free gift of the UK, given that the rating agencies will count Scottish debt straight into their view of how much indebtedness we have. I would very much like to hear from the Minister on that issue.

9.15 pm

Lord McAvoy (Lab): I shall speak to Amendment 57A which seeks to create a new clause to ensure that the process leading to the annual settlement between the Treasury and Scottish Ministers of the block grant to the Scottish Consolidated Fund is both transparent and accountable. It could have related to some of the earlier amendments which sought more transparency.

After eight months of negotiations behind closed doors of the Joint Exchequer Committee, the Scottish and UK Governments have now reached agreement on the revised fiscal framework. We gave the Scottish Government our full support in their efforts to get a fair deal for Scotland and we are glad that an agreement has been reached, albeit belatedly. It may not be perfect and the timing may not be perfect but it is essential that this Bill meets the requirements of the Scottish Parliament in terms of consideration, in terms of the calling of the election and in terms of leaving this House. We wanted an agreement on the fiscal framework and both the UK and Scottish Governments have done their best to achieve one.

However, we now need clarity on when the new powers will be available and what the SNP Government and the other major parties in Scotland plan to do with them. The Secretary of State for Scotland has said that the new powers over income tax will be

[LORD MCAVOY]
available by April 2017. We want as many new powers as possible, including those over airport duty, 50% of VAT revenues and social security, to be available by the same date in time for the first budget of the new Scottish Parliament.

The Labour Party moved this amendment in the House of Commons and since that time it has continued to advocate that a more open and transparent means of communication should have taken place. Documents have not been disclosed because we were told that this would constitute providing a running commentary. We understand that of necessity the process had to be carried out to achieve success, but it was marred on some occasions by negotiating positions being leaked to the press.

The amendment has taken on new significance since the publication of the fiscal framework, which suggests that the calculation of the block grant adjustment will take place on a transitional basis over the next five years and that at the end of the transitional period an independent review will take place. We believe in the discipline of transparency. Making the discussions and results of meetings transparent will help the Scottish and UK Governments. There is nothing like the discipline of public opinion and it will help both Governments to come to satisfactory conclusions.

Lord Dunlop: My Lords, again a number of points have been raised and I shall try to address each in turn. If I do not address them now I will be happy to write to noble Lords.

The noble Lord, Lord Kerr, said that his amendment sought to include annual limits on the borrowing and debt that can be undertaken by the Scottish Government. As he acknowledged, the Governments have now agreed the fiscal framework and, as a result, the Government are now bringing forward amendments to the Bill which will put the new borrowing arrangements into effect. I am grateful to the noble Lord for his view that the Government's amendment addresses the intent of his own amendment. The noble Lord also raised a number of specific questions, and if I may I will write to him about them.

The amendments spoken to by the noble Earl, Lord Kinnoull, raise a number of specific points that I shall seek to address. On the need for separate limits for capital and resource borrowing, the agreement already sets separate limits and the UK Government are therefore proposing to amend the Scotland Bill accordingly. As is clear, the Scottish Government's aggregate borrowing limit for capital spending is being increased from £2.2 billion to £3 billion, while the aggregate borrowing limit for resource spending is being increased from £500 million to £1.75 billion, reflecting the additional risks that the Scottish Government will take on. On the definition of how these limits are calculated, I can confirm that they are based on the principal, with interest payments not included.

On the issue of currency, the amendments proposed to the Scotland Bill by the Government require the Scottish Government to borrow in sterling to fund additional capital spending. As the Scottish Government can only borrow from the National Loans Fund for current spending, this will also therefore be in sterling.

On the issue of responsibility, I reiterate that the Scottish Government are responsible for all of their borrowing. But while the UK Government do not explicitly stand behind Scottish Government borrowing, the borrowing limits have been set at a level that the Scottish Government should be able to manage. I would like to remind the House of what the Chancellor of the Exchequer said when giving evidence to the Treasury Select Committee last Session:

"the UK stands behind its citizens wherever they live. The fiscal credibility of the UK is one of our most precious assets and we have had lots of debates in this Parliament about how we preserve that credibility. Of course we would not allow Scotland to go bust, but in order for that situation not to arise we will have to agree fiscal rules, independently verified, that make sure that that does not happen, so that we never reach that situation where the sovereign backstop has to be deployed".

Again the noble Earl raised a number of specific points on which I will write to him.

The noble and learned Lord, Lord McCluskey, did not move his amendment but a number of points were raised. My noble friend Lord Sanderson asked about independent forecasts. I can confirm that as part of the fiscal framework agreement, amendments will be made to the Scottish Fiscal Commission Bill that is currently going through the Scottish Parliament, and there is no reason to think that the Scottish Government will not act with anything other than good faith in that regard. The noble and learned Lord, Lord McCluskey, also raised a specific point about the OBR's right of access and asked whether there is any uncertainty in that. I think that there is a good understanding between the Governments about the information exchange that is required and I do not anticipate this being an area of great dispute between the two Governments. The provisions in this Bill will be underpinned by a memorandum of understanding as to how in operational terms this will work in practice.

I turn now to the amendments tabled by my noble friend Lord Higgins. Smith set out that extensive new tax powers should be devolved to the Scottish Parliament and Part 2 of this Bill does exactly that. Amendment 56B deals with whether we need two consequential powers in the Bill with regard to the income tax clauses. As has been referred to, this was covered in the Government's response to the Delegated Powers Committee report which is now available online.

Perhaps I may explain the Government's approach in this regard. The powers are separate and different, and both are required. Clause 15(8) allows the Treasury to make consequential amendments that arise in connection with changes made to the Scotland Act 1998 and the Income Tax Act 2007 by Clauses 13 and 14. The power in Clause 13, amending Section 80G of the Scotland Act 2012, allows the Treasury to make consequential amendments that are needed in consequence of or in connection with the exercise of the new income tax powers by the Scottish Parliament through a Scottish rate resolution. Income tax powers within this Bill are more extensive than those in the 2012 Act, so it is entirely natural that the changes made by Clauses 13 and 14 to the structure and terminology of the Income Tax Act 2007 that facilitate this devolution may give rise to the need for consequential amendments elsewhere in the taxes Acts.

I now turn to Amendments 56D, 56E, 56H and 56J, which deal with whether all SIs should be via the affirmative procedure. This is not an issue unique to the Scotland Bill; the approach is common across legislation. The Government agree that substantial changes to primary legislation should be made using the affirmative procedure. However, non-textual and minor technical changes should be possible under the negative resolution procedure. This minimises the burden on the House and also on government resources.

On Amendments 56C and 56G, which would deny the Treasury the power to amend by order the Scotland Bill, or Act itself, there will be a length of time between the Bill receiving Royal Assent and the Scottish Parliament exercising the new powers conferred by this Bill for the first time. The gap will be longer in some cases than in others. Income tax will be the shortest. We expect this to come into effect in 2017, then APD in 2018 and finally the aggregates levy. In the case of the aggregates levy, the length of time is uncertain as it will depend on resolution of the levy's legal challenges.

There may be circumstances where changes are made to the UK structure of those taxes in the intervening period which would require amendment to the Bill in the period between Royal Assent and the commencement of devolved powers. For example, given the outstanding litigation on the aggregates levy, we must have flexibility to respond to future judgments to ensure the levy and the powers that we are devolving remain fully lawful. Similarly, there may be future enactments relating to the taxes which would need amendment. Any amendments to an enactment will be subject to the affirmative resolution procedure. On that basis, the Government cannot accept the amendments tabled by my noble friend.

Turning to the amendment moved by the noble Lord, Lord McAvoy, the Government have listened very carefully to concerns, such as those raised in the context of Amendment 57A, on the transparency of how we operate the Barnett formula. In our response to the Lords Economic Affairs Committee's valuable report on this Bill, the Government committed to look into what more we could do. We are currently doing that and I hope to be able to report progress to the House in due course. This is not an issue just for Scotland; it impacts across the UK, so we have not tied this work to the Scotland Bill alone.

In the mean time, I reassure noble Lords that the Government have already set out changes to the devolved Administrations' Barnett-calculated block grant allocations at every spending review, as well as twice a year—at Budgets and Autumn Statements, as required. In November, at the spending review and Autumn Statement, tables were included setting out the overall impact on the block grant of that important event. Alongside this, the Treasury has also recently published an updated version of its *Statement of Funding Policy*, copies of which have been placed in the House Library. This document outlines the principles underlying the calculation of the block grant. On that basis, I ask noble Lords not to press their amendments.

Amendment 56A agreed.

Clause 15: Consequential amendments: income tax

Amendments 56B to 56E not moved.

Amendment 56F

Moved by ***Lord McAvoy***

56F: After Schedule 1, insert the following new Schedule—

"Schedule

The Joint Committee on Welfare Devolution

Membership

1 The Joint Committee on Welfare Devolution shall comprise the Secretary of State, who is to be the chair of the Committee, and the following other members—

(a) the Scottish Minister who is responsible to the Scottish Parliament for welfare policy and payments, who is to be the deputy chair of the Committee;

(b) the Member of the House of Commons who is for the time being the Chair of the Work and Pensions Select Committee of the House of Commons;

(c) the Member of the Scottish Parliament who is for the time being the Chair of the Welfare Reform Committee of the Scottish Parliament;

(d) two Members of Parliament who are not Ministers of the Crown;

(e) two Members of the Scottish Parliament who are not Scottish Ministers; and

(f) two persons representing local government in Scotland.

2 The members of the Joint Committee on Welfare Devolution mentioned in paragraph 1(d) are to be appointed by the Speaker of the House of Commons and the Lord Speaker of the House of Lords.

3 The members of the Joint Committee on Welfare Devolution mentioned in paragraph 1(e) are to be appointed by the Presiding Officer of the Scottish Parliament.

4 The members of the Joint Committee on Welfare Devolution mentioned in paragraph 1(f) are to be appointed by Scottish Ministers after consultation with the Convention of Scottish Local Authorities.

5 In this Schedule, references to the Work and Pensions Select Committee of the House of Commons are—

(a) if the name of that Committee is changed, to be taken (subject to paragraph (b)) to be references to the Committee by its new name;

(b) if the functions of that Committee with respect to welfare policy and payments (or functions substantially corresponding thereto) become functions of a different committee of the House of Commons, to be taken to be references to the committee by whom the functions are for the time being exercisable.

6 In this Schedule, references to the Welfare Reform Committee of the Scottish Parliament are—

(a) if the name of that Committee is changed, to be taken (subject to paragraph (b)) to be references to the Committee by its new name;

(b) if the functions of that Committee at the passing of this Act with respect to welfare policy and payments (or functions substantially corresponding thereto) become functions of a different committee of the Scottish Parliament, to be taken to be references to the committee by whom the functions are for the time being exercisable.

Term of office of Committee members

7 A member may resign from the Committee at any time by giving notice to the Secretary of State.

8 A member may be re-appointed (or further re-appointed) to membership of the Committee.

Committee proceedings

9 The Joint Committee on Welfare Reform may determine its own procedure.

10 The validity of any proceedings of the Joint Committee on Welfare Reform is not affected by—

(a) any vacancy among, or

(b) any defect in the appointment of any of, the members of the Committee.

11 The Joint Committee on Welfare Reform may appoint a member of the Committee to act at any meeting of the Committee in the absence of both the Secretary of State and the Scottish Minister who is deputy chair of the Committee.

Advisory Panel

12 The Secretary of State and Scottish Ministers acting jointly may make regulations appointing a panel to advise the Joint Committee on Welfare Reform on the transfer, implementation and operation of the powers devolved to the Scottish Parliament by Part 3 of this Act, comprising academics, representatives of the third sector and voluntary organisations, and other relevant stakeholders.

13 The Joint Committee on Welfare Reform must consult any advisory panel appointed under paragraph 12."

Lord McAvoy: This proposed new schedule on the joint committee on welfare devolution provides for an across-Parliament committee to oversee the transition and implementation of welfare powers transferred under this Bill. The committee would include Members from both Parliaments and would be required to report frequently in the transition phase, and therefore annually. We hope there will be some kind of progress on that, similar to the statement made by the Minister a few minutes ago about listening and implementing ideas. That is always welcome.

9.30 pm

This joint committee on welfare devolution that we propose would comprise the Secretary of State as the chair of the committee, and a list of other members as well. I will not read them all out. The members of the joint committee would be appointed by the Speaker of the House of Commons and the Lord Speaker of the House of Lords, and by various bodies given in the proposed new schedule. There might be some technical things regarding the name of the committee and what sort of rules would govern its procedures, but the main thrust of this is to examine the transfer, implementation and operation of the powers devolved to the Scottish Parliament by Part 3 of the Bill.

Welfare and the payments within it are too important to just be left to hang, so we hope that some sort of committee—something similar to this—or some implementation of transparency would help. Again, public exposure, scrutiny and transparency all help. We propose that the joint committee publish a report on the transfer and implementation of the powers devolved at least once every three months for the first three years from the date on which this Bill is passed, and on the operation of the powers devolved to the Scottish Parliament at least once in each calendar year starting three years from the date on which this Bill is passed. Welfare is too complicated and important compared to other powers. It is essential that there be some monitoring and transparency on that. We hope the Minister can respond as positively as he did to the last amendment. I beg to move.

Lord Kirkwood of Kirkhope (LD): My Lords, I have three amendments in my name in this group. I am pleased to follow the noble Lord, Lord McAvoy. Social security is a very important subject and Part 3 is a very important part of the Bill.

I can dispose of my amendments briefly. At one point during Committee, I considered running a series of amendments that would have sought to take on employability. That is an important part within social protection but separate from social security. I welcome the fact that Clause 29 devolves a certain amount of power in terms of the Work Programme and related contractor-driven service provisions north of the border to Scotland. That is entirely sensible.

My original idea, which I think there is still a case for, is that employability as a subject could have been taken much further than the Smith commission suggested. I have for some time come to the conclusion that the whole of Jobcentre Plus services could be more efficiently and better served from a Scottish base run by the Scottish Government through the Scottish skills department, in a way that could improve on what we have at the moment. I decided against doing that because it was not in the Smith commission. There is a stateable case for doing it but I do not think that this Bill is the right way.

Instead, I decided to try to encourage Ministers to look more flexibly at the powers within Clause 29. Amendment 58 looks at some of the restrictions in claiming reserve benefits. Amendment 59 would try to give more flexibility and power to the Scottish devolved powers in Clause 29 to make them easier to tailor to individual Scottish circumstances.

I should declare an interest. Colleagues probably know that I am a non-executive, non-remunerated director of the Wise Group in Glasgow. I have been in that position for a while. As a result of that experience, I am pretty persuaded that the Scottish conditions, the shorter lines of communications and the set-up north of the border are of a different order to what happens throughout the rest of the United Kingdom and could be better developed in a way that would provide a better service if a maximum amount of flexibility was given. The providers who run the programmes already have a lot of discretion about the services that they deploy. It is all done on the basis of payment by results and the outcomes are all very carefully monitored, so I do not think that we would be giving very much away by encouraging the Clause 29 powers to be developed in as flexible a way as possible.

I suspect that the Minister will be advised that Amendments 58 and 59 would run counter to some of the legislative provisions that set up the Work Programme. I am prepared to accept that, if that is the case, but I think there is at least a series of questions to be asked about what are very important programmes delivering services to low-income households and jobseekers in Scotland in a way that I think could be improved. In parenthesis, I think that worklessness will be less of a problem in Scotland in the future and that low-income working households will have difficulties with poverty which will need to be addressed in a different way, because work incentives are not just about getting people into work but about getting them to progress through work. That is important, too. If the Minister does not mind, it is worth spending just a moment

trying to give me a rationale on why we should not increase the flexibility available to work providers north of the border once Clause 29 powers are delivered to Scotland.

I do not think there are as many lawyers present in the House now as there were earlier this evening; otherwise, I might be tempted to press Amendment 60 to a Division because any self-respecting lawyer who looked at the complexity that now exists within this Bill compared with the parent Act of 1998—we are dealing with exceptions, reservations and exempted, as well as accepted, powers—would consider that a consolidation measure was easily justified. I hope that the Minister will note that I have made it easy for him in the amendment by saying that I would settle even for a draft, because trying to do what that amendment seeks to do in six months would be quite a tall order. However, it is a serious point. It would be of considerable assistance to all of us to have such a measure as this body of law develops. I hope rather than fear that it will develop; that is, I am fearful of that from a complexity point of view but hope for it from a political point of view.

On the previous group of amendments, the Minister rightly said that it was important to try to keep the template of the various sister Acts in some kind of cohesive shape. But in order to do that and to assist that process, a draft consolidation measure would be much appreciated by everybody in future. As I say, if there were enough lawyers in the House, I might even think about pressing this to a Division. I make the point facetiously but I hope that the Minister takes it seriously and gives us some comfort that he will go back to the department and explain how difficult it is for us—never mind members of the public—to understand the complexities of the interrelationships of the Acts that flow as a sequence from the parent 1998 Scotland Act.

Lord Hope of Craighead: My Lords, I support what the noble Lord, Lord Kirkwood, has said. Even with the advantage of the websites, it is very difficult to get an accurate and up-to-date version of amended legislation. If you go to the official website, you usually find that mention is made of amendments which have not yet been incorporated into the legislation as shown on the website. That time lag makes it very difficult for ordinary people to see exactly what the content of the legislation is. I think I am right in saying that when the Law Commissions were set up they had a function to keep an eye on the need for consolidation. If the Minister is not inclined to accept the amendment proposed by the noble Lord, Lord Kirkwood, perhaps he might, through his offices, encourage the Scottish Law Commission to get to work on consolidating these measures in a way that would be useful for anybody working in the Scottish Parliament or who was trying to understand what the current legislation really is.

Lord Forsyth of Drumlean: My Lords, I will speak briefly in support of Amendment 60, tabled by the noble Lord, Lord Kirkwood of Kirkhope. I am sure the Minister will be advised that it is not necessary to include this in the Bill but it would be excellent if he were to give an undertaking at least to produce a draft Bill. I am not a lawyer, but I have certainly found it extremely difficult to cope with the piecemeal changes that have been made over the years and to follow the cross-references back to the 1998 Act. The noble Lord has made probably the most sensible suggestion of the evening.

I presume the noble Lord, Lord McAvoy, will not press his amendment to a Division or anything of that kind. The Labour Party is in its debating society mode at present. When the Minister responds to the amendment, which is about setting up this welfare monitoring joint committee, will he answer a question I asked earlier, arising from the fiscal framework? Paragraphs 16 and 17 appear to contradict each other. Paragraph 16 says:

> "For welfare, and all other spending unless stated otherwise in this agreement, the chosen method will be the Barnett formula".

However, paragraph 17 says that,

> "whilst achieving the outcome delivered by the Indexed Per Capita (IPC) method for tax and welfare".

This is very important, because it makes a considerable difference to the amount of money that is available for welfare purposes in Scotland. Will the Minister indicate which I am to believe: paragraph 16, which would involve a substantial cut in the current budget, or paragraph 17, which appears to contradict it?

Lord Dunlop: My Lords, I thank the noble Lords, Lord McAvoy and Lord Kirkwood, for their amendments. I turn to Amendments 56F and 57B, moved and spoken to, respectively, by the noble Lord, Lord McAvoy. We had a good debate in Committee on similar amendments and I hope I was able to provide much detail on the joint working and scrutiny that will govern the transition and implementation of the new welfare powers. The Government are clearly sympathetic to the intent behind the amendments and the importance of a seamless transition that makes sure that the ultimate clients for welfare services are not in any way disadvantaged.

At the heart of the UK and Scottish Government scrutiny and implementation of these welfare powers is the Joint Ministerial Working Group on Welfare, which, as I said in Committee, has met four times since February 2015 and will meet again soon after the Scottish parliamentary elections. I have also given the assurance that I will explore how we can make the work of the Joint Ministerial Working Group on Welfare more visible in this place. I am already acting on that promise. Scottish and UK government officials will discuss the issue tomorrow at the next meeting of the joint senior officials group before it is then raised at the next joint ministerial group, which will take place after the Scottish parliamentary elections.

Beyond the range of work I have already outlined, there are other committees, both in the UK and the Scottish Parliament, which will have a role in the scrutiny of the new powers being devolved. For example, the Minister for Employment will be appearing in front of the UK Parliament's Scottish Affairs Committee on 9 March to give evidence on the welfare and employment powers that are being devolved through the Bill. Ministers also often appear before committees in the Scottish Parliament to aid the scrutiny of Scottish Government proposals. Most recently, the Secretary of State for

[LORD DUNLOP]
Scotland appeared before the Scottish Parliament's Devolution (Further Powers) Committee just seven days ago to discuss issues such as the fiscal framework and the role of the Joint Ministerial Committee on welfare.

9.45 pm

Noble Lords might also like to know that the Department for Work and Pensions established an implementation programme team in April 2015 which is specifically responsible for working with the Scottish Government on the transition and implementation of these powers. The team employs around 20 people and will expand substantially as the plans of the Scottish Government become clear. This will create clear lines of accountability and further reporting within the UK Government.

One issue that the noble Lord, Lord McAvoy, raised in Committee was the engagement with local groups and organisations in Scotland and whether this was, as he said, "perhaps a bit perfunctory". I will respond directly to this point. Through the development and passage of the Bill, colleagues from the Department for Work and Pensions have worked closely with a range of different organisations in Scotland which represent a wide range of people with different needs, to listen to their concerns and discuss the intent of the welfare and employment provisions. This work has certainly informed some of the amendments to the Bill that were tabled in the other place; for example, the changes to the carer's benefit powers.

Lord McAvoy: Just in the interests of having all the information, is the Minister in a position to name some of the organisations?

Lord Dunlop: For example, we have worked to build a strong relationship with the Convention of Scottish Local Authorities to ensure that universal credit is implemented and delivered in a way that best reflects the views of Scottish local authorities. Citizens Advice Scotland is another organisation that we have engaged with. This has been a genuinely joint approach to improve delivery in Scotland and is just one example of many.

As I said in Committee, I am sympathetic to the noble Lord's intention in what his amendment proposes to achieve but we believe that robust, strong and effective mechanisms are already in place. We will absolutely put the customer at the heart of any change and will work with the Scottish Government to ensure that the transition and implementation of powers is simple, clear and effective. This will protect the delivery of existing benefits and customer interests, and ensure a great future for all the people in the UK, including those in Scotland.

Turning to Amendments 58 and 59, spoken to by the noble Lord, Lord Kirkwood, Clause 29 gives the Scottish Parliament legislative competence to establish employment programmes to support disabled people and those at risk of long-term unemployment. It devolves power over support for unemployed people through employment programmes currently centrally contracted by the DWP; this is mainly but not exclusively the Work Programme and Work Choice. These two programmes represent virtually all funding across these contracted employment programmes and therefore, in our view, provide the Scottish Government with a significant policy space within which to operate.

The powers are very broad in scope and concurrent with the UK Government's powers. Any claimant on a reserved benefit at risk of long-term unemployment can be addressed in this way, so the Scottish Government have the ability to create schemes, programmes or grants in this space as the UK Government can. It gives the Scottish Government the ability to better align with the employment support they already provide through the devolved skills system. That is a very substantial package of powers which the Scottish Government can already use. I think the estimated annual spend in this area is some £600 million.

Support for those at risk of long-term unemployment must last for at least a year. The three restrictions seek to define the space which Smith said that the Scottish Government should have in designing new programmes. This creates clear lines of accountability between what the Scottish Government are able to do and what Jobcentre Plus is required to do. It is also important for there to be a clear handover point, so that Jobcentre Plus and Scottish Government programmes do not try to deliver different support to the same claimant at the same time. Jobcentre Plus will continue to deliver smaller-scale support, with the Scottish Government delivering more significant interventions.

The amendment of the noble Lord, Lord Kirkwood, would remove the limitations that assistance should be for persons claiming reserved benefits and be for at least a year. These limitations are necessary safeguards to ensure that those who need support over and above that provided by the enhanced Jobcentre Plus offer receive assistance for an intense period. Smith was clear that Jobcentre Plus and the conditionality regime "will remain reserved". As I have said, there needs to be a clear handover point so that Jobcentre Plus and the Scottish Government's programmes are not overlapping in that sense.

It is vital that the Jobcentre Plus work coaches have the right tools to support claimants into work and smaller-scale employment programmes at their disposal, such as mandatory work activity or locally commissioned support via the flexible support fund. If responsibility is split, the result could be people spending longer on benefits and employment support, and if we remove these restrictions, it will in the Government's view create a confused, muddled system of support which claimants and third sector organisations would struggle to understand or navigate. That would be a much worse system and have unintended consequences. We have sought to strike the right balance: enabling the Scottish Government to provide employment support for people who are at risk of long-term unemployment, and giving the Scottish Government the opportunity to take clear responsibility over a substantial portion of the claimant journey.

Finally, I turn to Amendment 60, which concerns "Consolidation of the Scotland Act 1998". We addressed points in Committee about the scope of the powers in the Bill related to welfare. Once the Bill is passed, it

will be available on legislation.gov.uk, alongside the Scotland Act 1998 and the Scotland Act 2012. In the Government's view, it would not be a good use of Parliament's time to bring forward another Bill simply to repeat what is included in previous Scotland Acts. The dynamic nature of the devolution settlement means that the two Governments work together on Section 30 orders, which adjust the terms of Schedule 5 from time to time, so any consolidated version would quickly be out of date. That is no bad thing; it is testimony to the devolution settlement working responsively.

However, the points made by the noble Lord, Lord Kirkwood, raise an interesting question about knowledge of the devolution settlement more generally. I think that the noble Lord, Lord Smith, referred to it in his personal recommendations. The Government very much support the objective and have taken steps to improve the knowledge in UK government departments and beyond. For example, in March 2015 the UK Government published a leaflet explaining the changes to devolution in Scotland. The Secretary of State has also undertaken visits to local authorities and is keen to ensure that they know what powers are coming to the Scottish Parliament. The Scotland Office communications directorate's work will also seek to make clear the Scottish Government's existing powers—powers coming into force from the Scotland Act 2012 and those being delivered by the Scotland Bill. Its work raises awareness not just of the debate on what powers may or may not be devolved in future but on where the existing powers are today. With that, I ask the noble Lord to withdraw his amendment.

Lord Forsyth of Drumlean: Before my noble friend sits down, could he possibly answer the question I asked him about the welfare funding and the two paragraphs in the fiscal framework? If he does not have that information now, perhaps he could write to me.

Lord Dunlop: We have agreed that welfare will be funded through the Barnett formula and that tax deductions will be calculated through the comparable model. However, during the transition period, we will reconcile both to index per capita.

Lord Forsyth of Drumlean: Perhaps my noble friend could help me. Does that mean that if the Barnett formula model resulted in a shortfall in the resources available in Scotland for welfare, it would be topped up?

Lord Dunlop: It means that if you look across the total Scottish budget, it would deliver the outcome that we discussed earlier. It is up to the Scottish Government to decide how to use the resources within that: it is not ring-fenced within that total figure.

Lord McAvoy: We welcome the further response about involving the principles that we have included in previous Bills around transparency, involving people and all the rest of it. We are reasonably happy with that and I beg leave to withdraw the amendment.

Amendment 56F withdrawn.

Clause 19: Devolved taxes: further provision

Amendments 56G to 56J not moved.

Amendments 56K and 56L

Moved by ***Lord Dunlop***

56K: After Clause 19, insert the following new Clause—

"Borrowing

(1) The Scotland Act 1998 is amended as follows.

(2) Section 66(1) (borrowing by the Scottish Ministers from the Secretary of State) is amended as follows.

(3) At the end of paragraph (b) omit "and".

(4) In paragraph (c)—

(a) after "devolved taxes," omit "or";

(b) after "Scottish rate resolution," insert "or from amounts payable under section 64A,".

(5) After paragraph (c) insert—

"(d) any sums which in accordance with rules determined by the Treasury are required by them to meet current expenditure because of an excess of welfare payments over forecast welfare payments, and

(e) any sums which in accordance with rules made by the Treasury are required by them to meet current expenditure because of a Scotland-specific negative economic shock."

(6) After that subsection insert—

"(1ZA) In subsection (1)(d) "welfare payments" means—

(a) payments under any provision relating to matters within exceptions 1 to 10 in Section F1 of Part 2 of Schedule 5 or exception 1 in Section H3 of that Part, and

(b) payments attributable to regulations made by the Scottish Ministers by virtue of section 27 or 28 of the Scotland Act 2016 (powers in relation to universal credit)."

(7) In section 67(2) and (3A) (lending under section 66(1)) for "£500 million" substitute "£1.75 billion".

(8) In section 67A (lending for capital expenditure) in subsections (1) and (3) for "£2.2 billion" substitute "£3 billion".

(9) The Treasury may by regulations make transitional or saving provision in connection with the coming into force of the amendments made by this section.

(10) Regulations under subsection (9) must be made by statutory instrument.

(11) A statutory instrument containing regulations under subsection (9), if made without a draft having been approved by a resolution of the House of Commons, is subject to annulment in pursuance of a resolution of the House of Commons."

56L: After Clause 19, insert the following new Clause—

"Provision of information to the Office for Budget Responsibility

(1) The Scotland Act 1998 is amended as follows.

(2) After section 96 (provision of information to the Treasury) insert—

"96A Provision of information to the Office for Budget Responsibility

(1) The Office for Budget Responsibility has a right of access at any reasonable time to all Scottish public finances information which it may reasonably require for the purpose of the performance of its duty under section 4 of the Budget Responsibility and National Audit Act 2011 (duty to examine and report on the sustainability of the public finances).

(2) The Office is entitled to require from any person holding or accountable for any Scottish public finances information any assistance or explanation which the Office reasonably thinks necessary for that purpose.

(3) "Scottish public finances information" means information held by the Scottish Ministers or by any Scottish public authority specified in regulations made by the Secretary of State.

(4) This section is subject to any enactment or rule of law which operates to prohibit or restrict the disclosure of information or the giving of any assistance or explanation."

(3) In Schedule 7 (procedure for subordinate legislation), in paragraph 1(2) insert at the appropriate place—

"Section 96A	Type C"."

Amendments 56K and 56L agreed.

Amendments 57 to 57B not moved.

Clause 29: Employment support

Amendments 58 and 59 not moved.

Amendment 60 not moved.

Clause 68: Power to make consequential, transitional and saving provision

Amendment 61

Moved by ***Lord Hope of Craighead***

61: Clause 68, page 74, line 32, leave out "1, 3, 4, 5 or 6" and insert "3"

Lord Hope of Craighead: My Lords, I have Amendments 61, 62, 63, 64 and 65 in this group. I tabled these amendments in Committee and renewed them for Report just to preserve my position in case amendments were not forthcoming from the Government. Clause 68 deals with the, "Power to make consequential, transitional and saving provision" and is of the type commonly referred a Henry VIII clause.

I made a number of criticisms of this clause in Committee, which I do not need to repeat. Having now studied the amendments which the Government have brought forward in this group, I am satisfied that the majority of the points that I raised have been met. I do not therefore propose to insist on any of the amendments which are in my name in this group. I wait to hear the explanation from the Government for the amendments they are putting forward, but my impression is that they are a commendable reaction to the points made by the Delegated Powers and Regulatory Reform Committee.

It is a pity that the clause was drafted in the very loose form in which it was. Perhaps there is a lesson here that, in future, such clauses should be more precisely related to the requirements of the particular Bill, not put forward in the general form in which they were when this Bill was introduced. Having said that, I do not propose to insist on the amendment, or the other amendments in my name in this group.

10 pm

Lord Stephen (LD): My Lords, this is all complex, although perhaps not as overwhelmingly complex as the fiscal framework itself. However, I am very pleased that the Government have brought forward amendments to respond to the views of the Delegated Powers and Regulatory Reform Committee. At this late hour, I do not intend going into all the detail, but it is interesting to note that, instead of—as the noble and learned Lord, Lord Hope, my noble and learned friend Lord Wallace of Tankerness and I proposed—deleting words and cutting back on these very wide and open powers to Ministers to change primary and secondary legislation here, in Northern Ireland and in other parts of the UK, the Government have introduced extra words to try to restrict those very wide powers. The restrictions are welcome; I would still have preferred such wide powers for Ministers—given inadvertently, I think—to be removed.

Doubtless, however, due to the political imperative, at this hour we will all accept the Government's approach and amendments. I close by thanking the noble and learned Lord, Lord Hope, for raising the issue and the Law Society of Scotland for the hard work that it has done on the detailed wording that it provided to us in presenting our amendments. I hope that, through constructive opposition to the Government, we have a set of measures brought forward by them that respond to the correct concerns voiced about the nature of the Bill as drafted. I look forward to the Minister's explanation, so that we can make sure that all the points of concern have been covered.

Lord Forsyth of Drumlean: My Lords, I wanted to delete this clause entirely in Committee, and was persuaded that the approach being taken by the noble and learned Lord, Lord Hope, was perhaps more forensic and justified. I agree with the noble Lord, Lord Stephen, that half a loaf is better than no loaf. This is a very useful example, both in the original draft and the slightly grudging response from the Government, which we can discuss when we come to debate the Strathclyde review and the Government's attitude towards the use of secondary legislation.

Our previous debate, when we spent 10 minutes arguing whether the House of Commons ought to be able to discuss the fiscal framework, to my mind underlined an Executive who are increasingly treating Parliament as the ornamental part of the constitution. That is very regrettable.

I thank my noble friend for at least moving as far as he has, but I would not want him to think that the Bill as it stands is in any way acceptable. I hope that on a future occasion we will have more opportunity to discuss the increasing use of secondary legislation. If it is not a Henry VIII clause, perhaps it is now a Queen Anne clause, in deference to the noble Lord, Lord McAvoy, who thinks that this is putting the Scottish Parliament in the same position as it was in 1707.

Lord McFall of Alcluith: Yet again, the noble Lord has got it wrong—it was me who said that. However, let us finish on a positive note tonight. First, I would like to thank the Delegated Powers Committee for its report, because it was very clear at the beginning that the Scotland Office provided a delegated powers memorandum, the explanation of which was inadequate. As a result of that, I thank the noble and learned Lord, Lord Hope, for tabling these amendments, and the noble Lord, Lord Norton of Louth, who made an excellent speech last time on the Henry VIII powers.

The Law Society of Scotland was mentioned, and Michael Clancy has been sitting in the box for many weeks, although he is not there tonight. He has been

helping us—and I well remember taking over the shadow Home Affairs responsibility in the 1990s for the Labour Party, when Michael was helping one and all political parties. So I thank him, too.

As the noble Lord, Lord Forsyth, said, it is better to have half a loaf than none. It is important to say that the Government have not outlined totally why the consequential powers are required in Parts 1, 4, 5 and 6, in every other respect. Perhaps the Minister will at this stage give your Lordships' House some indication of the type of saving powers that the Government expect to propose. As the noble and learned Lord, Lord Hope, said in Committee, if we are going to keep faith with what we are trying to achieve, the Government have to go that step further. With those comments, I commend the work that noble Lords have done and the response that the Government have given to the suggestions.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): I am obliged to your Lordships and particularly grateful to the noble and learned Lord, Lord Hope of Craighead, for his contributions on this matter. As will be appreciated, the powers in question can be used only in consequence of provisions in the Bill. The power to make consequential, transitional and saving provisions of this type are not exceptional or unusual in primary legislation of this ilk. Indeed, Section 105, together with Section 113, of the Scotland Act 1998 provided a similar power. The Scotland Act 2012 also contained consequential powers.

When consequential amendments were identified as necessary during the course of preparation of the Bill, they have been included in the Bill. For instance, Clause 10 makes provision in consequence of the clauses relating to elections. However, given the nature of the Bill, involving significant devolution of legislative and executive powers, it is difficult to anticipate the full extent of the consequential changes required when the provisions are commenced to put them on the face of the Bill. Therefore, it is possible that, following Royal Assent, legislation may be needed to amend and deal with the consequent provisions of the Act. In those circumstances, the Government considered it both necessary and appropriate to include this provision in the Bill.

However, following the views of the Regulatory Reform and Delegated Powers Committee, and those expressed in this House in Committee, we have brought forward an amendment to Clause 68. The effect of the amendment is that the power to amend future enactments, future prerogative instruments, any other future instruments or documents and Welsh and Northern Irish legislation, whenever made, will apply only to Part 3 of the Bill, the only part of the Bill dealing with welfare provisions. Amendments 62A, 62C, 65A and 65B limit the scope of the consequential, transitional and saving power as it applies to Parts 1, 4, 5 and 6 of the Bill. I hope that reassures noble Lords on the proper scope of these provisions.

Amendment 71A provides that Clauses 3 to 12 do not commence automatically two months after Royal Assent, but instead come into force on such a day as the Secretary of State may appoint by regulations. We have identified some consequential and savings provisions that may be required, and they require careful co-ordination with commencement of Clauses 3 to 12. They are largely concerned with electoral law. Commencement by regulations will facilitate such co-ordination. We do not expect to delay commencement for too long after the Scottish parliamentary elections have taken place in May 2016. In these circumstances, I invite noble Lords not to move their amendments and to accept the Government's amendments.

Amendment 61 withdrawn.

Amendments 61A and 62 not moved.

Amendment 62A

Moved by ***Lord Dunlop***

62A: Clause 68, page 74, line 37, leave out "(whenever passed or made)"

Amendment 62A agreed.

Amendment 62B not moved.

Amendment 62C

Moved by ***Lord Dunlop***

62C: Clause 68, page 74, line 40, at end insert—

"( ) For the purposes of making provision in connection with, or with the coming into force of, a provision of Part 3, subsection (2) applies to an enactment, instrument or document whenever passed or made.

"( ) Otherwise, subsection (2) applies to—

(a) an Act of Parliament passed before or in the same session as this Act;

(b) an Act of the Scottish Parliament passed, or an instrument or document made, before the end of the session in which this Act is passed."

Amendment 62C agreed.

Amendments 62D to 65 not moved.

Amendments 65A and 65B

Moved by ***Lord Dunlop***

65A: Clause 68, page 75, line 14, after ""enactment"" insert "— (a)"

65B: Clause 68, page 75, line 14, after "Parliament," insert "and

(b) for the purposes of making provision in connection with, or with the coming into force of, a provision of Part 3, also includes"

Amendments 65A and 65B agreed.

Amendments 65C and 65D not moved.

Amendment 66 had been withdrawn from the Marshalled List.

Amendments 67 and 67A not moved.

Clause 69: Commencement

Amendments 68 to 68B not moved.

Amendments 69 to 71 had been withdrawn from the Marshalled List.

Amendment 71A

Moved by ***Lord Dunlop***

71A: Clause 69, page 75, line 37, at end insert—

"( ) sections 3 to 12;"

Amendment 71A agreed.

Amendment 71AA not moved.

Amendments 71B and 71C had been retabled as manuscript Amendments 71AB and 71AC.

Amendments 71AB and 71AC

Moved by ***Lord Dunlop***

71AB: Clause 69, page 75, line 43, at beginning insert "Section (Borrowing) and"

71AC: Page 75, line 43, at beginning insert "Section (Provision of information to the Office for Budget Responsibility) and"

Amendments 71AB and 71AC agreed.

Amendment 72 had been withdrawn from the Marshalled List.

House adjourned at 10.14 pm.

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