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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

Wednesday 9 March 2016

3 pm

Prayers—read by the Lord Bishop of Durham.

Retirement of a Member: Lord Vincent of Coleshill

Announcement

3.06 pm

The Lord Speaker (Baroness D'Souza): My Lords, I should like to notify the House of the retirement, with effect from today, of the noble and gallant Lord, Lord Vincent of Coleshill, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House, I should like to thank the noble and gallant Lord for his much-valued service to the House.

Health: Ebola

Question

3.06 pm

Asked by ***Lord Chidgey***

To ask Her Majesty's Government what assessment they have made of the principal lessons that can be learned from communities affected by the Ebola epidemic in preparedness for future health crises.

The Parliamentary Under-Secretary of State, Department for International Development (Baroness Verma) (Con): My Lords, the UK's £427 million response was fundamental to combating Ebola and saving countless lives. We are committed to learning lessons and responding effectively to future crises, and made a critical contribution to better understanding community engagement. Many UK nationals worked bravely alongside Sierra Leonean communities and health workers, and I pay tribute to their phenomenal work. Part of our £240 million economic recovery programme will help strengthen local health systems, and help communities to hold government to account.

Lord Chidgey (LD): My Lords, I am grateful to the noble Baroness for her reply and for her consideration of the report of the All-Party Parliamentary Group on Africa on lessons to be learned from the Ebola crisis, which will be launched publicly later today. Can she confirm that the Government accept the key finding of this far-reaching study: that, in order to ensure preparedness for future health crises in Africa, health systems should be developed horizontally, local leadership prioritised and investment concentrated at community level? Will the Government regularly monitor DfID's health development programmes to ensure that they recognise and respond to these findings?

Baroness Verma: My Lords, I thank the noble Lord and the APPG for the useful and timely report, which draws attention to the importance of communities' role in ownership and in delivering in crises. We agree that engaging with communities in the delivery of public health systems is essential. To provide stronger, people-centred health services that reflect their needs, we are looking at lessons learned from the crisis, and very much looking at the recommendations of the noble Lord's report.

Lord Bruce of Bennachie (LD): My Lords, will the Government acknowledge that, prior to the Ebola crisis in Sierra Leone, they were planning to cut support for health systems in that country? As the Minister said, they subsequently spent nearly £500 million tackling the crisis. Does she accept that if we are to have health systems fit for the future, we must maintain long-term commitments? Can we be satisfied that the Government have reviewed their policy, given the cutbacks that have been applied in sub-Saharan Africa in order to support the Syrian refugee crisis?

Baroness Verma: My Lords, as the noble Lord knows, we are currently undergoing bilateral and multilateral reviews. We will learn from that process where our future funding will go. To take the noble Lord's point about concentrating on fragile countries, a number of the countries to which the noble Lord referred will be among the 50% that we are targeting in our support for conflict-ridden and fragile states.

Baroness Masham of Ilton (CB): My Lords, could the Minister encourage the Governments of the countries involved with the Ebola virus to teach their populations not to eat bush meat, which can carry the virus?

Baroness Verma: My Lords, the noble Baroness raises an important point about causes, but these are lessons that we will learn as we review all the work that we ourselves, other agencies and the Sierra Leone Government have done. We are also undertaking a lot of research in this area, so I thank the noble Baroness for her question.

Baroness Hayman (CB): My Lords, I saw for myself at the height of the Ebola crisis last year and again on the return visit to the Parliament in Sierra Leone last month the value that communities there put on the work of the Minister's department, the Foreign Office, NHS volunteers and international development agencies. One thing that they did not value was the suspension of direct flights to west Africa. Could the Minister look very carefully at that decision and not have a knee-jerk reaction in future? It did not stop people travelling from west Africa—it just made life a lot more difficult for volunteers and those going out and actually impeded public health screening, because people came back through a variety of routes rather than direct routes.

Baroness Verma: The noble Baroness is of course aware that as a Government we have to put the safety of the British people first.

Baroness Kinnock of Holyhead (Lab): My Lords, is the Minister aware of the criticism that has been made by Save the Children of the UK's NHS employment of 27 Sierra Leonean doctors and 103 nurses, which amounts to a subsidy to the UK of £22 million? Will the Government review the practice of using migrant nurses in the NHS?

Baroness Verma: As the noble Baroness will of course be aware, it is important that during the crisis we draw on the expertise of all volunteers and experts. We were very fortunate to have volunteers from the UK go out, but we also very much drew on local communities and are now building up their local capacities.

Viscount Ridley (Con): My Lords, does my noble friend agree that something that we can do from this country is harness the extraordinary strength of our scientific base, particularly with respect to tropical diseases—in particular, insect-borne diseases such as malaria and Zika, which also threaten people's livelihoods?

Baroness Verma: I absolutely agree with my noble friend. As I said earlier, we are working with other partners in looking at research and the Government are investing a lot more in research to be able to tackle these tropical diseases.

Lord Collins of Highbury (Lab): My Lords, just to pick up on the point made by my noble friend, one problem is that there is no postgraduate training for those who want to specialise in the healthcare system in Sierra Leone to build a sustainable and resilient system. I have asked this question before, but the Minister did not respond directly to it. What steps are the Government taking, and DfID in particular, to support the royal colleges in ensuring that there is in-country professional development for healthcare workers?

Baroness Verma: My Lords, I am sorry if the noble Lord thinks that I did not respond, so I shall try again this time. We are supporting the strengthening of healthcare systems in Sierra Leone and other places. In Sierra Leone in particular we are investing £37 million to strengthen President Koroma's recovery plan, which will help build up the strength and capacity of local health workers—and, of course, will look at patient safety.

The Countess of Mar (CB): My Lords, I understand that it is possible that Ebola will become endemic in some of the populations that have been affected in the recent crisis. Can the Minister tell us what assistance is being given to these countries to monitor their people and make sure that we do not have such a huge epidemic as we had before?

Baroness Verma: My Lords, I am pleased to say that so far we are now looking towards 16 March as being the zero-plus-42 days since the last outbreak of Ebola, but we continue to monitor. Sierra Leone has active surveillance activities. Throughout the communities, health workers, health facilities and community surveillance programmes are continuing, even though we are coming to a zero point.

Schools: Admissions Code

Question

3.15 pm

Asked by ***Lord Watson of Invergowrie***

To ask Her Majesty's Government why they are proposing to prevent some parents and organisations from objecting to violations of the School Admissions Code.

Baroness Evans of Bowes Park (Con): My Lords, we want the schools adjudicator to focus on concerns that parents might have about the admission arrangements of their local school. We also want to free schools from bureaucracy so that they can focus on delivering excellent education. We propose that only local parents and local authorities be able to refer objections about a school's admissions arrangements. That change will be subject to full public consultation and parliamentary approval.

Lord Watson of Invergowrie (Lab): I thank the noble Baroness for that reply. Given that the schools adjudicator's most recent report highlighted that violations of the school admissions code were widespread, noble Lords may not regard it as a coincidence that there is currently no body charged with enforcing and monitoring that code. Does the noble Baroness agree that the establishment of an independent body with responsibility for enforcement of the code is overdue? If that were done, there might be less concern about the banning of organisations that can raise questions.

Baroness Evans of Bowes Park: We want to put parental concerns at the heart of the system, which is why we want the adjudicator to focus on those concerns. It is not great for parents that it now takes 49 days for them to hear the result of their objection; that has risen from 26 days. We want the schools adjudicator—she herself has suggested it—to limit those who can make an objection, to put parents at the centre.

Lord McColl of Dulwich (Con): My Lords, will the Government consider advising Front-Benchers that Question Time is for Back-Benchers, not Front-Benchers?

Baroness Evans of Bowes Park: I will refer that to the Leader of the House.

Baroness Pinnock (LD): My Lords, I thank the Minister for saying in response to the earlier question that parents will be at the heart of school admissions policy because, in her latest report, the Chief Schools Adjudicator states that:

"Admission arrangements for too many schools that are their own admission authority"—

that is, academies—

"are unnecessarily complex. The arrangements appear to be more likely to enable the school to choose which children to admit".

What action is the Minister proposing to ensure fair access for all children?

Baroness Evans of Bowes Park: The schools admission system is working well. Last year, the adjudicator received 218 objections, but they related to just 1.1% of schools. Of course it is right that parents can raise their objections when they need to, which is why we also propose to give them a greater voice by requiring admissions authorities to consult on their arrangements every four years rather than every seven years as currently.

Lord O'Shaughnessy (Con): My Lords—

Baroness Massey of Darwen (Lab): My Lords, I understand that there is to be a consultation on a package of changes to the schools admissions code and that there will be measures on fairness and transparency. Will the Minister define what the Government actually mean about fairness and transparency?

Baroness Evans of Bowes Park: Schools obviously have to publish their admissions codes. It is most important that parents understand what they are and what they mean so that, if they want to send their child to a school, they understand the criteria on which it will judge. We want to put parents at the heart of this, which is why we propose to make sure that their concerns are raised by the adjudicator and can be looked at in a timely fashion. We also want to make sure that schools explain their admissions policies clearly so that parents can try to get their children to the schools they want.

Lord O'Shaughnessy: My Lords—

Baroness Meacher (CB): My Lords, we now have reliable information that virtually all religiously selective schools breach the schools admissions code, some in a very serious way. Does the Minister agree that serious breaches of the code are thoroughly unacceptable? Will Ministers agree to meet the British Humanist Association and the Fair Admissions Campaign to discuss the importance of having some informed organisation, whatever that might be, to make sure that the authorities are aware when breaches occur?

Baroness Evans of Bowes Park: It is certainly true that, if any school is breaching the admissions code, that cannot be acceptable. The noble Baroness refers to faith schools in particular, but actually a lot of the issues raised in the report *An Unholy Mess*, which I think she is referring to, were related not to faith but to other issues such as banding, sixth-form admissions arrangements and the use of incorrect definitions. Still, schools of course have to get their admissions codes right, which is why we want to put parents' concerns at the heart of the process and ensure that admissions codes are clear for all parents.

Lord O'Shaughnessy: My Lords—

The Lord Bishop of Durham: My Lords, we know that some campaign groups are actually targeting faith-based schools as part of a broader agenda. How many of the upheld objections were unrelated to religious selection criteria, and how many were upheld on minor administrative infringements? Are the significant time and resources used to respond to such objections justified in the light of those numbers?

Baroness Evans of Bowes Park: As I said in my previous answer, many of the faults that were found related not to faith but to other issues. Church and faith schools make a significant contribution to our education system: 87% of faith schools are good or outstanding, compared with 82% of non-faith schools. Of course schools have to abide by the correct codes, but it is important to recognise the value that these schools add to our education system.

Lord O'Shaughnessy: My Lords—

Baroness Whitaker (Lab): My Lords, the Fair Admissions Campaign—

Noble Lords: O'Shaughnessy!

Lord O'Shaughnessy: Your Lordships are very generous to a newcomer; thank you. As we have heard, church schools have been the subject of many vexatious attempts to take them to the admissions adjudicator. I ask the Minister to condemn those who abuse the school admissions code to make political and ideological points. I declare an interest as a parent with a son at a Catholic school. I also invite the Minister to pay tribute to the many excellent church schools, which not only are more ethnically diverse than average schools but are more likely to have a good or outstanding judgment from Ofsted.

Baroness Whitaker: My Lords, following the noble Lord—

Baroness Evans of Bowes Park: The noble Baroness can answer the question for me if she likes. As I said, we want to ensure that parents are at the heart of this process, which is why we want to ensure that adjudications are not held up by the need to consider large numbers of objections referred by interest groups. Unfortunately, because of some campaigns, parents now have to wait longer for the outcome of their appeals, and that cannot be right.

Adult Education: Part-time Attendance

Question

3.22 pm

Asked by ***Baroness Burt of Solihull***

To ask Her Majesty's Government what assessment they have made of the number of adults attending part-time higher or further education classes while maintaining a career.

Baroness Evans of Bowes Park (Con): The department does not record the employment status of those in part-time, further and higher education. However, this Government are committed to providing learning opportunities to those of all ages and circumstances. Advanced learner loans are now available for adults who wish to retrain and study for a new career. We have been taking steps to address the decline in part-time higher education by introducing a new maintenance package. Apprenticeships allow individuals to train while progressing their careers, and we are aiming for 3 million more apprenticeship starts by 2020.

Baroness Burt of Solihull (LD): I am grateful for that Answer, although I think it would be appropriate for the Government to count the number of part-time students. Many noble Lords in this Chamber will remember the days when night school was a major instrument of social mobility, yet today night school has almost disappeared and the number of adults on part-time courses has plummeted. What can the Government do to increase the availability of part-time HE and FE courses, including night school, and to encourage people in work to better themselves in this old-fashioned but tried and trusted way?

Baroness Evans of Bowes Park: This Government are taking a number of steps to help to encourage part-time learning. For instance, we will be introducing maintenance loans for part-time students for the first time, and we have expanded second degree student support funding for those who want to study a STEM subject. We have also expanded the advanced learner loan system, so from 2016-17 learners aged 19 and over studying at levels 3 to 6 will be able to access that support. We are doing what we can to provide people who want to study part-time with the support to do so.

Lord Foulkes of Cumnock (Lab): I thought that there could not be a worse Government than this Tory one for butchering further education until I looked at Scotland, where there are now 150,000 fewer places in FE than there were when the SNP took over. Are the Tories and the SNP in some kind of Dutch auction to see who can reduce further education places to their lowest number?

Baroness Evans of Bowes Park: I am very pleased to reassure the noble Lord that in fact, under this Government in the last spending review, we have protected FE budgets at £1.5 billion over the course of the Parliament. Therefore I am sure that the noble Lord will recognise how much the Government are doing to support FE and will want to congratulate us on doing so.

Lord Lucas (Con): My Lords, does my noble friend recall that the committee on the digital economy of this House recommended shorter courses, of five weeks or so, and bang-up-to-date courses so that people being encouraged to do part-time courses would be given something that employers value?

Baroness Evans of Bowes Park: I congratulate the noble Lord and the committee on their report. As I said, we want to encourage people to undertake part-time study if that is what they want to do, and of course we are working with employers and colleges to try to ensure that we have a flexible system that everyone can take advantage of.

Lord Sutherland of Houndwood (CB): My Lords, two of the main providers of higher education for part-time students are the Open University and Birkbeck College, both of which do exceptionally well. Have the Government carried out any consultation with them about the impact of the new fees regime on applications for such courses?

Baroness Evans of Bowes Park: I also congratulate those two organisations on their work—in fact, I met both of them recently. The Government are certainly listening to their concerns. Part of the reason we are consulting on the introduction of maintenance loans is because we want to make sure that we get the details right and ensure that those who want to take advantage of this support can do so.

Lord Brooke of Alverthorpe (Lab): With respect, can the noble Baroness answer the question from the noble Baroness, Lady Burt of Solihull, about the Government's views on night schools and night classes? Do they support them and, if so, will they encourage them?

Baroness Evans of Bowes Park: We want people to be able to access higher and further education in whatever way they think is best; night schools are one way to do that. Therefore, in order to provide flexibility for people who want to do further studies, there should be a whole range of provision so that people from all backgrounds and ages can access the support that suits them best.

Baroness Rebuck (Lab): My Lords—

Baroness Sharp of Guildford (LD): My Lords—

Baroness Sharples (Con): My Lords—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, it is the turn of my noble friend Lady Sharples, then I am sure we will go next to the Labour Benches.

Baroness Sharples: Can my noble friend say how many adults learn English on these courses?

Baroness Evans of Bowes Park: I am afraid that I do not have those specific numbers to hand but I will be happy to try to find them and get back to my noble friend in writing.

Baroness Rebuck: Will the Minister comment on the Skills Funding Agency report, which found that there are now 1.3 million fewer adults in further education compared to 2010?

Baroness Evans of Bowes Park: We are encouraging a whole range of ways in which people can access further education. For instance, increasing numbers of people take higher and degree apprenticeships—that is in fact one of the fastest-growing elements of the programme—so we are offering a whole array of ways in which people can retrain and study further.

Baroness Sharp of Guildford: Is the Minister aware that one of the main factors that inhibit those applying for part-time retraining in different areas is what is called the ELQ rule—in other words, where they already have a qualification they cannot take another one at the same level? Does the Minister have any proposals for easing that? It has already been done for the STEM subjects but it would be a good idea to ease it up for other areas so that people can retrain, even if at the same level.

Baroness Evans of Bowes Park: I am happy to say that we have expanded the number of courses where you can get second degree student support so that now people wanting to take subjects allied to medicine, biological and veterinary sciences, agriculture and related sciences, and physical and mathematical sciences can access that support.

Lord Rooker (Lab): With respect to further education —I declare an interest as someone who did three nights a week on day release at one point—would it not be a good idea that, instead of stuffing this place with chancellors of universities of higher education, we put some people with direct knowledge of further education in here?

Baroness Evans of Bowes Park: I am afraid to tell the noble Lord that basically, there is nothing that I can do about it but I have sympathy.

Turkey: Zaman Newspaper

Question

3.29 pm

Asked by ***Lord Sharkey***

To ask Her Majesty's Government what discussions they have had with the Government of Turkey about the seizure of the Zaman newspaper.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, we regularly underline the importance of freedom of expression and all fundamental freedoms as part of our dialogue with the Turkish Government. On Monday, the Prime Minister raised concerns about press freedoms with Turkey's Prime Minister, Ahmet Davutoglu, underlining the importance of protections for a free press and human rights in Turkey. As a friend and ally, we urge the Turkish Government to uphold the right of media to operate without restriction.

Lord Sharkey (LD): I have been a committed friend of Turkey for 40 years or so, but I now see a country where journalists are imprisoned, the media are persecuted, the Constitutional Court's rulings are openly criticised by the President, and the main opposition newspaper is seized. Dissent and disagreement are seen as crimes, human rights violations are widespread, and it all seems to be getting worse. Does the Minister think that Turkey can be trusted to respect the human rights of all the refugees, including Kurds, who are to be returned to its care under the EU plan?

Baroness Anelay of St Johns: My Lords, I stress that the EU plan has not yet been finalised. It was raised in the margins of the summit and indeed after the summit had formally concluded. President Tusk will, within 10 days, be concluding what the agreement looks like. However, the noble Lord makes a very valid point, whatever agreement may or may not be reached. The answer to it is that Turkey has already shown extraordinary generosity in hosting 2.6 million refugees from Syria and another 600,000 from other countries. It has already shown that it can be trusted to deliver a change of legislation whereby those refugees are able to work in Turkey, and during the next school year every Syrian child will be able to get access to education. We will hold it to any agreements.

Lord Forsyth of Drumlean (Con): My Lords—

Lord Morris of Aberavon (Lab): My Lords—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, I am sure that two distinguished Members of this House can, between them, decide whom to give way to.

Lord Morris of Aberavon: My Lords, has any estimate been made, to the nearest million, of the number of Turks who might be eligible to enter the European Union—and, ultimately, the United Kingdom—without visas?

Baroness Anelay of St Johns: My Lords, the noble and learned Lord refers to one of the issues that was under discussion after the summit had concluded its official session on Monday. The question of whether visa restrictions will be lifted within the Schengen area is now being considered and a proposal will be brought forward at the next European Council meeting, which I believe will be on 16 or 17 March. I repeat that that is for the Schengen area only and not for here, and therefore I suggest that it is a little premature to try to estimate how many Turks will avail themselves of it.

Lord Forsyth of Drumlean: My Lords, will my noble friend, through the Prime Minister, tell the German Chancellor and others that it is completely unacceptable and utterly bonkers to think that it is appropriate to export back to Turkey migrants who have come to Europe in return for Turkey being able to send people to this country?

Baroness Anelay of St Johns: My Lords, the proposal itself is welcome in that, in outline as it stands, it would break the business model enjoyed by the most

[Baroness Anelay of St Johns]
evil people that I can think of beyond Daesh—the human traffickers who make people's lives a misery by promising a life in Europe as the automatic result of getting on a leaky boat in the Mediterranean and risking their life, along with the lives of their children. I absolutely understand my noble friend's point and I assure him that the Prime Minister will bear in mind the concerns that underlie his question.

Lord Hannay of Chiswick (CB): My Lords, does not the Minister agree that the best way of bringing effective and continuing pressure on the Turkish Government over matters of press freedom and human rights is to open some new chapters in their accession negotiations, which would provide real leverage on Turkey? The failure to do so has meant that the EU's leverage has been very weak in recent years.

Baroness Anelay of St Johns: The noble Lord makes a very strong point. The 35 chapters of the accession negotiations were opened in 2005, and progress through them has indeed been taking some time. It is a matter of further discussion whether and how further chapters might be opened. Clearly, requests are being made by Turkey, but the noble Lord's point is right: it provides leverage.

Baroness Hussein-Ece (LD): My Lords, in the light of the opening of these chapters and the negotiations that will flow from that, will the issues of press freedom, freedom of speech and human rights be part of those discussions? Turkey is in a very difficult and volatile situation, given the war and all those refugees on its doorstep. I ask for an assurance that that is not lost in the European Union's keenness to keep all the refugees in Turkey.

Baroness Anelay of St Johns: My Lords, I can give that assurance. The Prime Minister made that point very clearly during the summit itself and ensured that language on that was included in the summit's published conclusions.

Lord Anderson of Swansea (Lab): My Lords—

Lord Marlesford (Con): My Lords—

Baroness Stowell of Beeston: My Lords, I am very sorry that the House requires me to take up valuable time to adjudicate. It is the turn of the Labour Benches and, therefore, of the noble Lord, Lord Anderson.

Lord Anderson of Swansea: My Lords, is it an unspoken, unwritten part of the deal under discussion that we moderate our criticism of the authoritarian tendencies of the current Turkish Government?

Baroness Anelay of St Johns: No, my Lords. Human rights underpin all the work of the Foreign and Commonwealth Office, as I made clear when I appeared before the Foreign Affairs Committee of another place recently. We will never hold back from speaking out or from holding people to account on the important issues of the Copenhagen agreement, whereby democracy and the rule of law underpin everything.

Electricity Supplier Payments (Amendment) Regulations 2016

Motion to Approve

3.36 pm

Moved by ***Lord Bourne of Aberystwyth***

That the draft regulations laid before the House on 25 January be approved. *Considered in Grand Committee on 2 March.*

Motion agreed.

Immigration Bill

Report (1st Day)

3.37 pm

Clause 1: Director of Labour Market Enforcement

Amendment 1

Moved by ***Lord Bates***

1: Clause 1, page 2, line 5, after "allowances" insert ", and

(b) pay or make provision for the payment of such pension to or in respect of the Director,"

The Minister of State, Home Office (Lord Bates) (Con): My Lords, as this is the first day of Report, I will put some general comments on the record. I thank all noble Lords for their engagement with officials over the period between Committee and Report. We have had eight all-interested Peers meetings, numerous bilateral meetings and significant engagements. We even had some external visits. As a result of all that, I have written a number of letters, including to the noble Lord, Lord Rosser, and to others, that even St Paul would be proud of. As a result of listening to the points and concerns that were raised by noble Lords from all sides of the House in Committee, as well as before then, we have a number of new proposals that I believe will go a long way to addressing those. In fact, ahead of Report, we tabled more than 100 government amendments to the Bill and tried to expand on, through a number of letters, the implications of what is being proposed.

I wanted to preface my remarks on this group of amendments by putting on record my thanks to all noble Lords for their engagement with the process. We hope that we have made progress which proves acceptable to your Lordships.

I want to draw your Lordships' attention to two key issues in the Government's amendments in this group: first, the Director of Labour Market Enforcement's intelligence hub and, secondly, changes in light of recommendations from the Delegated Powers and Regulatory Reform Committee.

Clause 6 requires the director to gather, store, process, analyse and disseminate information relating to non-compliance in the labour market. This enables the director to produce an evidence-based annual strategy. Our amendments will enable this through operating an effective intelligence hub.

The enforcement bodies covered by the strategy are the Employment Agency Standards Inspectorate, HMRC's national minimum wage team and the Gangmasters and Labour Abuse Authority. They will supply the majority of information and intelligence for the director's work. Amendment 2 requires the director to include information-sharing matters in the annual strategy; for example, frequency of provision of information. Amendment 10 allows the director to request information from those bodies, and vice versa, throughout the year. Other bodies may also hold intelligence useful for the strategy. Amendment 8 allows anyone to share information with the director or staff in the intelligence hub where it relates to the director's functions. The amendment also enables the director and intelligence hub staff to share information with specific named persons, listed in a new schedule inserted by Amendment 11, if relevant to the functions of those persons. There is a power to add to the list by regulations through the affirmative procedure. We are committed to data security. Amendment 9 sets out restrictions to ensure the information is used and shared appropriately. This contains specific provisions for the intelligence services and HMRC.

It is vital that the three labour market enforcement bodies have gateways allowing them to share information with other enforcement bodies. Amendment 29 will allow the Employment Agency Standards Inspectorate to share information with the Employment Agency Inspectorate in Northern Ireland, the Pensions Regulator and the Care Quality Commission, enabling collaboration across organisations. We want the GLAA to have the necessary gateways to share information relating to its new role. Amendment 32 therefore enables it to share information encompassing all labour market enforcement functions within the director's remit and LME undertakings and orders. Reflecting the GLAA's new role enforcing modern slavery offences, Amendment 38 inserts a new section into the Modern Slavery Act 2015 allowing disclosure of information to the GLAA from specified persons, and vice versa. A new schedule in the Modern Slavery Act 2015 will list those specified persons. There will be a power to add to this list, subject to the affirmative procedure. Other amendments allow the GLAA, HMRC's NMW team and the EAS to share information relating to the new LME undertakings and orders in this Bill.

The next amendments are those that address specifically concerns raised by the Delegated Powers and Regulatory Reform Committee report, for which we were very grateful, and its concerns particularly about some powers in Chapter 1. We are happy to accept its recommendations. Amendment 13 therefore makes the power to extend the purposes for which officers of the GLAA can be given PACE powers subject to the affirmative, rather than negative, procedure and thus to rigorous parliamentary scrutiny. The committee's second recommendation concerned the new LME undertakings and orders. Amendments 26 and 27 provide that the code of practice governing their use by enforcement bodies will be subject to parliamentary oversight by being brought into force by a statutory instrument subject to the negative procedure. The committee's third recommendation related to the GLAA's licensing rules. Amendments 31 and 33 maintain the introduction of licensing rules by statutory instrument and not simply by publication, but with the added requirement of approval by the Home Secretary.

3.45 pm

As the GLAA's expanded role under the Gangmasters (Licensing) Act 2004 applies only in Great Britain, Amendments 36 to 38 preserve the Act as it is in Northern Ireland. Our other amendments are mainly technical and ensure that the legislation enables the Director of Labour Market Enforcement and enforcement bodies to tackle labour market law breaches and protect vulnerable workers.

Amendments 1 and 28 enable the Government to make provision for the director to receive a pension, in addition to paying a salary and other necessary expenses. Amendments 5, 6 and 7 ensure that the scope of the director's labour market enforcement strategy covers all the enforcement bodies' work by including the new LME undertakings and orders and slavery and trafficking prevention orders obtained by the GLAA where the offence is secondary or inchoate, such as aiding or inciting, or where there was no conviction due to insanity or disability.

Amendment 12 amends the National Minimum Wage Act 1998 to reflect that future enforcement may be through more than one body—HMRC's national minimum wage team and the GLAA. We want reciprocal powers for the GLAA and certain bodies to ask for assistance. Amendments 14 to 20 will specify those bodies in legislation. They clarify that the power to add bodies to these lists can be used only for bodies whose functions are reserved. I can assure noble Lords that we are removing the National Crime Agency from the list only because it already has the right to ask for assistance through the Crime and Courts Act 2013.

Amendments 21 to 25 change the provisions on the court procedures relating to LME undertakings and orders to clarify when and which court can vary or discharge an LME order. Amendment 40 clarifies that the regulation-making powers in this chapter will be used only for reserved matters. Amendments 41, 42 and 43 provide definitions to aid interpretation of this chapter. Amendments 152 and 153 change the territorial extent clause of the Bill to reflect the position in the Modern Slavery Act 2015.

Finally, Amendment 38 repeals Section 55 of the Modern Slavery Act 2015 and the duty on the Secretary of State to consult on the role of the Gangmasters Licensing Authority. This is redundant with our recent consultation and the publication of our response. I beg to move.

Baroness Hamwee (LD): My Lords, I have Amendment 154 in this group. The Minister has referred to the large number of government amendments and I accept that many of them are in response to comments made in Committee, although I am not sure that that

[Baroness Hamwee]
could apply to the 46 amendments in this group. At the last stage, there was a good deal of comment about the number of government amendments laid at a relatively late stage of the Bill. These further amendments are not so much a response to the Committee as continuing the substantial development of the issues. The Minister may know that there has been some pressure on us to argue for recommitment of these clauses so that we can look at them calmly as a whole. That would have been the right thing to do. I canvassed a little on that but I detected not a lot of enthusiasm and I accept that we have limited time, so I will not spend time this afternoon arguing for recommitment. But I wanted to put that point on the record.

The first amendment is not the biggest but let us start at number one. I do not begrudge a pension for the director of labour market enforcement, but the amendment has puzzled me. I had a look at the Modern Slavery Act to see what was provided for the Independent Anti-slavery Commissioner and it does not refer to a pension. Given that it is not that unusual to appoint someone to a post which focuses on an issue, under the umbrella of a department but something new and quite discrete, is there not by now a standard formula for the appointments of such postholders? Does the wheel have to be reinvented a little differently each time?

By far a bigger issue is the reporting lines. The director deals with organisations that also have departmental reporting lines and which are now on the receiving end—that is a deliberate choice of phrase—of the provision of the strategy and the intelligence hub. On the charts with which we have been provided, there is no arrow in the reverse direction to show the contribution of those organisations. The Minister has heard me say this before, but this is particularly an issue for the Gangmasters Licensing Authority, the board of which is almost airbrushed out; it is hardly acknowledged. The director himself or herself has two masters in the form of two Secretaries of State with differing and possibly incompatible priorities. The Home Secretary is concerned with enforcement while BIS is concerned with deregulation, and I believe that it is to be BIS that will host and fund the director. An even bigger issue is that of resources for the functions and duties on which the amendments elaborate. The GLAA is to have new, extended functions and duties, and we need to be assured that adequate resources will be in place over the spending review period.

Amendment 2—I assure noble Lords that I shall not go through every amendment—seems to go into quite a degree of detail. Surely the detail of how one does something, which in this case is the obtaining and providing of information, should not have to be in legislation in this way. As long as the director has the power to require information, should that not be enough? The strategy will now propose annually the information that is to be provided and,

"the form, and manner … and frequency".

The more you spell out in legislation, the more you have to spell out. Having gone a little way down this road, you realise that if you have done that, you need to spell out the other as well.

Amendment 21 refers to a court in a "part" of the UK. The Minister should be aware that I was going to ask this question: what is a part of the UK in the case of a court? Is it a country or is it a jurisdiction, which of course is not the same as a country in the case of the law and the courts because England and Wales are a jurisdiction. Is it a county or a town? It would be helpful to know which it is.

On the information gateways set out in Amendment 8 and subsequently, again I am not sure why it is necessary to provide for information to be disclosed to "a relevant staff member" and then to define who that is. If the director asks for information, surely any staff member is working on behalf of the director. This may be something technical related to the Data Protection Act and noble Lords may think that I am being spectacularly pedantic in raising it, but if someone gets it wrong, there are consequences. If an irrelevant staff member, as it were, seeks information, what is the status of that?

I have comments to make about what seems a very narrow gateway in terms of control and the time-consuming and cumbersome nature of it, but I would particularly like to ask what consultation has been undertaken on these provisions about information with the Information Commissioner, the commissioners appointed under RIPA, which is not yet RIP, and with the bodies concerned. I ask because there are issues about bureaucracy, protection and confidentiality—health bodies are involved here so I assume confidentiality has been considered—and I wonder whether the Home Office might produce a flow chart showing who must provide what, for what purpose and to whom, and whether it can then be used by the recipient for that purpose or another purpose?

Finally, my Amendment 154 would change the title of the Bill. A third of its clauses now deal with the labour market. There have been very significant additions since the Bill started life in the Commons. It seems to me—this is a substantive point and, I know, one of real concern among organisations—that it would be appropriate to call the Bill the immigration and labour market Bill. There were several amendments throughout the passage of the Bill to the effect that labour market matters are not confined to immigration. Indeed, they are very much wider than immigration. It is important not to badge the GLAA, the stand-alone body, as an immigration enforcer, and important not to adopt the mindset that immigration should be the driver of dealing with labour market abuses, or that labour market abuse is confined to illegal immigrants.

Lord Alton of Liverpool (CB): My Lords, I intervene briefly—I know that there are more substantive issues that the House will want to move on to fairly soon—simply to place on record my consternation that in Committee we decided to invent a whole new authority, the GLAA, yet here were are on Report with more than 100 new amendments. Ministers are damned if they do and damned if they do not. I recognise that we have a Minister who listens carefully to debates in your Lordships' House. Indeed, he has a rollercoaster of meetings outside your Lordships' House. His energy and willingness to listen are much to be commended, but could he distinguish for us which amendments have arisen as

a result of consultations with and suggestions from outside organisations and Members of your Lordships' House, and which are government amendments that are necessary to put right things that were not considered in Committee?

Would he also not agree that it is not good to make legislation on the hoof? In Committee I contrasted it with the way he dealt so impeccably with the modern slavery and human trafficking Bill, which had enjoyed pre-legislative scrutiny from Members of both Houses prior to being introduced in another place, and which was dealt with with great diligence by Members of both Houses and in an exemplary manner by the Minister himself. Surely that is the way we should enact legislation. But the Immigration Bill has completed all its stages in another place. It has now come here and he has introduced whole new clauses without any pre-legislative scrutiny or consideration of them in another place.

If we are honest, there has not been much consideration here. We pride ourselves, do we not, on being a House that scrutinises legislation in great detail, line by line and clause by clause? I honestly do not think that we can say we have done that with these clauses. Personally, I do not understand all the implications of the amendments that have been introduced. Although I am grateful to the Minister for the compendium of letters and detail that he sent us this morning, the idea that one could have read it all in advance for today is, I think he would agree, pretty unlikely.

So all I am doing is appealing to the noble Lord to look at the way we have dealt with this and ask officials whether it would not have been better to come forward at an earlier stage, or wait for another opportunity. I also put in an appeal at least for post-legislative scrutiny. If there is to be no sunset clause in the Bill, can we at least have an undertaking from the Government that we will revisit these clauses especially in 12 months from now to see how they work?

I have one other question for the noble Lord on resources. He will recall that at meetings held on the periphery of your Lordships' House I questioned the level of resources available to what was the Gangmasters Licensing Authority, soon to be the GLAA. I know that he is deeply committed to tracking down those who exploit labour, who are involved in human trafficking and all the dreadful things that have been rehearsed at earlier stages of this and previous legislation. Is he really confident that there are sufficient resources? Given the research done by universities such as the University of Durham into the funding of the GLA, does he think that those resource problems have been overcome?

4 pm

Lord Deben (Con): My Lords, I remind the House of my declaration of interest and the fact that for many years I have helped businesses trying to combat modern slavery. I am a little less critical than the noble Lord, Lord Alton, of the changes being made, because I think that they are necessary, but I agree that it would have been better, had we had the time, to make them in a different way. But we have this opportunity and not to have made them would, I think, have been a grave mistake. I support the noble Lord's suggestion that the Government give an undertaking that we will come back to this in a year's time to make sure that these necessary changes have done what we hope they will do.

I want to draw the attention of the House to something that is very often forgotten. It is that when companies look at their supply chain and seek to see where there is modern slavery, they usually start in some distant country. They think about somewhere where the rule of law is not as we would expect it to be. The shock, to many, is how much is found in so-called civilised and advanced countries—not just in Britain and the European Union but in the United States. It is very valuable that we have moved from the narrow attitude that you get this only in agriculture or with gangmasters, or that you get it only a long way away, to an understanding that we actually get it in almost every place, in almost every country and in the most remarkable situations.

I will quote an experience of mine. While I was working very hard on what we should do in countries in the Indian subcontinent, the very first and worst case happened in Manchester. We have to recognise that the issues with which we are dealing here are almost universal and a terrible indictment of man's inhumanity to man.

Baroness Ludford (LD): My Lords, I want to ask about the information gateway provisions, and in particular Amendments 8 to 11. These are very substantial and intrusive new powers introduced at a very late stage of the Bill. Will the Minister elaborate a little on the justification for introducing them and why they were not thought of at an earlier stage of the Bill, even before Committee? They seem very wide, talking about the disclosure of information,

"for the purposes of the exercise of any function of the Director".

Like my noble friend Lady Hamwee, I would be interested to know whether the Information Commissioner has given advice. If so, will the Minister share that advice and assessment with us? There is a need for safeguards to match the breadth and depth of the powers. It strikes me that, while mention is made of the Data Protection Act and the Regulation of Investigatory Powers Act—which is not quite RIP—there is, of course, a new EU regulation on data protection that will be directly applicable and therefore will not have to be transposed into an Act of Parliament. Have these powers been health-checked against the new regulation, which may be somewhat tighter than the Data Protection Act in certain areas?

I want to ask specifically about medical confidentiality. In Amendment 9, which introduces a new clause after Clause 5, subsection (1) says:

"A disclosure of information … authorised by section (Information gateways) does not breach … an obligation of confidence owed by the person making the disclosure".

Since health bodies—NHS trusts, the Care Quality Commission and so on—are on the list for information sharing, this obviously raises the question of whether medical information is going to be covered, which is likely.

There do not seem to be any similar provisions to those in new subsections (5), (6), (7) and (8) of the new clause in relation to intelligence information and

[Baroness Ludford]
information pertaining to HMRC, where there is an obligation not to disclose information,
"without authorisation from the appropriate service chief",
or "from HMRC Commissioners". There does not seem to be anything comparable for medical data. Clearly, these are sensitive personal data for which a higher level of stewardship is already required under the Data Protection Act, and even more so under the new EU regulation. I would like an assurance that these provisions have gone through the filter of the ICO and the new EU regulation.

Lord Rosser (Lab): As has already been said, the Government have tabled a whole raft of amendments relating to the labour market aspects of the Bill and the new position of Director of Labour Market Enforcement and the associated organisations. A number of questions have been raised in this brief debate and I certainly do not intend to reiterate any of them.

We had a lengthy debate in Committee about including in the Bill wording stating that the primary purpose of the director is the enforcement of labour market legislation as defined in the Bill. The purpose of our amendment seeking to achieve that objective was to ensure that the director's functions were exercised primarily for the purpose of protecting those vulnerable to labour market exploitation. As we know, the Government resisted defining in the Bill the director's primary purpose and function. Our concern was that without a clear definition in the Bill of the function of the director—a post that is being established in an immigration Bill—there are likely to be misunderstandings or wrong assumptions on the part of those who might come into contact with the director's organisation that the post was also about immigration checks, rather than just labour market enforcement.

In respect of one or more of the bodies under the Director of Labour Market Enforcement, the Government's amendments appear to provide for the sharing of intelligence and new information-sharing gateways, and for the disclosure of information to specified persons. What assurances can the Government provide that these amendments will not lead to the director and the associated organisations moving into the field of immigration control issues, rather than just labour market enforcement and the protection of workers from exploitation?

Lord Bates: My Lords, I am grateful for the contributions that have been made. I apologise to noble Lords for bombarding them with so many amendments at the last minute. As is often said, "You're damned if you do and damned if you don't". I have found it difficult to gather together all the pieces of this jigsaw, given all the consultations that we had. I wanted to bring together all the letters and the consultation documents into one document. The Bill team dutifully did that. I thought that was a helpful pack to take home and suggested that we ought to provide it to other Members. Therefore, we sat late into the night, binding the documents, putting them into envelopes and then ferried them across to the House to put them on to colleagues' desks in time for today's debate. That process was not meant to be an insult to noble Lords. On the contrary, we were trying to be helpful. There is nothing new in the pack. It is simply a collection of documents that have been sent out by other means.

There was a very good question from the noble Lord, Lord Alton, about the nature of the amendments. Lest I be accused of making a virtue out of tabling too many government amendments, sometimes in the journey of legislation we forget important elements of it. To give some context, there was a wide consultation on this new role, which went out between October and December last year, and we listened to those views. It was published in December, and in January we published the Government's response. Rather than publishing that response and dealing with the issue in guidance, we thought, "Let's try to make amendments to the Bill in the light of the responses and how we want things to change". That accounted for the bulk of the amendments.

We flagged up these amendments back in January, on the first day of Committee. I said that we had tabled a batch of government amendments relating to labour market enforcement and that others would follow at this stage. Breaking those down might be useful. Of the amendments we have tabled, 14 relate to the intelligence hub; seven relate to the DPRRC's report, which was extremely helpful, and implementing all of its recommendations; 18 are technical; there were some drafting changes, which relate to the additional 15; and two relate to changes to the territorial extent of regulation-making powers.

I am grateful to the noble Baroness, Lady Hamwee, for giving me notice of one of the points she was intending to raise. We believe that the title, Immigration Act, is entirely adequate given the measures in it. While the labour market enforcement procedures will protect all vulnerable workers, they will have a particularly beneficial effect for those who migrate to the UK, who are more likely to fall victim to exploitative employers as they may not fully understand their rights and can be far removed from their normal support structures. Chapter 1 of the Bill will better equip our enforcement bodies to find and stop unacceptable behaviour by rogue businesses—the point raised the noble Lord, Lord Deben. We need to ensure that migrant workers coming to this country are not exploited by businesses here; we need to up our game and ensure that businesses are playing by the rules and treating their employees properly.

The noble Lord, Lord Rosser, made a general point about the remit and asked about immigration control and the director getting involved in immigration. If the director got involved or shared information about immigration control, they would be operating outside their statutory functions as set out in Clauses 2 and 3.

The noble Baroness, Lady Ludford, asked about information-sharing. An important point, which I made in my introduction to the amendments, is that we have taken great care to set out the basis for information-sharing. In fact, one of the reasons we tabled the amendments was to address an earlier concern that the Bill did not state which organisations were going to share information. Rogue businesses and employers which breach labour market legislation often breach other legislation. Therefore, we are creating a framework to enable information-sharing between the director and other bodies. The legislation will be underpinned

by memorandums of understanding between the director and those bodies, setting out the types of information that can and cannot be shared and the relevant processes that need to be followed. We are legislating now because we wanted to take account of the public consultation and legal advice.

The noble Baroness, Lady Hamwee, asked if I would clarify the relationship between the Director of Labour Market Enforcement and the GLAA board. Our amendment clarifies that relationship by requiring those exercising labour market enforcement functions to have regard to the labour market enforcement strategy. My noble friend Lord Deben asked how we will know whether this legislation is effective. The publication of the strategy—it will be made public—will enable us to understand what the priorities are for the Director of Labour Market Enforcement and what issues he is uncovering in carrying out his duties. In addition, we will set out how the GLAA board must carry out its functions in such a way as to fulfil its part in the labour market enforcement strategy. The GLAA board will remain accountable to the Home Secretary for the delivery of its functions, but those functions will now sit within the broader strategic context provided for by the role of the director.

4.15 pm

On resources, which the noble Lords, Lord Alton and Lord Rosser, as well as my noble friend Lord Deben focused on, perhaps a better explanation was provided in my letter of 20 January. I set out there that the current levels of resources available for the 2015-16 financial year are that the Employment Agency Standards Inspectorate has a budget of £500,000, the HMRC's national minimum wage team has a budget of £13.2 million—that was a significant increase, as your Lordships might recall, as additional resources of, I think, about £4 million were put into that—and the Gangmasters Licensing Authority has a budget of £4.3 million.

Of course, that will all be part of the ongoing review of all government spending, but our track record in creating offices such as the Independent Anti-slavery Commissioner shows that we have set up such offices with a particular purpose and focus, and we will want to make sure that they have the tools to do the job we ask of them.

I think that I have responded to the majority of the points that were raised—

Lord Deben: I thank my noble friend for giving way. I still have a problem, and that is that we are making these major changes, but the Bill is still called just the "Immigration Bill". Given that the Bill now covers things that are at a much further remove from immigrants, the Government really ought to think seriously about its Title. It really is something very different from that.

Lord Ashton of Hyde (Con): My Lords, may I just remind the House that the *Companion* is very clear that, on Report,

"Only the mover of an amendment … speaks after the minister … except for short questions of elucidation"?

Lord Deben: If I may say so, I was asking for direct elucidation. I wonder whether the Minister would answer my question.

Lord Bates: I shall do my best to address the point, and I hear what my noble friend says. He talked about the lack of pre-legislative scrutiny of the Bill, but of course there were two days of evidence-taking sessions in Committee in the Commons, which were all published and which actually helped us greatly in shaping many of these government amendments.

However, the Bill is particularly about protecting, if you like, in two ways. The first purpose of the Bill is to create some discomfort for those who are illegally in the UK so that they cannot have a normal settled life while they are actually trespassing on our laws and are here illegally. The other area, which I think should carry a great deal of support, is about making sure that those people who are here legally are treated properly. In that sense, putting those things together, we believe that the Title of the Bill still stands. I accept that there is an argument or debate on that, but I have made my response to that.

Baroness Hamwee: My Lords, with the leave of the House, I asked the noble Lord about a court in "a part" of the country, but I do not think that he has answered that question.

Lord Bates: I did not answer that, and it was a good question. There is a court in another part of the Chamber which is rushing advice to me, which will save another letter. In Amendment 21, what does the reference to a court in a "part" of the UK mean? Part of the UK in the context of these provisions on court proceedings means jurisdiction—whether the court is in England and Wales, in Scotland or in Northern Ireland. I hope that is helpful.

Amendment 1 agreed.

Clause 2: Labour market enforcement strategy

Amendments 2 to 4

Moved by ***Lord Bates***

2: Clause 2, page 2, line 25, at end insert—

"(iii) the information, or descriptions of information, that should be provided to the Director for the purposes of his or her functions by any person by whom, or by whose officers, labour market enforcement functions are exercisable, and

(iv) the form and manner in which, and frequency with which, that information should be provided,"

3: Clause 2, page 2, line 30, leave out "subsection (2)(b)" and insert "paragraph (b) of subsection (2)"

4: Clause 2, page 2, line 31, leave out "concerned" and insert "mentioned in sub-paragraphs (i) and (ii) of that paragraph"

Amendments 2 to 4 agreed.

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

Amendments 5 to 7

Moved by ***Lord Bates***

5: Clause 3, page 3, line 28, at end insert—

"( ) any function of an enforcing authority under this Chapter,"

6: Clause 3, page 4, line 12, after "following" insert "—

(i) "

7: Clause 3, page 4, line 13, leave out "or (e)" and insert ", (e) or (i) to (l), or

(ii) a finding of a kind mentioned in section 14(1)(b) or (c) of that Act in connection with any such offence"

Amendments 5 to 7 agreed.

Amendments 8 and 9

Moved by ***Lord Bates***

8: After Clause 5, insert the following new Clause—

"Information gateways

(1) A person may disclose information to the Director or a relevant staff member if the disclosure is made for the purposes of the exercise of any function of the Director.

(2) Information obtained by the Director or a relevant staff member in connection with the exercise of any function of the Director may be used by the Director or a relevant staff member in connection with the exercise of any other function of the Director.

(3) The Director or a relevant staff member may disclose information obtained in connection with the exercise of any function of the Director to a specified person if the disclosure is made for the purposes of the exercise of any function of the specified person.

(4) "Specified person" means a person specified in Schedule (Persons to whom Director etc may disclose information) (persons to whom Director etc may disclose information).

(5) The Secretary of State may by regulations amend Schedule (Persons to whom Director etc may disclose information).

(6) In this section, "relevant staff member" means a member of staff provided to the Director under section 1(4)."

9: After Clause 5, insert the following new Clause—

"Information gateways: supplementary

(1) A disclosure of information which is authorised by section (Information gateways) does not breach—

(a) an obligation of confidence owed by the person making the disclosure, or

(b) any other restriction on the disclosure of information (however imposed).

(2) But nothing in section (Information gateways) authorises the making of a disclosure which—

(a) contravenes the Data Protection Act 1998, or

(b) is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000.

(3) Section (Information gateways) does not limit the circumstances in which information may be disclosed apart from that section.

(4) Section (Information gateways)(1) does not authorise a person serving in an intelligence service to disclose information to the Director or a relevant staff member.

But this does not affect the disclosures which such a person may make in accordance with intelligence service disclosure arrangements.

(5) Intelligence service information may not be disclosed by the Director or a relevant staff member without authorisation from the appropriate service chief.

(6) If the Director or a relevant staff member has disclosed intelligence service information to a person, that person may not further disclose that information without authorisation from the appropriate service chief.

(7) HMRC information may not be disclosed by the Director or a relevant staff member without authorisation from HMRC Commissioners.

(8) If the Director or a relevant staff member has disclosed HMRC information to a person, that person may not further disclose that information without authorisation from HMRC Commissioners.

(9) Subsections (7) and (8) do not apply to national minimum wage information.

(10) If a person contravenes subsection (7) or (8) by disclosing revenue and customs information relating to a person whose identity—

(a) is specified in the disclosure, or

(b) can be deduced from it,

section 19 of the Commissioners for Revenue and Customs Act 2005 (wrongful disclosure) applies in relation to that disclosure as it applies in relation to a disclosure of such information in contravention of section 20(9) of that Act.

(11) In this section—

"appropriate service chief" means—

(a) the Director-General of the Security Service (in the case of information obtained by the Director or a relevant staff member from that Service or a person acting on its behalf);

(b) the Chief of the Secret Intelligence Service (in the case of information so obtained from that Service or a person acting on its behalf);

(c) the Director of GCHQ (in the case of information so obtained from GCHQ or a person acting on its behalf);

"GCHQ" has the same meaning as in the Intelligence Services Act 1994;

"HMRC information" means information disclosed to the Director or a relevant staff member under section (Information gateways) by HMRC Commissioners or a person acting on behalf of HMRC Commissioners;

"intelligence service" means—

(a) the Security Service;

(b) the Secret Intelligence Service;

(c) GCHQ;

"intelligence service disclosure arrangements" means—

(a) arrangements made by the Director-General of the Security Service under section 2(2)(a) of the Security Service Act 1989 about the disclosure of information by that Service,

(b) arrangements made by the Chief of the Intelligence Service under section 2(2)(a) of the Intelligence Services Act 1994 about the disclosure of information by that Service, and

(c) arrangements made by the Director of GCHQ under section 4(2)(a) of that Act about the disclosure of information by GCHQ;

"intelligence service information" means information obtained from an intelligence service or a person acting on behalf of an intelligence service;

"national minimum wage information" means information obtained by an officer in the course of acting—

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

(b) by virtue of section 24(2);

"relevant staff member" has the same meaning as in section (Information gateways);

"revenue and customs information relating to a person" has the meaning given in section 19(2) of the Commissioners for Revenue and Customs Act 2005."

Amendments 8 and 9 agreed.

Clause 6: Information hub

Amendment 10

Moved by ***Lord Bates***

10: Clause 6, page 5, line 17, at end insert—

"(2) The Director may request any person by whom, or by whose officers, labour market enforcement functions are exercisable to provide the Director with any non-compliance information specified or of a description specified in the request.

(3) "Non-compliance information" means information relating to non-compliance in the labour market which the Director considers would facilitate the exercise of any of his or her functions.

(4) A person by whom, or by whose officers, labour market enforcement functions are exercisable may request the Director to provide the person, or an officer of the person, with any enforcement information specified or of a description specified in the request.

(5) "Enforcement information" means information which the person making the request considers would facilitate the exercise of any labour market enforcement function of the person or of an officer of the person.

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

Amendment 10 agreed.

Amendment 11

Moved by ***Lord Bates***

11: Before Schedule 1, insert the following new Schedule—

"SCHEDULE

PERSONS TO WHOM DIRECTOR etc MAY DISCLOSE INFORMATION

Authorities with functions in connection with the labour market or the work place etc

The Secretary of State.

HMRC Commissioners.

A person by whom, or by whose officers, labour market enforcement functions are exercisable.

The Health and Safety Executive.

An enforcing authority within the meaning of Part 1 of the Health and Safety at Work etc. Act 1974 (see section 18(7) of that Act).

An inspector appointed by such an enforcing authority (see section 19 of that Act).

An enforcement authority within the meaning of regulation 28 of the Working Time Regulations 1998 (S.I. 1998/1833).

An inspector appointed by such an enforcement authority (see Schedule 3 to those Regulations)

The Low Pay Commission.

The Pensions Regulator.

Law enforcement and border security

A chief officer of police for a police area in England and Wales.

A local policing body within the meaning given by section 101(1) of the Police Act 1996.

The chief constable of the British Transport Police Force.

The chief constable of the Police Service of Scotland.

The Chief Constable of the Police Service of Northern Ireland.

A person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971.

Local government

A county or district council in England.

A London borough council.

The Greater London Authority.

The Common Council of the City of London.

The Council of the Isles of Scilly.

A county or county borough council in Wales.

A council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.

A district council in Northern Ireland.

Health bodies

The Care Quality Commission.

A National Health Service trust established under section 25 of the National Health Service Act 2006 or section 18 of the National Health Service (Wales) Act 2006.

An NHS foundation trust within the meaning given by section 30 of the National Health Service Act 2006.

A Local Health Board established under section 11 of the National Health Service (Wales) Act 2006.

Other

The Independent Anti-slavery Commissioner.

A Northern Ireland department."

Amendment 11 agreed.

Schedule 1: Functions in relation to labour market

Amendment 12

Moved by ***Lord Bates***

12: Schedule 1, page 72, line 13, at end insert—

"6A In section 15 (information obtained by officers)—

(a) in subsection (3)(b), after "any" insert "eligible";

(b) in subsection (4)(a), after "to any" insert "eligible";

(c) in subsection (8), for the words from ""relevant" to "body which," substitute ""eligible relevant authority" means any relevant authority within the meaning given by section 13(1A) which"."

Amendment 12 agreed.

Clause 10: PACE powers in England and Wales for labour abuse prevention officers

Amendment 13

Moved by ***Lord Bates***

13: Clause 10, page 6, line 42, leave out from "under" to "may" in line 43 and insert "subsection (4)(e)"

Amendment 13 agreed.

Clause 11: Relationship with other agencies: requests for assistance

Amendments 14 to 20

Moved by ***Lord Bates***

14: Clause 11, page 7, line 17, leave out "relevant person" and insert "of the following"

15: Clause 11, page 7, line 18, at end insert "—

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

(b) the Director General of the National Crime Agency;

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

(d) any other person prescribed or of a prescribed description."

16: Clause 11, page 7, leave out lines 22 and 23 and insert—

"(3) Any of the following persons may request the Authority to provide assistance to the person—

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

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

(c) any other person prescribed or of a prescribed description."

17: Clause 11, page 7, line 24, leave out "relevant"

18: Clause 11, page 7, leave out lines 33 to 39

19: Clause 11, page 7, line 40, leave out from beginning to end of line 15 on page 8 and insert—

"( ) Regulations under this section must not make provision which would be—

(a) within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament,

(b) within the legislative competence of the National Assembly for Wales if contained in an Act of that Assembly, or

(c) within the legislative competence of the Northern Ireland Assembly if contained in an Act of that Assembly made without the consent of the Secretary of State."

20: Clause 11, page 8, line 19, leave out from "22A" to end of line 20 and insert "(1)(d) or (3)(c) (regulations regarding persons whom the Authority may request to provide assistance and who may request assistance from Authority)."

Amendments 14 to 20 agreed.

Clause 20: Further provision about LME orders

Amendment 21

Moved by ***Lord Bates***

21: Clause 20, page 13, line 14, at end insert "and which was made by the court or any other court in the same part of the United Kingdom as the court"

Amendment 21 agreed.

Clause 21: Variation and discharge

Amendments 22 to 24

Moved by ***Lord Bates***

22: Clause 21, page 13, line 24, leave out paragraph (a)

23: Clause 21, page 13, line 26, leave out "order under section 18" and insert "LME order"

24: Clause 21, page 13, line 26, after "Wales" insert (whether made under section 16 or 18)"

Amendments 22 to 24 agreed.

Clause 22: Appeals

Amendment 25

Moved by ***Lord Bates***

25: Clause 22, page 13, line 39, leave out "on an application"

Amendment 25 agreed.

Clause 23: Code of practice

Amendments 26 and 27

Moved by ***Lord Bates***

26: Clause 23, page 14, line 21, at end insert—

"( ) The code and any revised code—

(a) must not be issued unless a draft has been laid before Parliament, and

(b) comes into force on such day as the Secretary of State appoints by regulations."

27: Clause 23, page 14, line 22, leave out "lay before Parliament, and"

Amendments 26 and 27 agreed.

Schedule 2: Consequential and related amendments

Amendments 28 to 39

Moved by ***Lord Bates***

28: Schedule 2, page 74, line 40, at end insert—

"(b) under the heading "Offices", at the appropriate place insert "Director of Labour Market Enforcement".

29: Schedule 2, page 74, line 40, at end insert—

"Employment Agencies Act 1973 (c. 35)

3A (1) Section 9 of the Employment Agencies Act 1973 (inspection) is amended as follows.

(2) In subsection (4)—

(a) in paragraph (a), for the words before sub-paragraph (i) substitute "No information to which this subsection applies shall be disclosed except—";

(b) at the end of paragraph (a) insert "; or

"(vii) to an officer acting by virtue of section 24 of the Immigration Act 2016 (investigative functions in connection with labour market enforcement undertakings and orders); or

"(viii) to an officer acting for the purposes of Part 2 of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 for any purpose relating to that Part; or

(ix) to the Pensions Regulator for the purposes of the exercise of any function of the Regulator; or

(x) to the Care Quality Commission for the purposes of the exercise of any function of the Commission."

(3) After subsection (4) insert—

"(5) Subsection (4) applies to—

(a) information obtained in the course of exercising the powers conferred by this section,

(b) information obtained pursuant to section 15(5A) of the National Minimum Wage Act 1998, and

(c) information obtained in the course of exercising powers by virtue of section 24(1) of the Immigration Act 2016 (investigative functions in connection with labour market enforcement undertakings and orders)."""

30: Schedule 2, page 75, line 16, at end insert—

"National Minimum Wage Act 1998 (c. 39)

5A (1) Section 15 of the National Minimum Wage Act 1998 (information obtained by officers) is amended as follows.

(2) In subsection (1)—

(a) after "to" insert "—

(a) ";

(b) at the end insert ", and

(b) any information obtained by an officer acting by virtue of section 24(2) of the Immigration Act 2016 (investigative functions in connection with labour market enforcement undertakings and orders)."

(3) After subsection (5B) insert—

"(5C) Information to which this section applies—

(a) may be supplied by, or with the authorisation of, the Secretary of State to an officer acting by virtue of section 24 of the Immigration Act 2016 (investigative functions in connection with labour market enforcement undertakings and orders); and

(b) may be used by an officer so acting for any purpose for which the officer is so acting."""

31: Schedule 2, page 77, line 26, leave out paragraph (c)

32: Schedule 2, page 78, line 12, at end insert—

"20A (1) Section 19 (information relating to gangmasters) is amended as follows.

(2) In subsection (1)—

(a) for the words before paragraph (a) substitute "Information to which this subsection applies—";

(b) for paragraph (a) substitute—

"(a) may be supplied to any person for use for the purposes of, or for any purpose connected with, the exercise of functions under this Act,

"(aa) may be supplied to any person by whom, or by whose officers, labour market enforcement functions are exercisable for the purposes of, or for any purpose connected with, the exercise of such functions, and".

(3) After subsection (1) insert—

"(1A) Subsection (1) applies to—

(a) information held by any person for the purposes of, or for any purpose connected with, the exercise of functions under this Act, and

(b) information held by any officer acting by virtue of section 24(3) of the Immigration Act 2016 (investigative functions in connection with labour market enforcement undertakings and orders).

(1B) In subsection (1) "labour market enforcement functions" has the same meaning as in Chapter 1 of Part 1 of the Immigration Act 2016 (see section 3 of that Act)."

(4) In subsection (2)—

(a) omit "relating to the operations of a person acting as a gangmaster";

(b) for "(1)(b)" substitute "(1)(aa) or (b)"."

33: Schedule 2, page 78, line 13, leave out paragraph 21

34: Schedule 2, page 78, leave out lines 37 to 45 and insert—

"(5) In paragraph 10, for sub-paragraph (2) substitute—

"(2) Section 8(1) as it applies in relation to Northern Ireland licences is to be read as if the words "with the approval of the Secretary of State" were omitted.""

35: Schedule 2, page 79, leave out lines 3 to 5

36: Schedule 2, page 79, line 5, at end insert—

"(6) After paragraph 16 insert—

"Section 19: Information relating to gangmasters

16A (1) Section 19 as it applies in relation to Northern Ireland functions is to be read as if—

(a) paragraph (aa) of subsection (1) (and the reference to it in subsection (2)) were omitted,

(b) subsections (1A)(b) and (1B) were omitted, and

(c) in subsection (2), after "Information" there were inserted the words "relating to the operations of a person acting as a gangmaster".

(2) In this paragraph "Northern Ireland functions" means functions under this Act in connection with persons acting as gangmasters in Northern Ireland or persons acting as gangmasters in relation to work in Northern Ireland.

Section 22A: Relationship with other agencies: requests for assistance

16B Section 22A does not apply in relation to the Authority's functions in connection with persons acting as gangmasters in Northern Ireland or persons acting as gangmasters in relation to work in Northern Ireland.""

37: Schedule 2, page 79, line 5, at end insert—

"Pensions Act 2004 (c. 35)

22A In the Pensions Act 2004, in Schedule 3 (certain permitted disclosures of restricted information held by the Pensions Regulator), at the end of the table insert—

"Director of Labour Market Enforcement or a member of staff provided to the Director under section 1(4) of the Immigration Act 2016.	Any of the Director's functions.""

38: Schedule 2, page 79, line 19, at end insert—

"

26A At the beginning of Part 7, after the italic heading "Miscellaneous" insert—

"54A Gangmasters and Labour Abuse Authority: information gateways

(1) A specified person may disclose information to the Gangmasters and Labour Abuse Authority (the "Authority") or a relevant officer if the disclosure is made for the purposes of the exercise of any function of the Authority or the officer under this Act.

(2) Information obtained by the Authority or a relevant officer in connection with the exercise of any function of the Authority or the officer under this Act may be used by the Authority or the officer in connection with the exercise of any other such function of the Authority or the officer.

(3) The Authority or a relevant officer may disclose to a specified person information obtained in connection with the exercise of any function of the Authority or the officer under this Act if the disclosure is made for the purposes of the exercise of any function of the specified person.

(4) A disclosure of information which is authorised by this section does not breach—

(a) an obligation of confidence owed by the person making the disclosure, or

(b) any other restriction on the disclosure of information (however imposed).

(5) But nothing in this section authorises the making of a disclosure which—

(a) contravenes the Data Protection Act 1998, or

(b) is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000.

(6) This section does not limit the circumstances in which information may be disclosed apart from this section.

(7) "Specified person" means a person specified in Schedule 4A (information gateways: specified persons).

(8) The Secretary of State may by regulations amend Schedule 4A.

(9) In this section, "relevant officer" means an officer of the Authority who is acting for the purposes of Part 1 or 2 of this Act (see sections 11A and 30A)."

26B Omit section 55 (review of Gangmasters Licensing Authority).

26C In section 58 (regulations), in subsection (4), after paragraph (j) insert—

"(ja) regulations under section 54A(8) (power to amend Schedule 4A);".

26D In section 60 (extent)—

(a) in subsection (1), after "section 53)" insert "and section 54A, and Schedule 4A, in Part 7";

(b) in subsection (3), after "and 7" insert "(except for section 54A and Schedule 4A)"."

39: Page 79, line 22, at end insert—

"27A After Schedule 4 insert—

"SCHEDULE 4A

INFORMATION GATEWAYS: SPECIFIED PERSONS

Authorities with functions in connection with the labour market etc

The Secretary of State.

A person by whom, or by whose officers, labour market enforcement functions (within the meaning given by section 3 of the Immigration Act 2016) are exercisable.

Law enforcement and border security

A chief officer of police for a police area in England and Wales.

The chief constable of the British Transport Police Force.

An immigration officer.

Local government

A county council in England or Wales.

A county borough council in Wales.

A district council in England.
A London borough council.
The Greater London Authority.
The Common Council of the City of London.
The Council of the Isles of Scilly.

Health bodies

A National Health Service trust established under section 25 of the National Health Service Act 2006 or section 18 of the National Health Service (Wales) Act 2006.

An NHS foundation trust within the meaning given by section 30 of the National Health Service Act 2006.

A Local Health Board established under section 11 of the National Health Service (Wales) Act 2006.

Other

The Independent Anti-slavery Commissioner.""

Amendments 28 to 39 agreed.

Clause 30: Regulations under Chapter 1

Amendment 40

Moved by ***Lord Bates***

40: Clause 30, page 17, line 24, leave out subsections (1) to (3) and insert—

"(1) Regulations under section 3 or 12 must not prescribe a requirement, function or offence if provision imposing the requirement, conferring the function or creating the offence falls within subsection (3).

(2) Regulations under section 9 must not confer a function if provision doing so falls within subsection (3).

(3) Provision falls within this subsection if—

(a) it would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament,

(b) it would be within the legislative competence of the National Assembly for Wales if contained in an Act of that Assembly, or

(c) it would be within the legislative competence of the Northern Ireland Assembly if contained in an Act of that Assembly made without the consent of the Secretary of State."

Amendment 40 agreed.

Clause 31: Interpretation of Chapter 1

Amendments 41 to 43

Moved by ***Lord Bates***

41: Clause 31, page 18, line 18, at end insert—

""the Director" has the meaning given by section 1;"

42: Clause 31, page 18, line 29, at end insert—

""HMRC Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;"

43: Clause 31, page 18, line 36, at end insert—

""strategy" has the meaning given by section 2;"

Amendments 41 to 43 agreed.

Clause 32: Offence of illegal working

Amendment 44

Moved by ***Lord Bates***

44: Clause 32, page 19, line 6, after "person" insert "("P")"

Lord Bates: My Lords, I have considered carefully the constructive debate on illegal working that we had in Committee—particularly on the amendments tabled by the noble Lord, Lord Rosser. I am also grateful to noble Lords who have given up so much time to discuss these issues with me in recent weeks. I accept that a compelling case has been made. I hope that with Amendments 44, 45, 47, 48 and 51 to Clause 32, which have been tabled in my name, noble Lords will agree that concerns have been addressed.

Illegal working is a key driver of illegal migration. Being able to work illegally encourages economic migrants to put themselves in harm's way in efforts to enter the UK illegally or to overstay. We need to address these economic motivations. Illegal working also undercuts legitimate businesses which play by the rules, and may depress wages and the availability of work for British citizens and lawful migrants. Individuals with an irregular immigration status are likely already to be committing a criminal offence, regardless of whether they work. The creation of this offence does not alter the fact. Many economic migrants are not here because they have been trafficked or enslaved, but because they have chosen to break the law in order to work illegally in the UK.

Parliament has already provided immigration officers with powers to recover the proceeds of crime in relation to immigration offences through the UK Borders Act 2007, but the courts do not always regard earnings derived from working illegally as proceeds of crime when considering cash forfeiture or confiscation cases under existing legislation, so the provisions of the 2007 Act are being frustrated. We need to plug this important gap in the law to deter illegal economic migration, including by those who work as self-employed without permission.

Victims of modern slavery are not the target of the offence: they have a strong statutory defence provided for by Section 45 of the Modern Slavery Act 2015. Traffickers and slavers always try to mislead their victims about the consequences of asking for help from authorities or non-government organisations. Their business model depends on controlling their victims, including the victims' access to information. I do not believe that the creation of this offence makes a material difference to traffickers' ability to spread disinformation.

The truth is that there is only one way to counter the lies spread by traffickers: we need to empower victims by providing them with accurate information about their rights and means of redress, and we need to do this through channels that are accessible and trusted. That is why the Government work closely with NGOs and are constantly looking for new and better ways to reach victims.

I reassure noble Lords that the Government will ask the modern slavery strategy and implementation group, a group chaired by Ministers that brings together non-government organisations and other partners, to advise on what further steps can be taken to ensure that victims and would-be victims understand the law and know what support is available to them. The Government have put victims at the heart of our modern slavery strategy. We are also seeking to strengthen enforcement against exploitation through measures in Part 1.

However, as I said, we have listened carefully to the concerns expressed by noble Lords about the strict liability nature of the offence and the resulting disparity

with the offence of employing an illegal worker. By tabling the amendments in my name, the Government propose to introduce a mens rea for the offence. The effect of the Government's amendments is that the individual must either know or have reasonable cause to believe that they have no right to work. This means that the offence would not be committed by someone who is working illegally but does not know, or does not have reasonable cause to believe, that he or she lacks permission to work.

We feel that this strikes the right balance between protecting the vulnerable and ensuring that those who make no effort to ensure that they are complying with UK immigration law cannot simply plead ignorance of our Immigration Rules where they should have known that they had no permission to work.

I turn to the minor and technical amendments tabled in my name to Clauses 34 and 87 and Schedule 4. Amendments 53 and 55 to Clause 34 concern the powers to prevent illegal working in licensed premises. Clause 34 allows regulations to make provision for Scotland and Northern Ireland equivalent to that made for England and Wales. To this end, the clause allows the regulations to amend an Act of the Scottish Parliament. However, in Scotland the equivalent of late-night refreshment, so-called late-hours catering, is dealt with by the Civic Government (Scotland) Act 1982. This is an Act of the Westminster Parliament which predates devolution. Amendments 53 and 55 to Clause 34 address this technical conundrum.

Amendment 148 to Clause 87 deletes a reference to a regulation-making power for private hire and taxi provisions to cover Scotland and Northern Ireland. This is now redundant as the necessary provisions have been placed on the face of the Bill. Amendment 56 to Schedule 4 adds a definition of "the Immigration Acts" to the Taxis Act (Northern Ireland) 2008. This is a necessary amendment because the Interpretation Act (Northern Ireland) 1954 does not contain such a definition. Without this amendment, the provisions could not operate properly in Northern Ireland. I beg to move.

4.30 pm

Lord Rosser: We have amendments in this group. First, I thank the Government for their amendment, which means that the offence of illegal working is committed only by a person who,

"knows or has reasonable cause to believe",

that they are disqualified from working by their immigration status. It is different in wording from our amendment, which refers to a defence of having a "reasonable excuse" for working when disqualified from doing so by immigration status. I am certainly no lawyer, but I suspect that our amendment might provide a broader range of people with a defence than the government amendment. However, since the Government have taken on board the case that has been made for providing a defence to the offence of legal working, we do not intend to pursue this point any further.

We have previously argued the case for deleting the intended new offence of illegal working from the Bill, and we are associated again with an amendment to that effect. Not a single person could be prosecuted under this new offence who cannot already be prosecuted under existing offences; it is already a criminal offence under the Immigration Act 1971 to enter the UK without leave, when leave is required, and to overstay or be in breach of a condition of such leave. The Government's argument for a new criminal offence of illegal working is that they believe it will provide an increased likelihood of seizing earnings through confiscation orders made under the Proceeds of Crime Act 2002. The Government can confiscate relevant sums from those who work in breach of the terms of their existing stay under the 2002 Act but cannot do so for those working illegally, and the Government wish to close the gap. However, government figures indicate that the 2002 Act is not typically used for offences of working in breach of conditions, although it is deployed in cases involving other immigration offences. The government figures indicate that only 16 confiscation orders were made under the 2002 Act in 2014-15, and none of them followed criminal convictions for working in breach of conditions.

As I understand it, proceeds of crime proceedings are apt to be lengthy and costly, and the Crown Prosecution Service guidance on proceeds of crime says that it should prioritise,

"the recovery of assets from serious and organised crime and serious economic crime".

I suggest that there would be few cases in which it would be cost effective or in the public interest to pursue confiscation proceedings to seize wages earned as a result of illegal working as proceeds of crime. However, there must be a distinct likelihood that the existence of the offence of illegal working will be used as an additional threat by those abusing or taking advantage of trafficked or enslaved persons to discourage them from going to the authorities, or indeed to coerce such people into exploitation in the first place. Yet one objective of the Bill is to encourage people who are being exploited to come forward. A trafficked or enslaved person who knows that they are not permitted to work will of course have no defence under the government amendment of "reasonable cause to believe". So it is quite possible that the new offence of illegal working will on the one hand raise little or no additional money under the 2002 Act, and on the other hand, by providing the threat of prosecution for those exploiting vulnerable people who should not be in this country, be a further means of discouraging them from coming forward to the authorities. I very much hope that the Government, even at this late stage, will be prepared to give further thought to the wisdom of introducing this new offence of illegal working.

Baroness Hamwee: The Minister said during the previous stage that the amendment that would insert "without reasonable excuse" would introduce considerable ambiguity and risk successful prosecutions. The amendment is down again today. We should consider it. The courts, the CPS and the police often have to assess whether something is reasonable so, as I read it, the amendment tabled by the noble Lord, Lord Rosser, is a matter not of ambiguity but of judgment, although I concede that if it was strict liability there would be no need of judgment.

For the reasons that the noble Lord gave, the reasonable cause—I accept that that is a more normal formula—in the government amendment is welcome, but I do not

[Baroness Hamwee]
believe it goes far enough to provide a defence to someone who knows that he is illegal but who has been abused and exploited, perhaps at a lower level than is covered by the Modern Slavery Act. If it is within the Modern Slavery Act, the defence kicks in only after there has been a charge. I do not think I am alone in preferring to see a charge not even getting off the starting block.

Our Amendments 49 and 50 are in response to the Minister's explanation in Committee that the clause is largely driven by the wish to bring it within the Proceeds of Crime Act. He assured the Committee that the Proceeds of Crime Act would not be applied to inappropriate targets:

"We are talking here about people who have on their person a significant amount of cash in excess of £1,000".—[*Official Report*, 18/1/16; col 626.].

I took those words literally and our amendments are an attempt to reflect them because, if that is the policy, the legislation should say so. I accept that the CPS guidance is to prioritise the recovery of the proceeds of serious organised crime and serious economic crime and that the confiscation order must be proportionate, but to create an offence with the risks which have been referred to and which I will come to in a moment seems an inappropriate direction in which to go if there is such a clear view on the part of the Government about when it will be used.

We remain extremely concerned about Clause 32 as a whole, and my noble friend Lord Paddick and I have our names to Amendment 52 to leave it out because of the danger of an increase, not a reduction, in exploitation. As we discussed on the previous group, the Bill is about more than immigration. If you fear prosecution and imprisonment, is that not a greater deterrent to standing up for your rights? Someone working without the right to do so should not be exploited any more than someone with the right, but we think that the new offence may carry far more risks than it solves problems.

I suspect that the new offence, or at least casting it in this way, is probably quite totemic for the Government but, given the risks of applying the Proceeds of Crime Act, surely there are other ways to deal with the issue, such as the existing offences that the noble Lord, Lord Rosser, has referred to, rather than by giving abusers and exploiters even more ammunition and ways that they can say to workers, "We can really cause trouble for you. You are in a situation that you can't get out of, and you are in terrible trouble if you try to go to the police, squeal on us or whatever". Given that existing offences could be used to prosecute everyone who would fall within the new section, we remain unpersuaded that it is appropriate to include the clause in the Bill.

Lord Mackay of Clashfern (Con): My Lords, in relation to the point made by the noble Lord, Lord Rosser, as against the clause as introduced, the virtue of the clause as amended by the government amendment is that the prosecutor would have to prove that the person in question knew or had reasonable cause to believe that he was disqualified, whereas in Amendment 46, which was proposed by the noble Lords, Lord Rosser and Lord Kennedy of Southwark, the onus would be the other way: in other words, the defence would have to prove that the matter was done without reasonable cause. I think that that is the nature of the law in this matter. So in a sense the government amendment has greater protection for the person alleged to have committed the offence than Amendment 46 would have done.

Lord Phillips of Worth Matravers (CB): On that point, my Lords, I have had occasion under another statute to consider the phrase "without reasonable excuse" in a judicial capacity, and I found it impossibly imprecise.

Baroness Lister of Burtersett (Lab): My Lords, I support Amendment 52, which would leave out Clause 32. I shall make one specific and one general point.

I am grateful to the Minister for his collection of letters. I am not sure that it is quite a limited edition, and I have visions of him scurrying around late at night delivering them. I have found it helpful because of course I had mislaid the letter of 28 January, in which he clarified that the offence of legal working will apply to asylum seekers who are not permitted to work but also to those who have been granted permission but take a job that is not on the shortage occupation list. Whatever one thinks of the clause itself, and I am opposed to it, surely it is unfair that it is applied to people who have a clear legal right to be in the country at that point. This has been presented as a clause that applies to people who have no legitimate right to be in the country, but those who are still seeking asylum have that right. I was concerned about that because it seems unfair.

My more general point is that, like other noble Lords, I fear that despite the government amendment the clause will serve to encourage exploitation. I was disturbed to read in yesterday's *Independent* a report of a study of young migrant men carried out by the University of Manchester as part of a European Commission study, which found that these young men felt that they are constantly having to justify their status and made to feel that they are on the wrong side of the law even when they have done nothing wrong. I am not arguing that there is a clear cause and effect, but when we have government policies like the previous Immigration Act, this Bill and particularly this clause, which deliberately try to create a hostile environment for undocumented migrants, unfortunately they can create a hostile environment for those who have every right to be here. That impedes their ability to integrate into British society, which can be in nobody's interests.

Baroness Ludford: My Lords, I wish to add to the very sound arguments put by my noble friend Lady Hamwee and others on the question of the resources of the Crown Prosecution Service and the police. Surely there are many pressures on them and demands for resources. I was reading the other day that there are 5 million frauds against bank customers every year and lax attention by the banks. Given the extent of child abuse and sexual abuse and the explosion of problems online which the CPS is trying to react to and get on top of, is it right to make this an extra priority for the CPS when we ask so much of it in other areas?

4.45 pm

Is there not also a possible perverse result? If people are illegally in the country—I take the point made by the noble Baroness, Lady Lister, about asylum seekers not being illegally in the country; I assume that we are focusing on those who are—is not the priority to seek their removal? The proceeds of crime proceedings that could be taken against them could be very lengthy, and you would be finding a reason to prolong their stay in the country at the expense of someone—certainly the criminal proceedings would be at the expense of the taxpayer. It would be very hard to remove these people and therefore say that they could not be present at their own criminal trial, so you would give a perverse extension of the stay of people in the country who should not be in it. This does not seem to be terribly wise policy-making, as regards both the resources of the CPS and the perverse incentives to prolong people's stay in the country.

Lord Deben: I wish simply to thank the Minister for these changes, particularly in view of the two codas from our legal friends on the dangers of the amendments and the explanation that my noble friend put forward about their real meaning. I hope the Minister will take back to the Government the great advantage to be gained from being seen to listen to sensible arguments in the House of Lords and changing the legislation as a result. There are many other occasions when we would get through our business much more quickly if sensible debate was ended by a sensible change of mind by government.

Lord Green of Deddington (CB): My Lords, I will contribute a slightly wider point to the discussion. It is surely clear to all of us that a substantial number of people would like to come to this country and work illegally. As the Home Office will confirm, nearly half of those who apply for asylum have previously been working illegally and apply only when discovered. We have literally thousands of people queueing up in Calais wanting to get into Britain and work illegally. They know perfectly well that they will be illegal when they get here but they come because they want to work and send money home. Understandable though that may be, it is surely essential that there should be a disincentive to those people from making that attempt. The obvious thing is to make it illegal. There is no way that they will understand the intricacies of British law—indeed, the deputy mayor of Calais does not understand them—so it must be made illegal. If the Government can usefully adjust the law in terms of prosecutions, so be it, but let us keep our eye on the ball. There are literally thousands, if not many thousands, who would like to come and do this and they should be deterred.

Lord Brown of Eaton-under-Heywood (CB): My Lords, I associate myself with what the noble Lord, Lord Green, has just said. Clause 32 would essentially criminalise knowingly working illegally. I find it difficult to suppose that there would be much if anything in the way of the successful recovery of illegal earnings under POCA, and I can hardly think that that is the real object that underlies the proposed introduction of this new offence. Surely the real question is whether the suggested benefit indicated by the noble Lord, Lord Green—of adding this explicit new offence to the altogether more abstract existing offence of working in breach of immigration conditions, to discourage people smugglers by cancelling the message that they presently give to aspiring immigrants; namely, that there is no such existing offence here—outweighs the suggested risk of the exploitation of such workers by henceforth making it more likely that they will keep their illegal working secret. My judgment is that it does outweigh it. Therefore I support the existing clause as amended.

Lord Bates: My Lords, I guess that the noble Lord, Lord Rosser, is regretting raising the absence of legal advice on this point. What is so wonderful about this place is that, when we look for legal advice on our proceedings, up pop a former President of the Supreme Court, a former Lord Justice of Appeal and a former Lord Chancellor. One of the great advantages of this House is that we can draw on such expertise. I am particularly grateful to the noble and learned Lords for their contributions in this regard.

In the spirit in which my noble friend Lord Deben approached this matter, which is the spirit in which we approach the Bill, we looked at whether the "reasonable excuse" amendment would be able to hold up and work. The advice that came back was that it was thought that it would not work; none the less, in Committee the noble Lord, Lord Rosser, highlighted a number of cases in which people had been brought to this country believing that they had a legal right to be here. They had been told that by an unscrupulous employer but it then became manifest that they did not have that legal right. We agreed that there ought to be some defence and have brought that forward in Amendment 48 with the words,

"knows or has reasonable cause to believe".

I shall deal with a couple of the points that have been raised. The noble Baronesses, Lady Hamwee, Lady Ludford and Lady Lister, rightly were all concerned about the impact on potential victims of trafficking and modern-day slavery. The suggestion that the Modern Slavery Act defence applies only after a charge is not correct, as that does not reflect the operational reality. We do not accept that the defence protects victims only after arrest—that is not the case. Law enforcement officers do not pursue investigations where a defence is clearly established. For example, it is a defence to a charge of assault if a person acts in self-defence and uses reasonable force. If officers establish that at the scene of an incident, they will not arrest a person, as to do so would be a waste of resources, as the noble Baronesses rightly highlighted.

I turn to how the clause on illegal workers will work. While many illegal workers do not earn significant sums, unfortunately some, particularly the self-employed, benefit from current loopholes in the law and make a good living out of being in the UK illegally. I am sure that the point that the noble Lord, Lord Green of Deddington, raised—about those who come here and move on to asylum—will be discussed when we reach a later clause concerning the ability to work while claiming asylum. The Proceeds of Crime Act 2002 (Recovery of Cash in Summary Proceedings: Minimum Amount) Order 2006 specifies that only cash sums of £1,000

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and above may be seized. This means that the illegal worker must possess cash amounting to at least £1,000 before proceeds of crime action and cash-seizing powers may be used in connection with the new legal offence. We believe that that threshold, as well as closing a loophole, and the new mens rea defence, which is required to be proved in the court for a successful prosecution to occur, give the right balance and the right defence to ensure that the types of individuals whom the noble Baronesses, Lady Lister and Lady Hamwee, and the noble Lord, Lord Rosser, referred to are not caught inadvertently by this legislation.

Amendment 44 agreed.

Amendment 45

Moved by ***Lord Bates***

45: Clause 32, page 19, line 6, at end insert "—(a)"

Amendment 45 agreed.

Amendment 46 not moved.

Amendments 47 and 48

Moved by ***Lord Bates***

47: Clause 32, page 19, line 7, leave out "the person" and insert "P"

48: Clause 32, page 19, line 7, leave out from "when" to end of line 16 and insert "P is disqualified from working by reason of P's immigration status, and

(b) at that time P knows or has reasonable cause to believe that P is disqualified from working by reason of P's immigration status.

(1A) For the purposes of subsection (1) a person is disqualified from working by reason of the person's immigration status if—

(a) the person has not been granted leave to enter or remain in the United Kingdom, or

(b) the person's leave to enter or remain in the United Kingdom—

(i) is invalid,

(ii) has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise), or

(iii) is subject to a condition preventing the person from doing work of that kind."

Amendments 47 and 48 agreed.

Amendments 49 and 50 not moved.

Amendment 51

Moved by ***Lord Bates***

51: Clause 32, page 20, line 1, leave out "(1)" and insert "(1A)"

Amendment 51 agreed.

Amendment 52 not moved.

Clause 34: Licensing Act 2003: amendments relating to illegal working

Amendment 53

Moved by ***Lord Bates***

53: Clause 34, page 22, line 22, leave out "relevant"

Amendment 53 agreed.

Amendment 54 not moved.

Amendment 55

Moved by ***Lord Bates***

55: Clause 34, page 22, line 29, leave out from "section" to end of line 32 and insert ""enactment" includes—

(a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;

(b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;

(c) an enactment contained in, or in an instrument made under, Northern Ireland legislation."

Amendment 55 agreed.

Schedule 4: Private hire vehicles etc

Amendment 56

Moved by ***Lord Bates***

56: Schedule 4, page 121, line 22, at end insert—

"( ) In subsection (1)(a)—

(a) "the Immigration Acts" has the meaning given by section 61(2) of the UK Borders Act 2007, and

(b) the reference to an offence under any of the Immigration Acts includes an offence under section 133(5) of the Criminal Justice and Immigration Act 2008 (breach of condition imposed on designated person)."

Amendment 56 agreed.

Amendment 57

Moved by ***Lord Alton of Liverpool***

57: After Clause 36, insert the following new Clause—

"Asylum seekers: permission to work after six months

(1) The Immigration Act 1971 is amended as follows.

(2) After section 3(9) (general provisions for regulation and control) insert—

"(10) In making rules under subsection (2), the Secretary of State must provide for persons seeking asylum, within the meaning of the rules, to apply to the Secretary of State for permission to take up employment, including self-employment and voluntary work.

(11) Permission to work for persons seeking asylum must be granted if—

(a) a decision has not been taken on the applicant's asylum application within six months of the date on which it was recorded, or

(b) an individual makes further submissions which raise asylum grounds and a decision on that new claim or to refuse to treat such further submissions as a new claim has not been taken within six months of the date on which the submissions were recorded.

(12) Permission for a person seeking asylum to take up employment shall be on terms no less favourable than those upon which permission is granted to a person recognised as a refugee to take up employment.""

Lord Alton of Liverpool: My Lords, in his reply to the previous group of amendments the Minister gave a trailer for Amendment 57. In this argument we are returning to an issue that some of us raised and spoke to in Committee. I thank the noble Lords, Lord Rosser and Lord Paddick, the noble Baroness, Lady Hamwee,

and others for supporting this amendment then, and again today. The amendment does precisely what it says on the package: it gives asylum seekers permission to work after six months. It was in Committee that the noble Baroness, Lady Ludford, said—and I agree—that the other side of this coin is that an amendment of this kind would impose a duty to work, rather than simply leaving asylum seekers to eke out a pitiful existence on a monetary subvention by the state.

In his admirable book, *The Home We Build Together*, my noble friend Lord Sacks describes three groups of people who arrive as migrants in a foreign land. The first group are greeted by the local mayor and told that they will be given free accommodation, every possible benefit and that nothing will be required of them. They are told that they will be left to get on with it and that the community will have nothing to do with them and do not want to be troubled by them. The second group arrived and, this time, the mayor explained that there was no welcoming committee, no accommodation available and no financial support. However, if the strangers in their land had money, there was a brand new hotel in which they could stay for as long as they could pay. A third group arrived, and they were told that there was no accommodation, no benefits and nowhere to hire. But the mayor and the community provided bricks and mortar and a site where the strangers could make a home and earn a living. The mayor promised that the whole community would assist them and that they would build a home together. All of us know that the third response—a combination of generosity and self-help—is the approach that would work best. It is the approach that lies at the heart of this amendment. Amendment 57 would allow asylum seekers to be able to work if their claim is not determined by the Home Office in a timeframe of six months. Why would any Government oppose something that is based so clearly on common sense and on the principle of self-help and the removal of reliance on the state?

During our Committee debates, the Government said that they opposed the amendment because it would lead to an increase in unfounded applications. The noble Lord, Lord Ashton, who is in his place, responding for the Government, echoed what has become something of a mantra, saying:

"Earlier access to employment risks making asylum more attractive for those who are otherwise not eligible to work in the UK".—[*Official Report*, 20/1/16; col. 851.]

But where is the empirical evidence for this assertion? The Government's position is based on speculation. They previously conceded that,

"it may be broadly true",

that,

"there is little hard evidence that the change you propose (to allow asylum seekers to work after six months) would result in more asylum applications".

So I agree with the Government's earlier assertion and I wonder why they have changed their mind.

5 pm

All the available evidence suggests that permission to work does not act as a pull factor for asylum seekers or economic migrants. That is reflected in the Home Office's own research and was confirmed by a review of the 19 main recipient countries for asylum applications in the OECD in 2011, which concluded that policies which relate to the welfare of asylum seekers—for example, permission to work, support levels and access to healthcare—did not have any significant impact on the number of applications made in destination countries. Furthermore, 12 other European Union countries already allow asylum seekers access to the labour market after six months or less of waiting for a decision on their claims. These countries are Austria, Belgium, Cyprus, Finland, Germany, Greece, Italy, the Netherlands, Poland, Portugal, Spain and Sweden. The vast majority of those countries have had such policies in place for many years, and none of them has had to change the policy because of any abuse of the asylum route by economic migrants.

In Committee, the Government noted that Germany has the largest number of asylum applications in the EU and a significant number of applications from countries in the Balkans which generally do not merit refugee status, and they sought to indicate that this was connected to its policy on permission to work. However, as the NGO Still Human Still Here has pointed out, "The reason Germany has the most asylum applications in the EU is because of its Government's publicly stated willingness to keep its borders open and to provide protection to those refugees fleeing conflict and persecution". Furthermore, the significant number of asylum applications from Balkan countries long predates Germany's decision to reduce to three months the time that asylum seekers have to wait before being able to access the job market.

In reality, those motivated to come to the United Kingdom for economic reasons are unlikely to make an asylum application and bring themselves to the attention of the authorities on the basis that they might be able to apply for permission to work after six months. Even if this were the case, they would never have an opportunity to do so, as the Home Office decides all straightforward claims within six months—a point made repeatedly by the Government in Committee. In summary, the Government accept that there is no evidence that the policy change proposed by this amendment would lead to an increase in unfounded applications. It is also stated that all straightforward cases, which would clearly include unfounded asylum applications, would be dealt with within six months and that the individuals concerned would therefore not have an opportunity to apply for permission to work.

The Government have developed a second line of argument against the idea contained in this amendment. In Committee, the noble Lord, Lord Ashton, told us:

"The Government believe that the current policy strikes the right balance. If a claim remains undecided after 12 months, for reasons outside their control, the person can apply for permission to work. That is a fair and reasonable policy and is consistent with our obligations under EU law. It also assists genuine refugees".—[*Official Report*, 20/1/16; col. 851.]

What the House has to ask is whether, as the Government claim, the current policy is fair and proportionate, and strikes the right balance. Once again, the evidence suggests that it does not. Twenty-four other European Union countries allow asylum seekers to access their labour markets if an initial decision has not been

[Lord Alton of Liverpool]
taken on their claim after nine months, and half of those countries allow asylum seekers to work after six months or sooner. In contrast, the United Kingdom Government effectively prohibit asylum seekers from ever working, because, even after 12 months, they can apply only for jobs on the shortage occupation list, which is for skilled jobs where there is an identified national shortage. Even if an asylum seeker had the requisite skills for such a job, it is unlikely that they would be able to secure it, as they would have to have had their existing qualifications recognised and may well have become deskilled in the year or more that they had been unemployed.

Once again, this is not the policy in many other European countries. For example, Belgium, Latvia, Norway, Poland, Spain and Sweden all allow asylum seekers to work in any job, including being self-employed, once they are granted permission to work. Nor does the current policy assist genuine refugees. More than half of all asylum applications are currently provided with protection in the United Kingdom either after the initial decision or on appeal. The process of integration for these people begins when they arrive in the UK, not when the Government recognise them as refugees and give them permission to stay. An extended period of exclusion from the labour market can have only a long-term impact on refugees' ability to find employment. The policy does nothing to encourage the principle of our duty to build a common home together.

Conversely, earlier access to employment increases the chance of smooth economic and social integration by allowing refugees to improve their English, acquire new skills and make new friends and social contacts in the wider community—all of which helps to promote community cohesion, which we should use every opportunity to nurture. I do not know how many asylum seekers Ministers have spoken to but, overwhelmingly, the vast majority of asylum seekers whom I have met want to work and contribute to society and they are frustrated at being forced to remain idle and dependent on benefits.

Finally, I return to the point I made in Committee when I referred to the experience of asylum seekers at Asylum Link on Merseyside, where I am a patron. I asked noble Lords to consider how on earth any of us would manage to subsist on just over £5 a day, which has to pay for food, clothing, toiletries, transport and any other essential living needs while an asylum application is being considered—housing and utility bills are paid for separately for those who need them. These support levels are set at rates that force asylum seekers to live way below the poverty line. In their shoes, I would probably try to find some form of income, inevitably driving some desperate people into the black economy and to act illegally—you're damned if you do and damned if you don't. Where is the justice, fairness or decency in that?

Where, too, is the principle of self-help that should be cherished in every free society? What effect does this enforced destitution have on those who experience it? There is absolutely no doubt that asylum seekers who have to survive solely on this level of support for extended periods of time will generally suffer a negative impact on their mental and physical health. At the end of 2015, more than 3,500 asylum seekers had still been waiting for more than six months for an initial decision on their claims despite the assurance of the noble Lord, Lord Ashton, in Committee that,

"the delays that have happened before have been brought under control".—[*Official Report*, 20/1/16; col. 852.]

Indeed, the Refugee Council in a note sent to me says:

"According to the latest immigration statistics, over 3,600 applications had been without an initial decision for longer than six months. When the dependents of applicants are taken into account, that's nearly 5,000 people living on little over £5 per day who are unable to work".

The Home Affairs Committee stated in its most recent report into the work of the immigration directorates:

"We are concerned that the department may not be able to maintain the service levels it has set itself on initial decisions for new asylum claims within 6 months. To do so may require further funding and resources".

In these circumstances, the current policy cannot be described as fair and reasonable. Nor is it sustainable. Those supporting this amendment include the General Synod of the Church of England, the Greater London Assembly, and many city councils including Liverpool, Manchester, Bristol, Swansea, Coventry and Oxford, the Joint Council for the Welfare of Immigrants, Still Human Still Here and the Refugee Council. Those of us who have pursued this argument from across the political divide and tabled this amendment passionately believe that Parliament should provide asylum seekers with a route out of poverty and an opportunity to restore their dignity by providing for themselves if their claims have not been decided within six months. It is underpinned by the belief that it is in the interests of both the individual and the community to build our house together. It asserts the principle of self-help, non-reliance on benefits, the duty to work, a removal of a burden on taxpayers and a repudiation of enforced workhouse destitution. In moving the amendment today, I hope that it will find favour with your Lordships and the Government. I beg to move.

Baroness Hamwee: My Lords, the noble Lord, Lord Rosser, who was to speak next, is indicating that he would like me to follow. I am extremely happy to support the noble Lord, Lord Alton, as we all do on these Benches. My colleagues in the Commons tabled an amendment to similar effect, and the noble Lord, Lord Alton, will be aware that this is a long-standing Liberal Democrat policy. Not so long ago my noble friend Lord Roberts of Llandudno had a Private Member's Bill to this effect and has made countless other attempts to change the policy, even on one occasion when I asked him not to because I did not see any prospect of our winning at that time, and thought that perhaps we might not take the time of the House. But given the support of the Labour Front Bench for the amendment on this occasion, I am extremely optimistic.

I have been trying to work out what among the various briefings we have received has not been covered by the noble Lord, Lord Alton, and of course most of it has. I do not want to weary noble Lords with too much repetition, but it is worth emphasising that if the decision-making process of the Home Office was as efficient and quick as we are often told it is or is about to become, this would not be an issue at all. I tabled a

stand-alone amendment at the previous stage about the requirement for asylum seekers who currently can seek permission to work after 12 months being limited to the shortage occupation list. When I looked at the list, I was really concerned that it amounted to no sort of right at all, given that asylum seekers' existing qualifications would not be recognised in those occupations.

The noble Lord, Lord Alton, mentioned community cohesion, but I will use the word "integration" instead. Either as a society we say to people coming here, "We are putting up barriers against you", or when we look at their claims for asylum—the word "asylum" is important in this context—we recognise that there are moral obligations regarding integration into our community. Seeking asylum is a two-way process—a contract, if you like. It is both an obligation on the part of the host country to provide asylum when properly sought and an obligation on the part of those who come here wanting sanctuary to become, in their particular way, a part of our society. Integration is therefore a hugely important aspect.

If people have the opportunity to work and if their English is not good, they will be able to practise their language skills. After all, language teaching is not easily available at the moment. However, it is remarkable how many of those seeking asylum are amazingly good at English. We should gather them up and get them working as quickly as possible using their skills both with language and in various sectors. In this way people can acquire new skills and social contacts. Looking around the House, every noble Lord taking part in this debate will be aware of how our opportunity to work after retirement age supports our own physical and mental health. I would apply that to asylum seekers as well.

I end by referring to the route out of poverty and the opportunity to regain dignity that this amendment offers, and I am delighted that these Benches will be supporting the noble Lord.

5.15 pm

Lord Rosser: I will be relatively brief, since the case for the amendment has already been made. My name is attached to the amendment, which we will vote for if the noble Lord, Lord Alton of Liverpool, having heard the Government's response, decides to test the opinion of the House. Its effect, as has been said, is to give all asylum seekers who have been waiting for more than six months for a decision on their asylum application the right to work on the same basis as a person recognised as a refugee.

According to the latest immigration statistics, I think for the period from September to December last year, some 3,500 applications had been without an initial decision for longer than six months. Currently, only asylum seekers who have been awaiting a decision for more than 12 months can apply to the Home Office for permission to work in national shortage occupations.

I would add only that the Government said in Committee that they had met their commitment to decide straightforward asylum claims lodged before April 2014 by 31 March 2015, and that they would decide all straightforward claims lodged from 1 April 2014 within six months. They went on to say that about 85% of cases were straightforward and that that meant that the vast majority of asylum claims were decided quickly. They also said that delays that had happened before had been brought under control.

Since the Government have said that the situation has changed for the better to a quite considerable degree in the time taken to deal with asylum claims and that previous delays have been brought under control, I hope that the Minister will be able to give a helpful response when he comes to reply. However, if the amendment is put to a vote and has the backing of the House, it will also provide the other place with the opportunity to reconsider this issue in the light of the changed situation in dealing with claims, under which the vast majority of asylum claims are now being decided quickly.

Lord Roberts of Llandudno (LD): My Lords, I am grateful to the noble Lords, Lord Rosser and Lord Alton, and my noble friend Lady Hamwee. I see this whole issue as one with far wider implications than just allowing asylum seekers to work. Sometimes I get quite depressed thinking about the legacy we will hand over to our children and grandchildren. Is it a legacy where every hope has been withdrawn, or one in which there is hope even though there are difficulties?

I see this as an opportunity to extend some hope to people who are here often in desperate circumstances. It has already been mentioned that trying to exist on £36 a week is not easy. People who want to work, to contribute to the taxation of the UK, and to support their families, or who have skills that they would love to develop and extend, are people we should encourage. When the time comes—I hope we will test the feeling of the House—I ask the House to say, "Yes, we're going to provide a beacon of hope. We're not going to lift another drawbridge or make it more difficult". We know that it is difficult, but I think, and I am not often a pessimist, that, in the years to come, the problems of the present day—migration, destitution, poverty and everything else—will be increased. This is our chance as a House to say that we are trying to help people and somehow provide a legacy that has at least some hope attached to it. It gives me terrific pleasure to support the amendment in the name of the noble Lord, Lord Alton.

Lord Brown of Eaton-under-Heywood: My Lords, once again there is a balance to be struck here. On one side is the disadvantage of permitting asylum seekers to work after six months. Contrary to what the noble Lord, Lord Alton, suggested, it seems inevitable that some aspiring immigrants, at least, would be encouraged by such a provision to apply for asylum and, perhaps, to prolong the process by making what they then assert to be a fresh claim. On the other side are the benefits of enabling self-support, not to mention self-respect, by allowing this work after six months—indeed, all the various benefits so eloquently outlined already in this short debate by the noble Lords, Lord Alton and Lord Rosser, and the noble Baroness, Lady Hamwee.

Here, contrary to the view I expressed on the previous issue, the balance seems to fall in favour of the amendment. Furthermore, if, as I hope, one consequence of passing the amendment were the further speeding up of the

[Lord Brown of Eaton-under-Heywood]
decision-making process, that would be a most welcome additional benefit. Accordingly, in this instance I respectfully support the amendment.

Baroness Lister of Burtersett: My Lords, I support Amendment 57. I will not repeat all the arguments I made in Committee in support of this most basic of civil rights—the right to be able to undertake paid work. I simply want to respond to a couple of the arguments that the noble Lord, Lord Ashton of Hyde, made in response in Committee.

As the noble Lord, Lord Alton, noted in so ably moving the amendment, the main argument seemed to be our old friend, the pull factor, which dominates policy-making in this area. Since that debate, my attention has been drawn to the only piece of research I am aware of that has explored with individual asylum seekers and refugees the factors that informed their decision to seek asylum in the UK. The report *Chance or Choice?* by Heaven Crawley was published a few years ago by the Refugee Council. I will quote from it in the interests of evidence-based policy-making. Her broad finding was that, contrary to the assumptions on which policy is premised,

"the choices asylum seekers make are rarely the outcome of a rational decision making process in which individuals have full knowledge of all the alternatives and weigh them in some conscious process designed to maximise returns".

Professor Crawley found no evidence from this or other research that work acts as a pull factor. Instead, she concludes that,

"the policy change introduced nearly a decade ago to prevent asylum seekers from working whilst their claim is determined has had no measurable impact on the level of applications received".

The report said of asylum seekers,

"the inability to work was the biggest difficulty they faced in rebuilding their lives. Lack of access to work has psychological and social as well as economic consequences".

It quoted a woman from Zimbabwe who said:

"Sometimes I just cry. It's like I am worthless, like I am just this piece of junk".

Another said:

"My mind has gone rusty. I am not able to look at a meaningful life anymore. I look at it and I think, oh what a wasted life".

It is terrible that people are having to feel this.

The noble Lord, Lord Alton, cited a range of cross-national evidence that does not support the argument that enabling people to work acts as a pull factor. No doubt the Minister will respond with the other argument given twice in Committee:

"It is important that we protect the resident labour market for those lawfully present in the UK".—[*Official Report*, 20/1/16; col. 850.]

But asylum seekers are lawfully present until they are deemed otherwise. To suggest they are not plays into the popular tendency to conflate asylum seekers with undocumented economic migrants.

This leads to my final point. A number of noble Lords and organisations outside have expressed the fear that by denying asylum seekers access to legitimate paid work, sheer need and desperation will push them into the shadow economy where they are prey to exploitation. I raised earlier my concerns that they could now also be caught by Clause 32, which will criminalise them.

To conclude, like the noble Lord, Lord Alton, I do not believe that the Government have made their case that current policy is, to quote the noble Lord, Lord Ashton of Hyde, "fair and proportionate". On the contrary, it is unfair and disproportionate when compared with the position in most other EU countries, and in its short-term and long-term impact on asylum seekers and refugees whose subsequent integration into British society is impeded by it, as we have already heard. As Ian Birrell, former speech writer for the Prime Minister, wrote earlier this week:

"The key is to let refugees work legitimately, so they can build a fresh start—wherever they are. After all, what human being wants life trapped in limbo … Refugees may have escaped hell, but that does not mean we force them into purgatory".

It feels as if, too often, we do just that. This amendment would help asylum seekers out of the purgatory of enforced idleness and impoverishment.

Baroness Kennedy of The Shaws (Lab): My Lords, I, too, support this amendment. I frequently find myself addressing immigration issues at public meetings because these issues are in the public's mind and attract a lot of attention, particularly in relation to law. As soon as you draw the distinction between economic migrants and those seeking asylum, the public always recognise the importance of the ability to work, and support it. There is a misconception among politicians' and public commentators' understanding of the public mood on this issue. The public generally think it is right that those seeking asylum should have the opportunity to make a life, to work and to have that dignity which everyone has spoken about. They do not see this as just a compassionate issue but as one of good sense in relation to this country and its needs. I urge the Minister to look at this issue carefully, especially given the speed with which these applications are now being dealt with, as the Labour Front Bench mentioned, and which we commend. This is one of the ways in which we can show that we are capable of making a distinction between economic migrants and others; that we will not allow this confusion to arise in the public's mind; and that we recognise the public's desire to ensure that those seeking asylum, to whom we are giving a home, should have the opportunity to live among us, work, and thereby make a contribution to their own lives.

Lord Wigley (PC): My Lords, I support the comments made by the noble Lord, Lord Alton, and by other noble Lords and reinforce the points that have just been made with regard to the attitude of the general public towards genuine refugees. They would much prefer that these refugees are enabled to make a contribution to the economy and to the social life of the community into which they move. This was reinforced in my mind the other night—as it possibly was for other noble Lords—when a refugee who was a pharmacist was shown on a television programme. One thinks of the contribution that he could make with those skills, which we need. We are silly not to maximise those opportunities. For those reasons, I support the amendment.

Baroness Neuberger (LD): My Lords, I, too, support the amendment. I declare an interest as senior rabbi of the West London Synagogue, where we run in a drop-in service for destitute asylum seekers, as many synagogues

and churches do around the country. Many of these asylum seekers have waited longer than six months. The way they survive—because you cannot survive on £5 a day—is by going from institution to institution—church to synagogue—getting handouts: that is, charity. They hate it. We do our best to make them feel welcome, but it is not what they want to do. They want to work and make a contribution. They do not want to set their children an example of effectively begging. One of the things that we give them, in addition to a decent meal and friendship—I hope—are second-hand clothes. On the rare occasions that we have enough shoes to put out, they go as if a plague of locusts has entered the room. Asylum seekers who are living on £5 or less a day cannot afford to get their shoes repaired, let alone get new ones. They walk absolutely everywhere and they go through shoes at the rate of a pair a week.

People need to understand what it is like to be in that circumstance and to realise that these people do not wish to live like that and it is not their fault that they have waited for longer than six months. I support the amendment very strongly.

5.30 pm

The Lord Bishop of Durham: My Lords, I support the amendment and endorse everything that has been said already, and reinforce the point that the General Synod had a major debate on this and overwhelmingly supported such a move.

Some of the saddest conversations I have ever had have been with asylum seekers who came to this country and thought they would be welcomed, but have felt unwelcome; who want to be able to uphold their human dignity and feel that the best way of doing that is to become contributors to this society. I would like to draw attention to proposed new subsection (2) and the phrase "voluntary work". There should be paid work, absolutely, but I have talked to many asylum seekers who say, "I'm not even allowed to go and voluntarily help somebody else". This is appalling. This amendment needs to be accepted.

Lord Clinton-Davis (Lab): To deny those who came here at the turn of the century was abhorrent. Later on, before the Second World War, people came here as refugees and they were accepted. Of course, there was a minority of people who denied their status but they were not heard. The compelling voice of the majority prevailed and they were accepted. More than that, most of them have provided a huge benefit to this country and I hope the Government will recognise that.

What the Government are proposing is wrong-headed. The noble Lord, Lord Bates, is a decent man and I hope he will realise that there is a need here for second thoughts. As has been said already, the denial of hope, which this amounts to, is wrong. Hope must be compelling, and authoritative. We must permit some hope, as has already been said, to certain asylum seekers within the provisions of the amendment. The onus of disputing this must fall heavily upon the Government. I hope that ultimately, they will see sense because that is exactly what the majority of this House recognises—hope.

Lord Green of Deddington: My Lords, the noble Lord, Lord Alton, made the best case that could possibly have been made for his amendment. He was very effectively supported by many others: the noble Lord, Lord Roberts, and the noble Baronesses, Lady Lister and Lady Neuberger. Clearly, there is, if you like, a human case to be heard and I am glad that it has been heard. But again, if I may say so, there are some wider aspects that also need to be taken into account. First, not all people who seek asylum are in fact genuine. The record is that 50% turn out not to be, so we have to have that in mind when we consider the people who are making applications.

Secondly, the most recent EU directive requires that there should be access to the labour market after nine months, and it is now proposed that we should go to six months and be on the more generous side among EU nations. It is perfectly fair to make that point, but mention was made of Sweden, which has had a very large number of applicants—much larger than most countries in Europe. Until recently, Sweden allowed all asylum seekers to work from the time that they arrived. Without question, that was a major reason why there was such a large inflow to Sweden, and it is why the Swedes were obliged recently effectively to try to close their borders.

One problem with going to six months is that it could become almost an incentive to asylum seekers to spin out their cases. If they could make enough appeals to slow up the process, then they would be able to go out to work. So there is some risk there.

However, my main point is that this is really almost an extraordinary time to propose this change. I mentioned earlier the thousands who are queuing up in Calais; these are not desperate people but people who are already in a safe country—that is the fact of the matter—and it would be entirely open to them to claim asylum in France, which is what both Governments are now trying to encourage. Really, we should not do this now. It should be our objective to reduce the pull factors—and pull factors do exist, even if one does not like the term—not to increase them.

Baroness Ludford: My Lords, powerful arguments have been made in favour of the amendment, led by the noble Lord, Lord Alton, who made an excellent speech. He was kind enough to quote what I said in Committee, and I want to return the compliment. In Committee, he said that,

"alleviating destitution amongst asylum seekers is a prerequisite if we believe in the upholding of a person's human dignity. The right to work is fundamental to this".—[*Official Report*, 20/1/16; col. 843.]

So, extremely importantly, this is not just about self-reliance and retaining skills for the benefit of the person and society—bearing in mind that a high proportion of these people will go on to live for many years, or possibly for the rest of their lives, in this country, so what is not to like about them retaining their skills?—it is also about human dignity.

It seems to me that much of what we are discussing in this Bill is a kind of displacement activity for what should be the core function, which is to apply immigration law efficiently and effectively. If asylum claims were determined as swiftly as possible, while allowing for

[Baroness Ludford]
people's rights to be respected, many of these problems would not arise. Illegal renting or driving and all this outsourcing of immigration control would be unnecessary. We keep having to come back to the main issue: whether the UK Border Agency, or whatever it is now called in the Home Office—sorry, I forget, but my past is not in domestic immigration law—is efficiently assessing asylum claims.

I say to the noble Lord, Lord Green, that I do not think that anyone is proposing, and the amendment is certainly not proposing, that people should be able to work from the day they arrive; it would be after six months. So, with respect, the Swedish experience is not really relevant to this debate.

I understand that the noble Lord, Lord Ashton of Hyde, said in Committee that UK policy is,

"fair and reasonable … and is consistent with our obligations under EU law".—[*Official Report*, 20/1/16; col. 851.]

Unless he knows otherwise, I understand that we do not have any obligations under EU law in this area because we are not opted into the so-called reception conditions directive, which, as the noble Lord, Lord Green, said, obliges other EU countries—and would oblige us if we were opted in—to allow work after nine months. We are not bound by that directive or, as I understand it, any other provision of EU law because we have opted into only some EU asylum directives, and not that particular one. We are entirely free, so please, for once, can we not blame Brussels for what we are doing in this area? As the noble Lord, Lord Alton, said, 12 countries allow working after six months, but all those other EU countries which are bound by the reception conditions directive, and do not have the choice the UK has, are of course obliged to allow working after nine months. We should not pray in aid EU law in this particular area.

All rational arguments are in favour of allowing the right to work—those based on human dignity and self-reliance, as well as the economic points and the fact that public opinion understands that people are trying to support themselves and not scrounge off the taxpayer, if £5 a day can be called scrounging off the taxpayer. The only argument attempted against it is that it would be a pull factor—our "old friend" the pull factor, as the noble Baroness, Lady Lister, said. I cannot understand how it can be argued that someone who is working illegally would deliberately make themselves known to the authorities by claiming asylum. I understand that the noble and learned Lord, Lord Brown, suggested that sometimes people claim asylum after they are discovered working illegally, but that is quite different from deliberately claiming asylum when you are working illegally undetected. Why would you then claim asylum and bring yourself to the attention of the authorities in order to get the right to work?

Lord Green of Deddington: The point is that 50% of those who claim asylum were working when they were discovered.

Baroness Ludford: The answer to that, as I said at the beginning, is to apply the law more efficiently. There is every benefit in making things above the law and in regularising people's right to work. The more we can bring people into the light of day—what they are doing, whether they are legally in the country and whether they have a right to work—the better for enforcement. What is so pernicious for public confidence in the asylum system is the idea that so much of what is done is not being properly regulated, enforced or managed. That is where the concentration and the focus has to be. Like my noble friend, I fully support this amendment.

Lord Cashman (Lab): My Lords, I will be brief and make a couple of very quick points. There have been references to bogus asylum applications. If there are such applications, we should not punish those who are sincere and make valid ones. Equally, this amendment addresses a human rights obligation. Every civilised society is judged by how it treats those most in need. In this respect, the Government are sadly wanting and I urge them to accept this amendment.

Lord Bates: My Lords, I begin by paying tribute to the noble Lord, Lord Alton, for the way that he moved his amendment. Nobody could be unmoved by the way in which he presented the arguments, or by his clarity and compassion. They were very persuasive. Before I put some remarks on the record, I will just say—very carefully and respectfully—that as I was sitting here listening to the debate, I was wondering whether perhaps your Lordships did not quite understand what is happening or being proposed here. It is not being proposed in the Immigration Bill before us today that somehow we change the law so that asylum seekers who were hitherto able to work and earn a living are no longer going to be able to do so. That is not what is being proposed in the Bill.

In fact, up until 2002, it was an established policy that people could stay and work after six months. Forgive me for using party tags here, but I hope that the House will bear with me; I am not trying to make undue party-political points, but I want to set out the complexity of the issue. Then, in 2005, the previous Labour Government, as a result of opting into the 2003 EU receptions conditions directive, which sets out the minimum benefits and entitlements afforded to asylum seekers while they await a decision on a claim, changed the Immigration Rules, allowing asylum seekers to apply for permission to work in the UK if they had been waiting for more than 12 months for an initial decision on their case. That was the choreography: we are not talking about a proposed change now—this was changed back in 2005 under the previous Labour Government.

5.45 pm

I know that the noble Baroness, Lady Ludford, is itching to come in, but I ask her to bear with me, because I am about to come to the coalition. Then, in 2010, during the coalition, a case went before the Supreme Court on the issue, and the coalition Government subsequently changed the Immigration Rules from those set out by the Labour Government to reflect the Supreme Court judgment, as would be expected. At that time, they introduced the provision restricting asylum seekers' jobs to the shortage occupation list.

I set that out because it is important, when we hear persuasive and passionate speeches—I accept that they are persuasive and passionate—about the very vulnerable group of people who come to this country seeking international humanitarian protection because of a well-founded fear of persecution, that we bear in mind that we do not propose to change the rules. The amendment would change the rules back to the situation that existed not under the coalition, but pre-2005, under the then Labour Government.

Baroness Ludford: The Minister kindly gave me an opening. I do not want to be an EU bore—although I guess I am—but whatever the Labour Government did, which I do not agree with, EU law in the previous reception conditions directive said that you had to allow asylum seekers to work at least after 12 months. There was nothing whatever to stop a Government allowing asylum seekers to work after six months. The Government have not opted into the new receptions conditions directive 2013; they did not follow the habit of previous Governments. That is the one that says that you have to allow asylum seekers to work after nine months—but you can let them work after three months if you want.

Lord Bates: That is absolutely right; I am not dissenting from that; that is the one that we decided not to opt in to under the coalition Government. My point was that when the Labour Government introduced the provision, it was fully compliant with the 2003 EU directive and met the terms and conditions. Of course, it can be relaxed. As the noble Lord, Lord Green, said, we could go to the extent of Sweden's position as it operated it, where people could enter the labour market immediately on claiming asylum. Of course, we all know that Sweden has some of the highest numbers of asylum claimants, so we should not somehow be vilified for claiming that that might be a pull factor when the evidence seems to suggest that the terms and conditions might act in that way.

Having set out for the benefit of the House the fact that we do not propose to change a position that obtained under the coalition and was introduced by the previous Labour Government, I want to set out the argument for noble Lords to consider.

First, while awaiting a decision, asylum seekers receive free accommodation and a cash allowance; they have all their living needs met, in terms of utility bills, and have access to education and skills and our health services. Also, to answer the point made by the right reverend Prelate the Bishop of Durham, they can undertake volunteering activities while their claim is outstanding, and we are exploring ways in which to support that. This approach also assists genuine refugees. It is common knowledge that some people make unfounded claims. The figure of 61% is the figure that we have of initial claims that are refused. It is reasonable to assume that some do so because of the benefits, real or perceived, that they think they will gain here. Earlier access to employment risks undermining the asylum system by encouraging unfounded claims from those seeking to use the asylum system as a cover for economic migration.

The amendment would create further incentives for asylum seekers to choose to try to come here. In Europe we have seen the effect that those policies can have in driving migrant behaviour. The numbers choosing to live in squalid conditions in Calais, hoping to enter the UK illegally, rather than seeking protection in France, is testament to that fact. Allowing access to work after six months would be more generous than many other member states. The noble Lord, Lord Alton, referred to some—but it would certainly be more generous than some and more generous than is required under the current 2013 directive on reception conditions to which the noble Baroness referred. We should not do anything at this stage to encourage more people to risk their lives to undertake dangerous journeys to come across Europe instead of claiming asylum in the first safe country that they reach.

In the great majority of cases, asylum seekers receive a decision within six months, so we should think carefully about the particular asylum seekers whom the amendment would benefit. That would include those who were themselves responsible for delaying the consideration of their asylum claim. It could be argued that it could provide a perverse incentive for people to institute delays. It would also include those complex cases where there are good reasons, often related to serious crimes, established or alleged to have been committed by the claimant, why a decision on an asylum claim cannot be reached within six months. Those are the asylum seekers to whom the amendment would accord preferential treatment at the expense of UK residents, including refugees seeking employment here.

Again, I accept that the arguments in favour of the amendment are well made—not emotive, but clearly touching an emotion. The vast majority of asylum seekers come here to seek our protection and we expedite their assessment. When they come to this country, they come under our obligations under the refugee convention and the 1951 Act, which says that we must offer protection and humanitarian assistance. The argument was that when people entered into the labour market they would need to be provided with national insurance numbers and tax reference numbers as well, potentially, as pay roll numbers, all of which might mean that if their claim is not upheld and well founded, it is more difficult for them to be removed from the country. The other argument is that there are also 1.5 million people who currently do not have employment in this country, and it might be argued that somebody could go for a job in a particular location and find that they do not get that job because it is offered to somebody who is here on an asylum basis. They may feel some upset that people to whom we are offering humanitarian support are somehow put ahead of them in the jobs queue, which would be unreasonable.

Those are the broad arguments that can be presented on this issue. The essential one that I would ask noble Lords to reflect on is that in this Bill we seek to provide a protection of the existing laws governing immigration in this country, recognising that there is a great migration crisis on and many people are seeking to make their way through Europe on this journey. We are seeking control of migration flows into this country. Therefore, now is not the time to change rules that were introduced in 2005 by the Labour Government

[LORD BATES]
and which were then refined under the coalition Government. Now is not the time to make this change—and I urge the noble Lord to consider withdrawing the amendment.

Lord Alton of Liverpool: My Lords, the Minister was good enough to say at the outset that he thought that I had put a persuasive case—but clearly not persuasive enough to change his mind. The argument that this is not the time is one that we are all familiar with. I have heard it in both Houses of Parliament over the last three or four decades, again and again. Now is never the time. I was surprised by the Minister's argument that if we were to pass this amendment we would be more generous than we are required to be. Those were his words. We are talking about £5 a day to subsist, instead of giving people the opportunity to do a job. If they are here illegally, they will not be taking somebody else's job, because they will be deported. If they are here illegally, they are not becoming part of what he described as a perverse incentive for criminality—they will be deported. Our rules are quite clear. As the noble Baroness, Lady Lister, said, they are not here illegally; they are asylum seekers. As the noble Baroness, Lady Kennedy of The Shaws, said, the public understand the difference between people who are here illegally and trying to cheat our system and people who are genuine asylum seekers and who should be considered on the merits of their applications.

We have heard some extraordinary speeches, and I remind the House that we have heard only one speech against these amendments during the course of the debate, from my noble friend Lord Green. My noble and learned friend Lord Brown of Eaton-under-Heywood put the point that there was a balance of arguments. He, with his extraordinary legal experience, came to the conclusion that on balance it would be right to support this amendment and, in doing so, was echoing a point made by the noble Lord, Lord Rosser, from the Opposition Front Bench—that we will be incentivising the Home Office. We will be ratcheting up the process to deal with these applications to put them through within the six-month period because, if we do not, they would have the opportunity to go after a job and to do that job until the asylum application has been dealt with.

My noble friend Lord Wigley said that public opinion knows the difference between illegal migrants and asylum seekers, and that people who have skills will be deskilled—he referred to a pharmacist—if they are not given the opportunity to work.

Many other noble Lords have contributed to the debate, and I know that the House is now keen to reach a conclusion. I end by reminding the House of the vivid description that my noble friend Lady Neuberger gave during her remarks, when she talked about how like a swarm of locusts people will swoop on second-hand shoes, because they are so bereft of basic income or resources or the basic things to keep life and limb together. The noble Lord, Lord Roberts of Llandudno, said that this amendment is about hope for people of that kind. Hope was the one thing left in Pandora's box—and here I do agree with the Minister. We are witnessing mass migration on a huge scale. This amendment, sadly, is unable to deal with that; it is far beyond its scope. What it will do is to offer some hope or support for people who find themselves in a position where their human dignity has been utterly degraded. Therefore, I seek the opinion of the House.

5.58 pm

Division on Amendment 57

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Amendment 57 agreed.

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6.16 pm

Amendment 58

Moved by ***Lord Hylton***

58: After Clause 36, insert the following new Clause—

"Overseas domestic workers

(1) For section 53 of the Modern Slavery Act 2015 (overseas domestic workers) substitute—

"53 Overseas domestic workers

(1) Immigration rules must make provision for leave to remain in the United Kingdom to be granted to an overseas domestic worker.

(2) Immigration rules must make provision as to the conditions on which such leave is to be granted, and must in particular provide—

(a) that the leave is to be for the purpose of working as a domestic worker in a private household;

(b) for a person who has such leave to be able to change employer, registering such change of leave with the Home Office.

(3) Immigration rules may specify a maximum period for which a person may have leave to remain in the United Kingdom by virtue of subsection (1), and if they do so, the specified maximum period must not be less than 2½ years.

(4) Immigration rules must provide for a period during which no enforcement action should be taken against such an overseas domestic worker in respect of his or her—

(a) remaining in the United Kingdom beyond the time limited by his or her leave to enter or remain, or

(b) breaching a condition of that leave relating to his or her employment if he or she wishes to change it.

(5) The Secretary of State must issue guidance to persons having functions under the Immigration Acts about the exercise of those functions in relation to an overseas domestic worker who may be a victim of slavery or human trafficking.

(6) The guidance must provide for an overseas domestic worker remaining in the UK for more than 42 days to be required to attend a group information session as defined in that guidance, within that period.

(7) In this section—

"enforcement action" has the meaning given by section 24A of the Immigration Act 1971;

"immigration rules" has the same meaning as in that Act;

"overseas domestic worker" means a person who, under the immigration rules, has (or last had) leave to enter or remain in the United Kingdom as—

(a) a domestic worker in a private household, or

(b) a private servant in a diplomatic household.""

Lord Hylton (CB): My Lords, most employers who visit the United Kingdom, bringing their domestic workers with them on a tied visa, behave decently. A minority, however, do not. That is why since the early 1990s cases have been coming to light of unpaid wages, payment of less than the national minimum, withheld passports, no free time, intolerable conditions and physical and mental abuse—even rape. Because of these, I commend to the Minister the brief that I received today from a group of lawyers called the Anti Trafficking and Labour Exploitation Unit. They cite two cases of awards of more than £250 million but warn of the difficulties and delays in taking cases through the national referral mechanism. They also criticise delays in obtaining residence permits from the Home Office.

Before going further, I thank the last Government for appointing Mr James Ewins QC to review the working of the visa. I am grateful to him for his recommendations, which we discussed briefly in Committee on 20 January. I thank the Minister for saying then that there was a problem to be addressed because of the special vulnerability of these workers, living as they do on their employers' premises. I also thank the Minister for arranging several meetings, including a large one at the Home Office with the reviewer and the anti-slavery commissioner. The Minister has shown throughout that he listens and wants to conciliate. He has carried out his commitment by getting the Home Office to produce a three-column Written Statement dated 7 March.

The Statement candidly admits that the Government have taken the advice of the anti-slavery commissioner rather than implementing in full the recommendations of the review. The weakness of that decision is, first, that it allows the domestic workers to find alternative employment only during the balance of their original six-month stay. In practice, that is likely to be just a few months or weeks. Few employers will want to take someone for such a short time—all the more if they have no references from an employer here. There is therefore a serious risk that the worker leaving their original job will become destitute and then be deported. The Government have failed to produce, in the very words of the Statement,

"an immediate escape route from abuse".

They have gone back on the strong hopes of Karen Bradley MP, who was the Conservative Minister in 2015 and who wanted the review recommendations to be implemented.

The second weakness is that the Minister in Committee and in the recent Statement relies heavily on the national referral mechanism, which was never designed to deal with the problems of tied domestic workers. They enter

this country perfectly legally with their employers, whereas most trafficked and enslaved people come in illegally or as sham visitors or students. Some slaves may have been trafficked within this country, usually from one brothel to another. I therefore ask: how many overseas domestic workers' cases has the NRM handled? How many employers have been prosecuted or banned from importing domestics as a result? Lastly, have some workers received compensation or extensions of stay as a result of the NRM? One can say that the mechanism is not entirely relevant to the wrong we seek to address; it is not suited to important hardships that may be less than crimes. How are workers even to know that the NRM exists?

I now come to Amendment 58 itself. This proposed new clause amends the Modern Slavery Act to give full effect to the recommendations of the Ewins review of the ODW visa. It gives clear directions about the changes needed to the Immigration Rules, which currently tie the incoming domestic worker to a single named employer, thus making them highly vulnerable to abuses and exploitation and, sometimes, to conditions of complete slavery. This amendment is better than the one that I spoke to in Committee; it does not provide for indefinite leave to remain but specifies not less than two and a half years. This is made up of the original six months provided by the tied visa plus a further two years, which Mr Ewins considered necessary to enable the worker to find alternative domestic work. Proposed new subsection (2)(b) would require changes of employer to be registered with the Home Office, thus keeping track of the worker and making action possible against some employers. Proposed new subsection (6) meets a most important Ewins recommendation, namely that domestic workers who stay here for more than six weeks should have group information sessions. This gives a chance to check that the national minimum wage is paid, that passports are not withheld, and that conditions are generally reasonable.

I have outlined the purpose of our amendment, which, I submit, is better and more tightly drafted than those previously discussed. The scandal of abuse, exploitation and slave-like conditions has gone on for far too long, with impunity, and in the most prosperous parts of London. This scandal has been strongly criticised by voluntary groups, churches, law centres, trade unions and some Members of the other place. Now is the time to improve the Modern Slavery Act so that this country can hold up its head, safe from reproach because it has done everything possible to end an admitted wrong. I beg to move.

Baroness Hamwee: My Lords, I find myself preceding the noble Lord, Lord Rosser. Again, I am delighted to support this amendment and that my noble friends are doing so.

The government Statement, with its proposals as to how to respond to James Ewins's report, does not seem to redress the power imbalance which he identified in his report. I must not let the opportunity go by—I should have started by saying this—without congratulating the Government on appointing Mr Ewins and congratulating Mr Ewins on his splendid report. The Government's Statement, to which the noble Lord has referred, was at first attractive. I changed the notes to my colleagues last night after I had read through it again, thought about it more and become, I am afraid, less attracted to it. I am not persuaded that without a right to apply for an extension to the visa—for the reasons that Mr Ewins gave, which I will come back to—the Government's proposals will work. That proposal seems to be the linchpin. His recommendation is to entitle overseas domestic workers to be granted the right to change employer but also to provide for annual extensions provided that they are to work as domestic workers in a private home for up to two and a half years in total. He says in his report that he considers it,

"both impractical and invidious to discriminate between seriously abused, mildly abused and non-abused workers",

and that,

"there is a real possibility, perhaps likelihood, that many overseas domestic workers will not avail themselves of that right … for those who are abused in any way at all, the universal right will give them a real and practical way out of that abuse without the current possibility of a subsequent precarious immigration status and threat to livelihood".

He acknowledges that,

"an unintended consequence may well be that there are those who avail themselves of the universal right without having suffered any abuse at all".

However, referring to pre-2012 figures, he says that the number of workers is likely to be low, and that,

"by legitimising their status, they will continue working, paying tax, and will be visible to the UK authorities during their extended (but limited) stay".

With all the work done with overseas domestic workers over the last few years we have learned that that visibility is very important. To come to the balance, this takes us back to some of the arguments made on the last amendment:

"Such an *unintended* consequence is of limited detriment compared to the benefit of the central *intended* consequence".

The second major recommendation is with regard to information sessions. Like the noble Lord, I was glad to have the briefing from the Anti Trafficking and Labour Exploitation Unit, which, on the basis of its experience, has described to us that the complexity of the information that is required needs what Mr Ewins proposes more than what the Government propose. It considers that most domestic workers, faced with items that would be included in those information sessions—which it enumerates over a third of a page of bullet points—would choose to stay in abusive situations rather than take the risk of escaping. As it says, the right to change employer is not clear, concrete and simple. It also comments about the national referral mechanism, which is of course a part of this whole picture. As I say, I congratulate the Government on having appointed Mr Ewins and having made an attempt, which I recognise, to meet the situation with the Written Statement a few days ago, but we are not there yet.

I am very pleased to support the amendment moved by the noble Lord, Lord Hylton. This House has shown on previous Bills and in previous Sessions its concern for this group of workers. I hope that we will do the same again tonight.

6.30 pm

Lord Rosser: My name is also attached to this amendment, which we support and for which we will be voting if the noble Lord, Lord Hylton, having

[LORD ROSSER]
heard the Government's response, decides to test the opinion of the House. The noble Lord has made a powerful and persuasive case, as indeed has the noble Baroness, Lady Hamwee. I do not intend to go over again all the arguments that have been advanced but shall just reiterate one or two.

The amendment is intended to implement the terms of the Ewins *Independent Review of the Overseas Domestic Workers Visa*. The Conservative Minister said in the Commons:

"I cannot commit a future Government, but the intention is that whoever is in government—I very much hope it will be the Conservatives—will implement the review's recommendations".—[*Official Report*, Commons, 17/3/15; col. 650.]

This amendment enables the Government to deliver on an intention declared by a Conservative Minister during the passage of the then Modern Slavery Bill.

Mr Ewins stated in his review that his recommendations were the minimum necessary to protect overseas domestic workers, but the Government have indicated in their recent letter that they intend to implement less than that minimum. They say that Mr Ewins identified gaps in the evidence available. That is true, but Mr Ewins looked at the evidence that was available and made recommendations based on it. Rather than accept those recommendations, which largely confirm the arguments put forward during the passage of the then Modern Slavery Bill, the Government are proposing their own courses of action.

One is that all domestic workers should be allowed to change employer but only within the currency of the six-month visa. The Government say that their proposal acknowledges the case put forward for providing overseas domestic workers with an immediate escape route from abuse. However, one has to ask what the prospects are of changing employer if you have to say to a new employer that you are permitted to stay in the United Kingdom only for an absolute maximum of six months and very likely much less than that, as such overseas domestic workers would be very unlikely to decide to move from their current employer immediately. I suggest that the chances are likely to be slim and, without work, how would such an overseas domestic worker manage to live without falling back into exploitation and abuse, as there would be no recourse to public funds?

A six-month visa restricted to domestic work in a private household is no help to a vulnerable worker looking for a good employer. In reality, who would employ someone for less than or up to six months for childcare or care work? From a commercial point of view, who would employ someone for six months or less in a childcare or housekeeping position? It is just not long enough, especially since, as the noble Lord, Lord Hylton, said, the new employer would be highly unlikely to be able to get a reference from the previous employer.

An overseas domestic worker is more likely to report the abuse if they have left the control of the employer concerned and have relative security. That is what Mr Ewins's recommendations were designed to achieve—recommendations which the Government appear to have either rejected or, at least, not accepted. Mr Ewins concluded the following in paragraph 10 of his review:

"On the balance of the evidence currently available, this review finds that the existence of a tie to a specific employer and the absence of a universal right to change employer and apply for extensions of the visa are incompatible with the reasonable protection of overseas domestic workers while in the UK".

This amendment seeks to provide in the Bill for the implementation of the Ewins review recommendations through the Immigration Rules, and it is an amendment that we support.

Lord Green of Deddington: My Lords, I take a different view on this and I do not apologise for doing so. I accept that the motivation is entirely well intended but I fear that it is completely impractical. Anyone who has been involved in issuing visas overseas will be astonished by this proposal. It would provide what will be seen by many as a wide-open door to the UK.

Earlier, the question was raised as to why the Government had not accepted the report from the reviewer. They could not have foreseen that the reviewer would simply deny that there were implications for immigration control, but there most certainly are. This is an invitation to anyone who comes here on a visa as an overseas domestic worker to leave their employment whether or not they are being abused. If they were being abused, of course I would support the idea that, through the mechanism that now exists, they should be helped, looked after and given time to organise their affairs. But the amendment says that any of the 17,000 workers who come here as domestic workers can leave their employment at any time and stay on for another two years with another employer. And then what? They will probably disappear. That is amazing and it cannot possibly be a basis for government policy.

Lord Bates: My Lords, this amendment brings us to the issue of how best to protect the interests of those who are admitted to the United Kingdom as domestic workers and how the Government plan to respond to the *Independent Review of the Overseas Domestic Workers Visa,* produced by James Ewins.

When we discussed similar amendments in Committee, I undertook that the Government would clarify their position on Report. I am pleased to be able to say that we have done so. The Minister for Immigration and the Minister for Preventing Abuse, Exploitation and Crime made a Written Ministerial Statement on 7 March setting out the Government's response to Mr Ewins's key recommendations. The meeting we had on 11 February at the Home Office, to which the noble Lord, Lord Hylton, referred, to discuss these issues was also attended by the Independent Anti-slavery Commissioner and Mr Ewins, and it greatly assisted the Government in coming to their final view.

The key issue is the proposal that we relax the employer tie. Mr Ewins proposed that we do this by permitting those admitted as overseas domestic workers to change employer and to be granted an additional two years' stay for this purpose. The amendment before noble Lords would appear to go slightly further by providing for an additional two and a half years to be granted for this purpose.

The Government have considered this matter carefully. We have come to a somewhat different view of how best to approach it, but it is one that I hope will meet

with the approval of your Lordships. Our primary aim is to ensure that, where abuse takes place, it is brought to light so that victims can be supported and action can be taken against perpetrators. Our concern is that if overseas domestic workers enjoyed an unconditional freedom to change employers and extend their stay for as long as two years, this would undermine the national referral mechanism and perpetuate a revolving door of abuse. The Government have also noted the view of the Independent Anti-slavery Commissioner that such arrangements might create a situation in which the trafficking of victims between employers flourished more easily.

The Government are proposing two changes in response to James Ewins's proposal. First, they acknowledge that overseas domestic workers should have an immediate escape route from abuse. We will therefore, as the Independent Anti-slavery Commissioner has proposed, allow those admitted as domestic workers to take alternative employment as a domestic worker during the six-month period for which they have been admitted. Their entitlement to change employer will not depend on whether they have been a victim of abuse and they will not need to make an application to the Home Office for permission to do so, although we will wish to encourage notifications of any changes of employment. Secondly, we will increase from six months to two years the length of the extension of stay that can be granted to an overseas domestic worker who has been confirmed as a victim of slavery or human trafficking.

Taken together, these measures strike the right balance between ensuring that overseas domestic workers have a "self-help" remedy and ensuring that the national referral mechanism is not undermined. This approach will also complement the action that the Government have taken under Section 53 of the Modern Slavery Act 2015 to protect against enforcement action those identified as potential victims of abuse, and to provide actual victims of abuse with greater certainty as to their immigration status. By contrast, and contrary to the current provisions of Section 53, the amendment before noble Lords would appear to protect overseas domestic workers against enforcement action, irrespective of whether they had been the victims of abuse. That approach may simply invite wilful abuse of the terms on which such workers are admitted.

It is common ground between the Government and the proposers of this amendment that Mr Ewins's recommendations concerning information, advice and support meetings should be adopted. The Government have made it clear that they will implement these recommendations as soon as possible. The amendment, however, seeks to impose a requirement to attend such meetings through guidance issued to immigration staff. It is not entirely clear how that would work, and the Government have indicated that they intend to go much further.

We will place the requirement to attend such meetings within a wider scheme of controls aimed at enforcing the obligations placed on the employers of such workers. We will do so by introducing a system under which such employers must be registered with UK Visas and Immigration. If employers fail to comply with their obligations, we will be able to consider striking them off the register so that they will no longer be able to sponsor the admission of domestic workers. The existence of such a register will send a powerful deterrent message to those employers who may otherwise doubt the seriousness of our intention to root out abuse.

The Government have made it clear that they will implement the planned changes through changes to the Immigration Rules. No amendment of primary legislation is required. The Government consider their response to the independent reviewer's report to be a coherent approach to the issues, balancing the need to encourage those who are victims to access the national referral mechanism, the need to provide support to victims where they are identified, and the need to adopt more measures to deter employers who think the system is blind to their activities.

The noble Lord, Lord Hylton, asked how many cases involving overseas domestic workers had been handled by the national referral mechanism. Between January 2009 and December 2015, there were 80 positive conclusive grounds decisions under the NRM in respect of non-EEA nationals admitted as overseas domestic workers. Those admitted as overseas domestic workers accounted for 3% of all NRM referrals between July and December 2015. Of those overseas domestic workers in the NRM process, so far about 30% have obtained a positive conclusive grounds decision and at least 29 referrals still await a decision.

How many overseas domestic workers have received compensation or an extension of their visa as a result of having entered the NRM process? We do not have figures for what proportion have received a conclusive grounds decision under the NRM and have also been granted an extension of stay. If we can establish that figure, I will write to the noble Lord. How many employers have been prosecuted or banned? No reliable figures are available for this. In fact, in his report, James Ewins referred to the absence of information available to him.

I think I have covered most of the points and questions that were raised. From what the noble Lord, Lord Hylton, has said, I have picked up that he intends to press his amendment and that no matter what we say it will be very difficult to move him on that. However, I personally firmly believe that his amendment would put more people at risk than the current policy, as set out and amended, before us today—it is a carefully considered mechanism. I ask the noble Lord and the Opposition to think very carefully about that. They are proposing that there should be no obligation for people to go through the national referral mechanism, but if they do not, we do not have a record of who employers have been carrying out this abuse on. It is a revolving door for abuse: the employers can go on abusing and go on bringing people in, and they will not be prosecuted. That is a tragedy and a complete failure, not just for the people who are here but for those who are going to be brought here in the future.

Under the national referral mechanism, people get access to a whole range of benefits provided by the Salvation Army. They get safe accommodation; emergency medical treatment; material assistance; access to a complaints service; translation and interpretation services; information and signposting; advocacy for specialist

[LORD BATES]
services; access to education for dependent school-age minors; and transport services. They get access to all those things but under this amendment they would not.

The noble Lord asked me in Committee if we would organise a meeting and invite James Ewins. We did better than that: we invited James Ewins and we also invited Kevin Hyland, whom we appointed to act as the Independent Anti-slavery Commissioner and who enjoys widespread respect in this House for clamping down on trafficking. Do you know what he said at that meeting on 11 February? The noble Lord, Lord Hylton, heard it as clearly as I did. He said he feared that by adding another two years to the time that people could stay here, they would be made vulnerable to the trafficking gangs that all our modern slavery legislation has been introduced to mitigate.

Having seen the vote on the previous amendment, I know that the noble Lord has the numbers to get this amendment through. However, I urge him to think carefully about whether this will make people safer. Fewer people will be prosecuted because we will not know about them, more people might fall victim to the trafficking gangs, and fewer people will get access to the type of services provided by the Salvation Army. I ask the noble Lord to think very carefully on that before he presses his amendment.

6.45 pm

Baroness Hamwee: Mr Ewins's report, and his presentation at that meeting and on other occasions, was very impressive. Has the Minister discussed with him the balance between the prosecution of employers—who in this case, as I understand it, are domestic individuals and not gangs of traffickers—and the protection of individuals? Mr Ewins proposed extending the visa. Does the Minister know Mr Ewins's view on whether taking the route proposed by the Government instead will mean that more victims will come forward than do at present?

Lord Bates: More will come forward than do at the moment. We are implementing the vast majority of what James Ewins recommended. He recommended, supported by Kevin Hyland, that there ought to be information meetings. It will now be a requirement that that will happen within 42 days. We are flexible on that, and if it needs to be sooner, we will look at that very carefully. The reality is that to qualify for this visa people will have to sit down with somebody who is independent—not from the Home Office or the Government—who will ask them if they understand what their rights are. These are unprecedented protections that have been put in place by the Government, alongside the Modern Slavery Act—we are leading the world in this area. I urge the noble Lord to think very carefully about the safety of people and the ability of the police to prosecute those who are carrying out this heinous abuse of the most vulnerable people in our country.

Lord Hylton: My Lords, I am extremely grateful for the support I have had from the Opposition Front Bench. It has been suggested that implementing the review is impractical. But I say to my noble friend Lord Green and to the Minister that that surely overlooks the point that changes of employer would have to be registered. The Government also rely on the national referral mechanism, but there have been serious criticisms of how that mechanism works in practice. This whole discussion shows how closely interrelated domestic and overseas issues have become.

Lord Bates: I am sorry to interrupt, but I want to make a very important point. People need to understand that there have been criticisms about the national referral mechanism and that is why we asked Jeremy Oppenheim to undertake a review. He undertook a comprehensive review, which was discussed during the passage of the Modern Slavery Act and which we are now going through and implementing to ensure that it works in a way that is on the side of victims.

Lord Hylton: I think it is paradoxical for the Government to have a review and then turn down two-thirds or so of its recommendations. As I was saying, home issues and overseas issues are closely related—

Lord Bates: If it were not such an important issue, I would not intervene again, but I am afraid that it is not true that we have turned down two-thirds of those recommendations. We asked Jeremy Oppenheim to undertake that review and we have implemented the vast majority, if not all, of its recommendations. Some elements related to child trafficking advocates. There was a trial; it was not working as we wanted and we said that we would look at it and do something else. But that is not turning down two-thirds.

Lord Hylton: It is clear that the Minister and I are not going to agree tonight, so I wish to test the opinion of the House.

6.50 pm

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Amendment 58 agreed.

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Cathcart, E.
Cavendish of Furness, L.
Chalker of Wallasey, B.
Chester, Bp.
Chisholm of Owlpen, B.
Colwyn, L.
Cooper of Windrush, L.
Cormack, L.
Courtown, E.
Crathorne, L.
Cumberlege, B.
Dear, L.
Deben, L.
Deighton, L.
Denham, L.
Dixon-Smith, L.
Dundee, E.
Dunlop, L.
Dykes, L.
Eaton, B.
Eccles, V.
Elton, L.
Empey, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Falkland, V.
Fall, B.
Faulks, L.
Fellowes of West Stafford, L.
Fink, L.
Finn, B.
Flight, L.
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.
Glenarthur, L.
Glentoran, L.
Gold, L.
Goodlad, L.
Goschen, V.
Grade of Yarmouth, L.
Green of Deddington, L.
Greenway, L.
Griffiths of Fforestfach, L.
Hague of Richmond, L.
Hailsham, V.
Hamilton of Epsom, L.
Harding of Winscombe, B.
Hay of Ballyore, L.
Hayward, L.
Helic, B.
Henley, L.
Heyhoe Flint, B.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Hooper, B.
Hope of Craighead, L.
Horam, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
Inglewood, L.
Jenkin of Kennington, B.
Keen of Elie, L.
Kilclooney, L.
King of Bridgwater, L.
Kirkham, L.
Knight of Collingtree, B.
Lansley, L.

Leach of Fairford, L.
Leigh of Hurley, L.
Lexden, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Livingston of Parkhead, L.
Lupton, L.
Lyell, L.
McColl of Dulwich, L.
MacGregor of Pulham Market, L.
McGregor-Smith, B.
McIntosh of Pickering, B.
Mackay of Clashfern, L.
Magan of Castletown, L.
Maginnis of Drumglass, L.
Mancroft, L.
Marlesford, L.
Maude of Horsham, L.
Mobarik, B.
Mone, B.
Montrose, D.
Morris of Bolton, B.
Moynihan, L.
Naseby, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Northbrook, L.
Norton of Louth, L.
O'Cathain, B.
O'Neill of Gatley, L.
Oppenheim-Barnes, B.
O'Shaughnessy, L.
Palumbo, L.
Pannick, L.
Patten, L.
Perry of Southwark, B.
Pidding, B.
Polak, L.
Popat, L.
Porter of Spalding, L.
Prior of Brampton, L.
Ramsbotham, L.
Redfern, B.
Renfrew of Kaimsthorn, L.
Ribeiro, L.
Ridley, V.
Robathan, L.
Rock, B.
Rogan, L.
Rowe-Beddoe, L.
Sanderson of Bowden, L.
Scott of Bybrook, B.
Scott of Foscote, L.
Seccombe, B.
Selborne, E.
Selkirk of Douglas, L.
Selsdon, L.
Shackleton of Belgravia, B.
Sharples, B.
Sherbourne of Didsbury, L.
Shields, B.
Shinkwin, L.
Shrewsbury, E.
Skelmersdale, L.
Smith of Hindhead, L.
Somerset, D.
Spicer, L.
Stedman-Scott, B.
Stowell of Beeston, B.
Stroud, B.
Suri, L.
Taylor of Holbeach, L. [Teller]
Tonge, B.
Trefgarne, L.
Trenchard, V.
Trimble, L.
True, L.
Tugendhat, L.
Ullswater, V.
Verma, B.
Wasserman, L.
Wheatcroft, B.
Whitby, L.
Willetts, L.
Williams of Trafford, B.
Wolf of Dulwich, B.
Young of Cookham, L.
Younger of Leckie, V.

Consideration on Report adjourned.

Trade Union Political Funds and Political Party Funding

Motion to Take Note

7.03 pm

Moved by ***Lord Burns***

That this House takes note of the Report from the Trade Union Political Funds and Political Party Funding Committee.

Lord Burns (CB): My Lords, I am pleased to have the opportunity to open tonight's debate on the report of the Select Committee on Trade Union Political Funds and Political Party Funding. I am grateful to the Government Chief Whip for scheduling it at very short notice.

Some of your Lordships may have noticed that I voted against the Motion in the name of the noble Baroness, Lady Smith of Basildon, to set up the Select Committee. I did so because I thought it would be impossible to conduct a meaningful inquiry in the timescales proposed. I hope that noble Lords will agree that, once again, I have been proved wrong.

In the course of our inquiry, we received oral testimony from 19 witnesses and 40 written submissions.

The Earl of Courtown (Con): My Lords, I apologise to the noble Lord. Many noble Lords are very keen to hear what he has to say. Perhaps he could ensure that he is standing underneath the microphone.

Lord Burns: I also hope that the evidence as well as the conclusions of the committee will be of assistance to the House as it considers Clauses 10 and 11 of the Trade Union Bill on Report.

That I have been proved wrong on this is a tribute to my colleagues on the committee, who at very short notice worked intensively and flexibly throughout the inquiry and, more than that, showed a collegiate and constructive spirit which was so necessary if we were to make progress in the very short period that was available. It is somewhat remarkable that there were no votes in the committee and that, after lengthy discussions, the members agreed a report which was unanimous in all but one area—albeit a significant area, as I shall explain in due course.

None of this would have been possible without the outstanding work of the committee staff and Tom Wilson, the clerk to the committee, in particular. They worked against very tight deadlines, organising the written and oral evidence with great skill and preparing evidence for publication very quickly. They also produced a first draft of the report of high quality during the half-term recess. This gave us a firm foundation against which to have the final and decisive deliberations.

I should remind the House of the committee's remit, which was,

"to consider the impact of clauses 10 and 11 of the Trade Union Bill in relation to the Committee on Standards in Public Life's report, *Political Party Finance: ending the big donor culture*, and the necessity of urgent new legislation to balance those provisions with the other recommendations made in the Committee's Report".

We took the view that our first task should be to assess what the impact of Clauses 10 and 11 would be on the unions and how that would affect the Labour Party in turn. Both clauses concern the political funds that unions must establish if they wish to spend money on the furtherance of political objects. That includes both donations to political parties and spending on political campaigns. Out of the 163 listed unions in the UK, 25 have political funds; and of those, 15 are affiliated to the Labour Party.

Currently, most members of a union with a political fund pay a political levy into the fund unless they take the active decision to opt out of doing so. It is important to bear in mind that the political levy is a very small amount. The average is just over 9p per week or £4.84 per year. In 2013, 89% of members in unions with a political fund have not opted out and therefore were paying the levy.

Clause 10, as drafted, would require unions to move away from the current opt-out system and introduce an opt-in system. In other words, union members would pay the political levy only if they actively chose to do so. In attempting to assess the likely impact of Clause 10, we looked at the evidence of history, at

what has happened in Northern Ireland, and we took evidence from behavioural experts. It may be worth saying a few words on each.

We thought that history might provide some clues because political funds have already been moved once from an opt-out system to an opt-in system, in 1927, and then back again in 1946. Although the available data have to be treated with a pinch of salt, they indicate that the move from an opt-out to an opt-in caused participation rates to fall by about one-third, and then the move back again caused the rates to increase by about 50%. Northern Ireland, which of course has a rather different political context, never restored the opt-out system after 1927 and its current participation rates under an opt-in system are about 28%.

The behavioural experts that we consulted gave us some powerful evidence about the impact of inertia on human behaviour. At the moment, the power of inertia benefits the unions because only 11% of their members make the effort to opt out of the political fund. Under the Government's proposals, of course inertia would work against the unions. People have busy lives and their political levy is very small, so human nature means that it would be extremely difficult to persuade existing members to make an active choice about whether or not to opt in. Indeed, Dr David Halpern of the Behavioural Insights Team said that analogous situations led him to expect a fall of 20% to 30% in political fund participation rates.

In summary, the truth is that nobody can know what the impact of moving to opt-out would be in Great Britain at this particular time. However, the committee agreed that there could be a sizeable negative effect on participation rates. It is, of course, possible that those members who opt in could be asked to pay more, which might, to some degree, mitigate the financial impact.

The committee also agreed that the negative effect would be exacerbated by the particular details of Clause 10, which gives us a short transition period, does not allow opt-in by electronic means and requires opt-ins to be renewed every five years. Taking all of those factors into account, the unions themselves took a pessimistic view that the clause as currently drafted would result in participation rates being as low as 10% or even 5%. Although the committee was not convinced by those estimates, we did agree that the details of the scheme needed addressing and we were pleased at the Government's apparent willingness to look again at those points.

The next question is whether the negative effect on political funds will have a knock-on effect in the funding of the Labour Party. We were told that out of the £22 million that Labour Party-affiliated trade unions raised in political funds in 2014, just under half, £10 million, was given to the Labour Party. The committee agreed that there would be an impact but the scale was uncertain. For example, unions might choose to give a larger slice of the political fund to the Labour Party and to spend less on other political campaigns. So there will not necessarily be a direct correlation between the impact on political fund participation rates and the impact on the Labour Party's finances. But on balance the committee concluded that there would be a significant reduction in union payments to the Labour Party.

Before I talk further about party funding, I shall say a brief word about Clause 11, which would require unions to provide much more detail about their political expenditure to the Certification Officer, who oversees trade union administration. Although this clause was raised far less often than Clause 10 in the evidence we received, the committee agreed that, as presently drafted, it could be disproportionately burdensome on the unions. The clause would require any union that spends more than a total of £2,000 per year from its political fund to declare the recipient, the amount and the nature of every payment, no matter how small. I repeat: there is no de minimis. To take a striking example, it was put to us that in principle this clause, coupled with subsections (1) and (2) of the 1992 Act, will mean that a union will have to declare the reimbursement of a bus fare to one of its members who attends a Labour Party conference. The committee believes that this clause needs to be looked at again, and accordingly we propose that before the Bill completes its passage, the Government should consult the Certification Officer, who will also be significantly affected by the clause, and come back with revised proposals which better balance accountability and proportionality.

I turn now to the part of the committee's remit dealing with the 2011 report of the Committee on Standards in Public Life. The remit raised the possibility of,

"the necessity of urgent new legislation",

to balance Clauses 10 and 11,

"with the other recommendations made in the committee's report".

I must confess that the committee had a little difficulty with that wording even after reading it many times. The CSPL report did not address political funds at all. One of its recommendations concerned union affiliation fees to the Labour Party, but they are different. It is also clear that there is no cross-party agreement on the CSPL report and thus no prospect of urgent legislation.

The committee decided, however, that it would be useful and within the spirit of our remit to consider whether there is a convention or some lesser tradition that reform of political party funding should proceed by consensus. We concluded that while there is no firm convention, history shows that both of the main parties have acted with a degree of constraint and that consensus is desirable. There is a widespread view that no Government should use their majority unilaterally to inflict significant damage on the finances of opposition parties. With this in mind, we commended the CSPL's general approach of seeking to maintain balance so that any package of reform would affect all major parties in a broadly proportionate and fair manner.

However, we have a dilemma. The Conservative Party made a manifesto commitment,

"to ensure that trade unions use a transparent opt-in process for union subscriptions".

Yet, as I have explained, Clause 10 will certainly have an impact on the funding of one particular party, the Labour Party, and as it stands it is not part of a balanced package that might command a desirable consensus. This dilemma led us to try to seek a way forward which would allow the Government to fulfil

[LORD BURNS]
their manifesto commitment while also mitigating the worst of the impact on the unions and the Labour Party.

We were agreed that one way of easing this dilemma would be to distinguish between the requirements for new members and those for existing members of trade unions. For new members, we were agreed that opt-in was the correct way forward. Across many different walks of life, such as financial services, in which I have a great deal of experience, it is increasingly recognised that people should be asked to exercise an active choice and that organisations should not rely on inertia. We have therefore recommended that, after a minimum transition period of 12 months, anyone joining a union with a political fund should pay the political levy only if they have actively chosen to do so.

We were also agreed that for members who are opted in, there should be no requirement to renew that decision at regular intervals, provided that they are reminded every year about their right to opt out. This would also be in line with the requirement of the Financial Conduct Authority for financial services. We have therefore suggested that the Certification Officer should issue a statutory code of practice specifying the minimum communications which unions must have with political fund contributors every year about their right to opt out and to monitor compliance with it. We were also agreed that it should be possible to opt in and opt out electronically, whether by email or on the internet, as well as on paper.

I now turn to the more difficult issue of the treatment of existing members. As I have said, we agreed that we should distinguish between existing members, many of whom have been paying into political funds for years, and new members who can be forced to make an active choice on their union membership form. Human nature means that it would be much harder for unions to persuade existing members to make an active choice as there is no effective trigger point. Large numbers are likely to ignore mailshots asking them to make this choice and repeated prompting is likely to be necessary. The fear is not of existing members choosing to opt out rather than to opt in, it is that they will simply make no choice at all. This raised two questions for the committee: whether and how quickly the opt-in system should be extended to existing political fund contributors as well as to new members, and whether this should be linked to progress on party funding reform.

Our deliberations boiled down to two options. One was that the opt-in system should be extended to existing members, but perhaps on a longer transition period than that for new members. This would recognise the problem of inertia and the likely difficulty of persuading existing members to make a choice, but still set a deadline for that choice to be made. A second option was that existing contributors should be considered as part of future talks on party funding reform and should not be included in this Bill. This was because it was feared that extending the opt-in to existing members would have a significant negative effect on union and Labour Party funding even with an extended transition period. Meanwhile, existing members will also be covered by the proposed statutory code of practice specifying the minimum communications which unions must have with political fund contributors every year about their right to opt out. Of course, the difference between these two approaches depends on the length of the extended transition period on the one hand, and the outcome and timing of talks on party funding on the other. A majority of the committee, including myself, on balance preferred the second option; namely, that extending the opt-in requirement to existing members should be considered only as part of wider cross-party talks on the reform of political party funding.

That brings me to my final point, and in some ways the most important recommendation of the report, as it also has a part to play in resolving our dilemma. The whole committee strongly believes that the Conservative, Labour and Liberal Democrat parties must give effect to their respective manifesto commitments on party funding reform. Accordingly, we urge the Government to take a lead by convening cross-party talks with a view to making a renewed and urgent effort to reach agreement. We cannot hope that this problem is going to go away; it will not. My fear is that until we solve it, the public are going to continue to mistrust political parties and the way that they are funded. I look forward to hearing what noble Lords have to say, and I beg to move.

7.19 pm

Lord King of Bridgwater (Con): My Lords, I think the House will recognise the very real contribution that has been made to the progress of the Bill by the work of the committee. I say that as someone who did not expect anything to come out of it at all. If I remember rightly, we voted strongly against the idea of it being set up in the first place. It has actually been encouraging to see the progress that has been made. The House owes a great debt to the noble Lord, Lord Burns, for the leadership and chairmanship he has given on this matter.

I simply make the very obvious point that the committee has, as I understand it, unanimously agreed that the principle no longer of inertia, but of opting in for new members is the right one and should be adopted. That can certainly be welcomed and I have no objection to the allowance of a year for the necessary procedures to be introduced. I make only that point, because we then move on to the more difficult question of the established members. I simply say that I would not rush that one. We need to think about it quite carefully. I take quite seriously the issue of party funding and whether this can be seen as the action of one party using its majority to abuse the situation of the other major party.

The interesting thing is that we would not be here if trade unions had been loyal to the undertakings given to me by the TUC. In a sense, the TUC was betrayed over this matter. I had the clearest assurances from the then right honourable Lionel Murray—Len Murray as we knew him, and later Lord Murray—with the full support of the unions, that the fullest arrangements would be made to ensure that all new members and all members of every union affiliated to the TUC would be given full information and advice, and be properly informed about what their rights were. As others have said, sadly this simply was not done. I accepted those

assurances in good faith, which I said in reply to Mr Murray at the time on the basis of the undertakings that he had given in good faith to me, representing the Government. This is absolutely no criticism of him at all: he thought that he had a cast-iron agreement with the member unions of the TUC on the procedures that would be followed and they simply, sadly, were not. Thirty-two years later, here we are again.

Lord Lea of Crondall (Lab): With my TUC background, I would say that the noble Lord, Lord King of Bridgwater, is slightly—if not more than slightly—overdoing it.

Lord King of Bridgwater: If the noble Lord thinks that I am overdoing it I simply ask him to read again the letter that Mr Murray sent to me. The noble Lord was a deputy general secretary himself at the time, so he has no excuse for not knowing what was said in that letter, or for not knowing the circular that was sent out by the TUC to all the unions, to which they subscribed, and on the basis of which I then accepted that assurance. I invite any noble Lord here to read the correspondence and make their own judgment as to whether I am overegging it.

That is where we are now. I had not sought to see this introduced. I hoped, 32 years ago, that the matter had been resolved. Sadly, my acceptance of the assurance that I know was given in good faith by Mr Murray on behalf of the TUC simply was not honoured and respected by the vast majority of the unions. So new members—this covers virtually all the current union members, since it has been going on for 32 years—were not made aware of the rights that they had, which they should have been, and on whose behalf the TUC had given me those clear undertakings.

Lord Whitty (Lab): My Lords, obviously I accept the noble Lord's recollection of what happened in 1984 and of the deal that was done. He will be aware that the committee had mixed information and reports on exactly what the unions were doing, and that the evidence from the Government was much challenged by the unions and by independent observers on whether the unions were following the spirit of that agreement. More importantly, over the 32 years, no Minister of any Government—the majority of whom were not Labour—has ever raised with the TUC the fact that there was a serious breach of that understanding and has never proposed, until the Bill appeared before the House, that we should change the situation again.

Lord King of Bridgwater: The noble Lord makes a very interesting point. I do not know where the Government were at that time. He is absolutely right that it got completely neglected. I went off to Northern Ireland and did not follow it through. Until the noble Lord, Lord Monks, produced the correspondence I had forgotten its existence. I am quite frank about that.

The simple point I want to make, having thought that nothing would come out of the committee, is that we now have a way forward, and that the opt-in for new members should be properly communicated and in legislation. I note that the noble Lords, Lord Burns and Lord Tyler, and the noble Earl, Lord Kinnoull, have tabled an amendment that is currently in the Printed Paper Office, setting out the point of opting in for new members. It is a very helpful amendment, which I have read and noble Lords will be able to read. On that basis, we have made an important start. On the difficult point of established members, we should see how we get on with the first lot and then see where we go thereafter.

7.26 pm

Baroness Dean of Thornton-le-Fylde (Lab): My Lords, I was a member of the Select Committee; it was a privilege to be so. I have read all the debates that took place in the Chamber, including the exchange between the noble Lord, Lord King, and my noble friend Lord Monks on 10 February at col. 2325 and related.

The Motion we were asked to go away and look at I believe was passed with such an overwhelming majority of 94 because there was a feeling in the House that Clauses 10 and 11, which is all I am dealing with, were unfair and in many respects disproportionate. If noble Lords check this long path on party funding, they will see that whatever committee was set up on this—the Committee on Standards in Public Life has looked into it, as have several others—they all honed in on ensuring that there was fairness and balance in what was put forward on party funding and that it was not disproportionate. Indeed, the evidence that we had from Ministers in the other place, from both Tory and Labour Governments, shows that they had demonstrated restraint on dealing with the issue. That was the background and environment within which we conducted our work.

I hope that noble Lords will accept that the report covers a wide range of evidence brought by witnesses, both in person and in writing. When we got into our work, we quickly established that we were talking on average, about 9p a week, or £4.80 a year. That is averaged out over individual union members; the highest amount paid was, I think, 28p a week. Were these clauses proportionate for what we were told was a high-principle issue of opting in?

We tried to look at the evidence coolly, without emotion, and the Committee worked very well together. That is evidenced in the fact that all the proposals for the way forward at pages 134 and 135 are unanimous recommendations to the House. I hope that this is judged to be of assistance to the Government, and the Minister in particular, in finding a way forward when we come back to this next week.

The issue raised by the noble Lord, Lord King, about the unions not keeping their word that they gave him when he was Secretary of State, is challenged very strongly by the TUC in the evidence it gave us. We have a copy of the agreement that was reached. When the Minister, Mr Boles, came before us, he made it clear that his office and the Department for Business, Innovation and Skills looked on the web at union membership forms. No membership form is mentioned anywhere in the agreement. Of course, that set us, as individual members—perhaps not all of us—going on the web and seeing where the evidence was and what unions were doing about telling their members that they could opt out. It is in every rule book. A union

[Baroness Dean of Thornton-le-Fylde]
will not get clearance from the Certification Officer if it is not in the rule book that the members must have it made clear that they can opt out. Indeed, the Certification Officer was completely puzzled when he came before us as to what the problem was, because he had had, I think, two complaints over quite a number of years.

Let me look at the disproportionality, both financially and in what unions were being asked to do. The impact assessment has been challenged very severely. Some of us did our own figures. The noble Earl, Lord Kinnoull, in particular, was very good at coming up with statistical information and giving it to the committee. One could argue that it would cost the political funds practically the whole of the fund in one year to carry out what the Government were asking the unions to do. It was completely disproportionate, as is mentioned in the report.

We were asked to look at the impact on party funding. No one who came before the Committee said that it would not have an impact. The Minister himself said it would depend on the unions and how they dealt with this, but then did not really show us the way. Paragraph 134 of the report establishes clearly that there will be an impact on the funding of Her Majesty's Opposition, the Labour Party.

There has been reference to the Tory party manifesto, which we quote in the report. In paragraph 131 it promises,

"to ensure trade unions use a transparent opt-in process for union subscriptions";

it does not say "political fund contributions". The manifesto goes on:

"In the next Parliament, we will legislate to ensure trade unions use a transparent opt-in process for subscriptions to political parties".

The contributions do not go to the political parties; they go into the union political fund, half of which, on average, in affiliated unions, goes to the Labour Party. Let us be clear that of 163 trade unions, 25 have political funds and only 15 affiliate to the Labour Party. So we are again looking at disproportionality.

I close by saying that reference has been made to our chairman. He was experienced in the chair and I have to say that he set the tone and the environment from the beginning. I feel that we worked together as a committee in a very constructive way. We were backed up, as we always are in this House, by absolutely superb secretariat support. The secretary to the committee and the clerk worked on a hugely demanding timetable and delivered: I register my thanks to them. This was a report done in a hurry, but we tried to cover everything. Its intention, which I hope it achieved, was to assist this House in going forward and ensuring that the Trade Union Bill, when it is finished, will be fair and not disproportionate.

7.35 pm

Lord Tyler (LD): My Lords, when I first proposed in January that this Select Committee should be set up, I took the following as my text:

"It has become a well-established custom that matters affecting the interests of rival parties should not be settled by the imposition of the will of one side over the other, but by an agreement reached either between the leaders of the main parties or by conferences under the impartial guidance of Mr. Speaker".—[*Official Report*, Commons, 16/2/1948; col. 860.]

That was Winston Churchill, leader of the Conservative Opposition, speaking in the Commons. That has been much quoted in evidence to the Select Committee and we should note that the one respect in which we did not follow that pattern was that we picked a much better chairman than Mr Speaker. I pay tribute to the noble Lord, Lord Burns, and to the clerks who were indefatigable in making sure not only that we had a very speedy conclusion to our work, as was determined by the Motion before your Lordships' House, but that it was, of course, very successful. I hope Members on all sides will acknowledge that the report is comprehensive, intellectually robust and very positive. This has already been said by the noble Lord, Lord King, and I am delighted that he, too, recognised this.

The strong recommendations—with only one attracting minor misgivings from a minority on the committee—now await a government response. We should recall the firm double commitments of the 2015 Conservative manifesto, referred to constantly in debates on the Bill. Because, of course, there were two commitments in that manifesto. One has been regularly prayed in aid by Ministers, while they have tended to dodge the other. To remind the House, the first says that,

"we will legislate to ensure trade unions use a transparent opt-in process for subscriptions to political parties",

while the second says:

"We will continue to seek agreement on a comprehensive package of party funding reform".

As we have been constantly reminded, those two stood firmly together in the manifesto.

During our debates in January, we heard several contributions from, for example, the noble Lords, Lord Kerslake, Lord Bew, Lord Dobbs, Lord Cormack and Lord Forsyth of Drumlean—some of whom are going to speak this evening, which is welcome—all of whom warned Ministers to be extra careful in this area. I would summarise the concerns across the House as pointing out that this Government have been getting a bit too big for their electoral boots. After all, they were supported by fewer than a quarter of those eligible to vote last May. Unlike the coalition, for example, this is not a majority Government and therefore it behoves them to be very careful in approaching issues of this sort.

In the interest of brevity, I shall not refer to all the issues that the noble Lord, Lord Burns, has spoken of, because I very much endorse his approach, but I want to take up the point just made by the noble Lord, Lord King. We must ask the Government to think very carefully and not rush into these issues, because they are of very considerable long-term consequence. The crucial recommendations of the Select Committee can be easily summarised. They have already been referred to. Paragraph 134 states:

"It is clear to us that clause 10 will have an impact on party funding and that it is very far from commanding the consensus which we have said is desirable in such situations".

I very much hope that the Minister will recognise that this stands in stark contradistinction to the assertion that the Bill is not about party funding. We unanimously

agreed that that was not the case. There can be no pretence now that there is no connection between Clause 10 and party funding: that was the unanimous view of the Select Committee. Incidentally, colleagues on all sides of the House should note our comment in the report on,

"the inexplicable failure of the Impact Assessment to consider this issue".

Next is the question of how to take forward a comprehensive package of party funding reform, as promised by all the parties. Here the committee, as the noble Lord, Lord Burns, said, was again very firm and unanimous in saying:

"Whether or not clause 10 is enacted, in whatever form, the political parties should live up to their manifesto commitments and make a renewed and urgent effort to seek a comprehensive agreement on party funding reform. We urge the Government to take a decisive lead and convene talks itself, rather than waiting for them to emerge".

Again, this was unanimous. Whether Clause 10 is improved in ways we all support or not, the Government must simply stop sitting on the fence. It is not good enough for the Prime Minister, who is, after all, a party leader himself—as he is reminded daily at the present time—loftily to blame party leaders for not taking steps to make progress.

The whole logic of the report leads to the inescapable conclusion that the legislative proposals in Clause 10—and, to a lesser extent, Clause 11—should not proceed, even if improved by amendment, if that latter manifesto promise is not actively pursued at the same time. In other words, unilateral legislation is not acceptable.

The only very minor divergence of opinion in the whole report was on timing, as the noble Lord, Lord Burns, said. The clear majority favoured an explicit omission of all existing trade union members from the opt-in provisions of the Bill unless and until this issue could be considered in the context of wider party funding negotiations. A minority simply wanted a longer transition period for them compared with new members, and there was talk of three years or so.

However, all the other recommendations, including those to which I have referred, were supported on every side of the Select Committee, as the noble Baroness said. It is fair to say that we all recognised the need for progress in this field. If we had not been so aware, we were often reminded of it by the evidence given to us. The public are understandably suspicious of the big donor culture referred to by the authoritative CSPL report. They argue that multimillion-pound donations seem to buy preferential access, influence and even—dare I mention it?—patronage in your Lordships' House.

The CSPL report referred to,

"a high, and unhealthy, degree of public suspicion about the motivations of both donors and recipients".

This was endorsed in evidence to the Select Committee from the Electoral Reform Society, whose polling in October 2015 found that 72% of the public believed that the current system of party funding was,

"corrupt and should be changed".

Evidence from Unlock Democracy cites further Electoral Reform Society research which found that:

"77% … believe that big donors have too much influence",

over our political parties. This is just one of many factors in the current dangerous level of public disengagement with our politics. There is a firm starting point to address this disenchantment set out in the Committee on Standards in Public Life's report.

It is often said that where there is a will there is a way. The speed and success with which our Select Committee reached unanimous agreement on so many issues shows that there is potential for progress in this area. The parties have all recognised the urgent need for reform in repeated election promises; now Ministers and party leaders have an opportunity to follow brave words at election time with effective action. It is time for balanced legislation to reform party funding not just for one party—Labour—but for all parties in our political system.

7.42 pm

The Earl of Kinnoull (CB): My Lords, I, too, pay tribute to the noble Lord, Lord Burns, and to the outstanding clerking that we on the committee had the benefit of. The noble Lord showed great clarity of thinking, a good-humoured approach and was able to reduce the difficult problem we had been set to a series of logical steps. Powerful evidence sessions were arranged and we were able to land on those steps. I do not belittle the contribution of the other members of the committee. Everyone contributed. We witnessed the great charm of the noble Baroness, Lady Dean, in eliciting evidence and the scholarship of the noble Lord, Lord Tyler. We will hear from more of my fellow committee members later but the report shows balance and is very fair.

The noble Lord, Lord Burns, has summarised matters carefully and fully. I agree with every word he said, as I do with those of the noble Baroness, Lady Dean, and the noble Lord, Lord Tyler. However, I wish to add a little additional colour around some of the evidence sessions. There were three neutral sets of evidence concerning the effect of Clause 10 on union political fund participant numbers. These were: the lessons of history from 1927; the similar evidence of Northern Ireland; and the very interesting evidence of the Government's own behavioural insights team, which so starkly rebutted the impact assessment.

The politically influenced evidence, which came largely in the evidence sessions from people who supported the Labour Party, was delivered by people of great passion and integrity, yet the numbers that they foresaw the participant percentages falling to were, for me, unbelievably low. I put that down simply to fear. They feared an existential threat, or certainly a threat of very major damage, occurring to the party they love. I know from the insurance industry that fear is not at all equal to the probability of damage. Therefore, I was able to square the evidence that they gave on that basis.

I turn to the Kelly report, while sticking with the theme of fear—the first report of the Committee on Standards in Public Life that has not been fully accepted by people of all descriptions. We had a very good evidence session with the noble Lord, Lord Bew, and Sir Christopher Kelly, and discussed what was termed "the balance of pain"—that is, the pain that would be felt by the Labour Party in having to make changes to

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the way in which it got its money, and that felt by the other parties, which essentially get most of their money from large political donors. I think that is almost a balance of fear; again, it is a fear of the unknown. We heard evidence from Nick Clegg MP on his complete failure to convene any form of discussions likely to produce any results in the aftermath of the Kelly report.

We have just heard that public opinion is strongly in favour of adopting some changes in party-political funding. Therefore, it is no surprise that the three main manifestos—I shall read out a line from each—were so keen to promote change in the party-political funding arena. Looking at the annunciator, I note that the words,

"and Political Party Funding Committee",

are included in the committee's title. Therefore, it is entirely right that I should cite these manifestos. The Conservative Party manifesto stated:

"We will continue to seek agreement on a comprehensive package of party funding reform".

The Labour Party manifesto said:

"We remain committed to reform of political party funding and taking the big money out of politics".

The Liberal Democrats said that they would:

"Take big money out of politics by capping donations",

and introduce,

"wider reforms to party funding along the lines of the 2011 report of the Committee on Standards in Public Life".

I feel, therefore, the time has come to grasp the nettle. In fact, there is no better time to do it because these three manifesto commitments are very similar in their vow to the Smith commission agreement. All three parties have given this undertaking to the electorate. It is incumbent on those parties now to make progress in this area, have meaningful discussions and not just "dance a dance". The balance of fear that I have mentioned is well understood. There is certainly no appetite for creating an existential problem for any of the three parties. The interim arrangements on party funding would take that into account. It is fair to ask the Minister when the Government intend to make good their manifesto promise in this regard.

I, too, note that we had 33 pages in our main report, 32 of which were wholly agreed; just the last half page was not. For the avoidance of doubt, I was in favour of option A on the opting in of existing participants only when a comprehensive reform package was in place. I commend the report to the House for its balance and thoroughly practical nature. The committee has reached agreement. We now seek the agreement of the House, and then of the Government.

7.49 pm

Lord Robathan (Con): My Lords, having been a member of the committee, I pay tribute to the Cross-Benchers, such as the noble Earl who has just spoken, for their measured contributions. I particularly thank the noble Lord, Lord Burns, for his skilful handling of the committee, which must not have always been easy, and his very good humour. As a new Member of this House, I have noticed that people are sometimes reluctant to intervene. I shall make a short speech and if anybody wishes to challenge me, I would be very happy for them to intervene.

First, I will address the question of opting in or out, and then the second, linked issue of how this will affect Labour Party funding. This discussion of the trade union political levy hinges on one issue alone: is it right in principle for trade unionists to opt in or out of the political levy? I know why the situation is as it is. I know the history. But the world has moved on since the second half of the 19th century.

Nick Boles, the Minister, came to our committee and gave us some very eloquent evidence, which I shall quote at length. He said that,

"there has been a very substantial shift across a whole range of areas of public life and consumer activity towards the idea that it is important, when you are asking someone to make a contribution to some other organisation—it could be a supplier of a good or a charity—that they should actively consent to do so … the consumer rights directive, which was implemented in the UK in 2014 and which applies across the European Union for contracts between a trader and a consumer, reinforces the concept of express consent … pre-ticked boxes are no longer permitted under that directive … Turning to the charitable sector … a review of the approach to self-regulation of fundraising in charities and strongly encouraged that, again, all fundraising organisations should take steps towards adopting a system of 'opt-in only' in their communications to donors … The FCA is very clear that when signing up to a financial product, consumers should be provided with clear information and be offered an opportunity to actively consent to a new commitment".

Would anyone in the Chamber disagree about the principle of active consent—opting in, in this and indeed other fields—in the second decade of the 21st century?

The contributions to the political levy are, frankly, trivial, as we have heard already from the noble Baroness, Lady Dean, so the result is that people do not challenge them. It is just not worth the candle. It is not worth the hassle, after all, for an average of 9p a week—less than £5 a year. But if you multiply that, which the noble Baroness did not do, by nearly 5 million union members, you get not far shy of £24 million a year, of which around half goes to the Labour Party. Can anybody in the Chamber defend that system, where those who vote Conservative, Liberal Democrat or whatever unwittingly give money to a party that they do not support? I opt in to join the Conservative Party, and Conservative associations up and down the land sweat blood each year trying to get members and their subscriptions.

Turning to Labour Party funding, it is not my place to advise the Labour Party, it will be pleased to know, but I would suggest that it gets out and gets more members. We were told by the *Guardian* in January this year that membership of the party has increased from 202,000 to 388,000 since the general election, so perhaps the party is doing exactly that. I am told that more than 100,000 people paid £3 to vote in the leadership election by becoming registered or affiliated supporters. However, trade union membership is falling rapidly. It is less than half what it was in the winter of discontent. I might again advise the Labour Party: it is not wise to rely on these funds. The party needs to get more trade unionists who are committed to the Labour Party to subscribe properly. Perhaps the standard sub of £47 puts them off. In the Conservative Party it is only £25. I think that is too little, but there you go.

The noble Lord, Lord Collins, is in his place, and his review has already started the process of opting in. I will quote—not to him because he will know it backwards—what he said:

"After a transitional period of five years, affiliation fees shall only be accepted on behalf of levy payers who have consented to the payment of such fees".

Notwithstanding the Motion setting up the committee, the issue of trade union reform is separate from party funding. Indeed, all noble Members will have received the joint union briefing on the Trade Union Bill, which included briefing by USDAW and the NASUWT, both of which have political funds. The briefing did not even mention the opt-in or the opt-out, or political levies or political funding. So those unions saw it as separate. It is, frankly, immoral and unacceptable for any party to be funded unwittingly and unwillingly by people who do not support it. I believe that even those opposite must agree.

Lord Forsyth of Drumlean (Con): Is there not a bit of a dilemma here with company donations made, say, to the Conservative Party, where some of the shareholders may not take the view that they support the Conservative Party?

Lord Robathan: My noble friend is absolutely right, although he may be slightly—dare I say?—living in the past. We heard evidence—somebody who was on the committee may correct me—that the amount of public company donations has dropped to a negligible level because of legislation brought in by the last Labour Government.

Lord Forsyth of Drumlean: My noble friend is absolutely right that the amount has certainly gone down but I thought he was making an argument of principle, not of quantity.

Lord Robathan: My noble friend is absolutely right, but of course, in principle, shareholders vote at a company general meeting and the result is that they do not vote for political donations. Of course, one can sell one's shares, as indeed one can leave a union, but leaving a union may have implications for one's employment.

Lord Whitty: My Lords, I am sorry to interrupt the noble Lord—we crossed swords in the committee—but, further to the point made by the noble Lord, Lord Forsyth, does he not recall the evidence before the committee that over the past five years trade unions gave roughly £64 million in political donations? Other organisations gave £80 million, predominantly to the Conservative Party. None of those organisations is required to have a political fund and therefore the issue of opting in or opting out by shareholders or members of those organisations does not apply. Does he regard that as either moral or fair?

Lord Robathan: The noble Lord and I did indeed cross swords but in the committee we heard that these are personal donations. They may be from rich people and one can knock that—

Lord Whitty: My Lords, I am talking about organisations. There are also very rich donors—to all parties but, again, predominantly to the Conservative Party. But I am not talking about individuals, I am talking about other organisations which together donate more than the trade unions do to the Labour Party—to all parties.

Lord Robathan: Perhaps the noble Lord might like to tell me which organisations, without asking their members, donate to the Conservative Party, because I think he may be mistaken.

Lord Whitty: My Lords, the point is this: public companies have to have a vote but there is no requirement to have a political fund and therefore those who oppose the majority vote have no option to opt in or opt out. That is a requirement that applies to trade unions only and it will continue to do so in a rather harsher form if the Bill is passed. Why does the noble Lord not regard that as necessary for other organisations if he is indeed trying to make a point of principle?

Lord Robathan: Funnily enough, I would be very happy to examine that but we did not do so in our committee. I think the noble Lord is saying that he will defend the principle of making people opt out rather than having the opportunity to opt in.

Finally, the recent discussion has just illustrated how well the noble Lord, Lord Burns, did, with good humour, in handling our committee.

7.58 pm

Lord Desai (Lab): My Lords, I, too, pay tribute to the noble Lord, Lord Burns, for an excellent report. I have known the noble Lord more or less since I landed in this country, 51 years ago. I have always known that he will do whatever he does in an excellent way.

I think most things that have to be said about the report have been said. It is a good report. The recommendations are good. But I want to take a slightly broader point of view. First, we should be realistic about this. We live in a class society and it is a fact that capital has more resources than labour. Labour ultimately has to have numbers on its side because each member can make only a small contribution. So the Labour Party has always needed arrangements such as that with the trade unions to get a little, respectable sum of money together.

As we know, regardless of the nice things that the report says about all parties having exercised restraint, the record in the report shows that there has been class legislation on these questions in 1913, 1927, 1984 and so on. After all, what is political power for? Political power is to serve your people and to put the other people down—that is our system. We have had a bilateral monopoly of power between Conservative and Labour, and that is the way that we have operated. I do not really accept this idea that, somehow, political parties cannot do something because they do not have a majority of voters on their side. We have a first past the post system, where if you get a majority of the

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seats, you bash the other people's face in—that is the way politics works, so I do not think there should be any surprise about that.

However, several things have happened. We have a situation in which, for various reasons, the trade unions are in decline. With production technology changing and the economy changing, trade unions are in decline. Secondly, inequality of income has increased remarkably—there is a lot of evidence about that—and so there are these contrasting forces in which the balance of power between the two major groups has changed. Also, because we had a bilateral monopoly of power, the smaller parties had suffered and, more and more, it is becoming clear that the bilateral monopoly's hold on the electorate is weakening—they no longer command the 99% of the electorate's vote that they had in 1945 or 1951 but have a much smaller number.

Whatever we do with this system and whatever we do with Clause 10 of the Trade Union Bill, we need to go back to some wider thinking about political funding, and I think this is where the CSPL report will come in. Eventually, we will have to transit to a system that, if not entirely, is substantially publicly funded, because only a publicly funded system—based on the votes obtained by a political party at an election, with some sort of per capita subvention in relation to the number of votes that a party got—will do justice to the smaller parties and do justice to the relative inequality of resources between the two major parties.

Whatever we do with the Trade Union Bill—and I agree, I think, with the recommendations of the committee—we need to think seriously about how we transit, if not fully at least partially, to a mixed system in which all parties have access to public funding, which might be topped up by other arrangements that would also be regulated in a strict way. We need some system like that, because the present system has broken down and, as the noble Lord, Lord Bew, has said in his report, it no longer commands public trust. Neither the trade union funding nor the corporate funding commands public trust. Therefore, we need a system in which public funding is made available to parties, and the sooner we move to that system, the better.

And here we should once again emphasise the advantages of your Lordships' House. The Trade Union Bill would not have met this big roadblock and the Select Committee would not have been appointed, had it not been for your Lordships' House. Because of the way that the voting strength is constructed here, we can do that kind of reforming thinking in your Lordships' House. So, as and when the members of the ruling party have got over their little local difficulties with Brexit—somewhere in high summer, so in July or so—they ought to turn their mind to thinking about long-run reform of political funding. I would again recommend that they use your Lordships' House for that and, since the noble Lord, Lord Burns, is a very busy man, he would be the ideal person to do the job because he will do it quickly.

8.05 pm

Lord Oates (LD): My Lords, I echo the praise that has already been given to the committee for its swift, comprehensive and skilful report. In marked contrast to Clauses 10 and 11 of the Trade Union Bill, the conclusions of the committee are measured, sensible and proportionate; they look beyond party advantage to the interest of our democracy.

The Government's publicly stated arguments for Clauses 10 and 11 are based on a desire for greater transparency and a concern about a lack of compliance by unions with the King-Murray agreement. If those really are their motivations—and I confess that I doubt that—then the measures proposed unanimously by the committee will fulfil the Government's desires and put at rest their concerns. With the greater transparency proposed, the active choice about the political fund for people joining a union and the clear annual communications with existing union members about their right to opt out of the political fund, the committee proposes a fair and balanced approach.

I also support the majority view of the committee that the decision on whether to extend the opt-in to existing members must be considered only as part of cross-party discussions on party funding reform. That is also a fair and balanced approach, and it is vital if party funding is not to become entirely unbalanced.

I want to concentrate on one particular sentence in the report that struck me. Paragraph 115, which was alluded to by the noble Lord, Lord Burns, states:

> "If any government were to use its majority unilaterally to inflict significant damage on the finances of opposition parties, it would risk starting a tit-for-tat conflict which could harm parliamentary democracy".

That is a sobering sentence, because that is exactly what the Government are seeking to do in the Trade Union Bill. I hold no brief for the Labour Party or the partisan campaigns run by some trade unions, but I recognise that there is something greater at stake here than my dislike about the way that the Labour Party and trade unions have sometimes campaigned against my party. What is at stake is the health of our democracy.

The odds are already massively stacked in favour of the Conservative Party, given its immense financial advantage. But now it is the intention of the Government not to redress that balance through the party funding reform that the Conservative manifesto promised but to further entrench it through the Trade Union Bill. Since the constraints of coalition were removed from the Conservatives, they have brought forward a raft of measures to hobble their opponents, including the measures to cut funding to the Labour Party included in this Bill and the cut to Short money for opposition parties. This also comes at a time when the number of special advisers serving Conservative Ministers has risen: the Chancellor now has nine special advisers and the Prime Minister now has 32 special advisers.

Not only that but, in a move that has largely escaped public scrutiny, the Code of Conduct for Special Advisers has been changed to allow government-paid special advisers to take part in national political campaigns. The previous code prohibited special advisers from taking part in national political activities, including canvassing on behalf of a candidate or party; now it is allowed. The previous code prohibited special advisers from being identified as prospective parliamentary candidates; now it is allowed. The previous code prohibited special advisers from undertaking local political activities

in support of national politics; now it is allowed. Of course, such activities may be carried out only in the special adviser's own time, but I wonder how this will be monitored in practice—the Government have not told us. Compare that with the onerous reporting requirements imposed on trade unions.

All these measures are coming together and, in doing so, they unbalance our politics. I hope that tonight the Minister will not waste too much of her time on protestations that Clause 10 is not a partisan attack on funding of the principal opposition party. No objective person believes that, and they are right not to believe it, because it is not true. The motivation of the Government—or at least of the architects of this Bill, who have been pushing it for the last few years—is entirely partisan. That is not an assumption on my part. It is not a matter of speculation. It is a matter of fact.

We know it is a matter of fact because Conservative Ministers attempted to serve up this Bill during the coalition. Their motivation could not have been clearer. They assumed that because of the money that the Labour Party and the trade unions were pumping into demonising the Liberal Democrats' role in government and Liberal Democrat MPs in their constituencies, we would go along with their partisan plan. However, much to their frustration and indeed bewilderment, the then Deputy Prime Minister said no, repeatedly. He did not do so, let us be clear, out of a love for the Labour Party or the trade unions—anyone who has seen the absurd and unpleasant campaigns that were run against him nationally and in his Sheffield constituency will understand there was not a lot of love there—but because he thought that sometimes there is actually a wider interest than your own party's short-term advantage.

He did so because he knew that although trade unions' political campaigns can be shrill and vindictive, free trade unions play a vital role in any democracy. Anyone who doubts that should just go and ask a Pole, a Zimbabwean or a South African. He said no because he believes that a functioning and balanced democracy is a cherished gift, and that if you play with it for purposes of party advantage, you do so at your peril and at the peril of your country. Most people in this House understand that. I suspect most Conservatives understand it too. The Conservative Party will be defeated one day, however distant that day may look today, and it would be foolhardy of the Conservatives to start the sort of tit-for-tat conflict that the report warns of. It would be not only their party and the Labour Party that suffered but all of us. I hope, therefore, that the Minister will tell us tonight that the Government have seen sense and will accept the wise and measured recommendations of the committee.

8.12 pm

Lord Leigh of Hurley (Con): My Lords, I warmly welcome the report and congratulate the noble Lord, Lord Burns, and the other noble Lords who served on the committee. We had a good discussion on Clauses 10 and 11 in Committee, which I think it is generally recognised were instigated by the Conservative Party manifesto. As the noble Baroness, Lady Dean, and other noble Lords have pointed out, perhaps it did not contain the most elegant of wording, but it did none the less convey the message. As a humble treasurer of the party, I did not get involved in writing the manifesto, so cannot claim any credit for that.

The important point about Clauses 10 and 11 is that they are not seeking to prohibit donations to political parties by trade unions but rather seek transparency and ensure that those who wish to donate to a political fund, first, appreciate that this is the home for their money; and, secondly, understand how that money is spent. Those present in Committee will recall the Populus survey from which I quoted, which found that 30% of one union's members thought that they had opted out of contributing to the political fund and a further third did not know if they had opted out or not. Nearly two-thirds of the members of this union who were polled thought that unions could do more to advance their members' interests by using the money elsewhere than for political donations to Labour. Of course, a substantial proportion of members of this union and other unions support other political parties, but donations are focused exclusively on the Labour Party.

The report makes clear that it should be a requirement for all members joining a union with a political fund to be asked, on the membership form, to make an active choice to contribute, or not, to that fund. Like the noble Lord, Lord Robathan, who said it very elegantly, I cannot really see any argument against that. Indeed, I served on the Etherington committee, which made the point, in respect of charities, that there has to be an active opt-in before donations are made to avoid it being classified as aggressive fundraising. The current situation is that every 10 years a ballot is opened up for members to approve the continuation of opt-out arrangements. However, we have seen one union which, despite leaving the ballot open for three weeks—one would have thought a proper ballot would take just a day—achieved only an 18% turnout.

Accordingly, it seems to me that the only real issue for Members of this House to decide is whether to implement the opt-in requirements immediately or over a period of time. It would of course be very helpful if, at this point, the unions could enter into negotiations with the Government to reach an agreement on this, and perhaps my noble friend will explain whether that is happening. However, in the absence of any such negotiations, I would find it somewhat extraordinary if the opt-in does not commence for all existing union members, albeit phased in over a year or maybe two. I would not accept that a cross-party consensus on the general and much wider subject of political funding is necessary to implement this one particular aspect relating to trade union behaviour. Indeed, I am somewhat surprised that others think otherwise.

It should be borne in mind that, while the Conservative Party manifesto specifically called for a cross-party consensus on political funding, the Labour Party manifesto was explicit in its determination to impose a cap on political donations. There is no mention of consensus and no mention of agreement; simply that a cap will be put on political donations. Accordingly, if Labour had won the election in 2015, it would either have had to break a manifesto commitment or it would right now be implementing a very dramatic and severe change to party funding. It is clear to me that

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the Government are not proposing to do that but are simply trying to ensure transparency for those who wish to donate. The debate on the ethics of the state imposing a limit on a citizen's free will to give their money to a political party of their choice is not for this occasion.

The discussions we are having about this situation must be pretty similar to those when PPERA was brought in in 2000 under the Labour Government. That required private, public and listed companies—the three can be different—to seek approval from members of the company in general meetings before political donations above quite a modest sum were made. Subsequently, the Companies Act required full disclosure of such donations. Both of those are now recognised as steps forward and I welcome them as being appropriate. The actual figures, since some noble Lords have questioned this, are that since 2010, declared donations from listed companies to the Conservative Party have been well short of £1 million. In the same period, well over £50 million has been raised, so the numbers speak for themselves.

Lord Forsyth of Drumlean: The point that I made, which I think the noble Lord is referring to, was not about the numbers or the amounts. I was responding to my noble friend's point when he argued that it was immoral for people with money to be contributing to a political party when they did not support it. That applies in the case of some shareholders who may not support the Conservative Party. I am not against that; I was simply arguing that it was wrong to make a moral case which would apply to company donations. The extent of the donations—their number and volume—has nothing whatever to do with the principle. We are not discussing the price here; we are talking about the principle.

Lord Leigh of Hurley: I take the point, but the principle I am trying to explain is that a listed company has to have a general motion at a meeting where all shareholders have the right to vote. As a result, such listed companies have dramatically reduced their donations. Private and public companies also have to have shareholder approval.

I would agree with noble Lords who point out, in respect of Clause 11, that £2,000 is a very low level and may not be practicable. I would certainly not want to see unnecessary administrative expense for the unions in the enforcement of these new requirements.

Finally, I believe that further clarification is required on Clause 11. I note the Certification Officer will have to ensure that unions identify moneys spent under Section 72(1) of the 1992 Act, but there is confusion as to whether payments which are not within Section 72(1) should be similarly identified. For example, there are donations that can properly be described, in layman's terms, as political but are not necessarily made through or to a political party. For example, payments by unions to CND and Boycott, Divestment and Sanctions against Israel made through the fund are not disclosed as such. I would argue that many members of unions would be horrified to find that that is how their money has been spent.

I would hope that a government amendment would clarify this point. I understand that it might be covered by case law, but I agree with paragraph 107 of the report, which states that the current level of reporting for political fund expenditure is insufficient.

8.20 pm

Lord Bew (CB): My Lords, I should declare my interest as chairman of the Committee on Standards in Public Life; the committee's report in 2011 has obviously played a significant role in the discussion of the Select Committee.

I say immediately that if you are going to get something wrong, get it wrong in good company. Like the noble Lord, Lord King, who was an important member of the Committee on Standards in Public Life in its early days, I did not believe in the viability or usefulness of the committee being established in the first place. I have been proven to be quite wrong. I had perfectly reasonable reasons for believing that. I have been struggling for several years—and my predecessor for longer than that—to get movement on this issue. Having failed to do much in five years, I did not think that much would happen in five weeks. Actually, this has been a useful and valuable report.

I had another, more profound reason for scepticism. As chairman of the Committee on Standards in Public Life, although I absolutely identified with the moral thrust of the report, particularly the commitment to the idea that these issues should be dealt with not in a partial way but across the whole terrain, I was also well aware that there were major difficulties.

For example, the report has a section supporting the idea of state funding; the noble Lord, Lord Desai, spoke eloquently about that concept this evening. However, the Deputy Prime Minister in the previous Parliament, who was referred to earlier, made it clear that that was not acceptable at a time of financial stringency, and there was no possibility of getting the major political parties to push forward that idea.

I was also well aware of the fact that neither of the major parties had agreed to our report and both dissented in significant ways. I was worried that there might be a feeling that there was a gold standard that could be returned to which embodied some form of consensus, when I knew there was no such thing. That did not matter to the noble Lord, Lord Burns, and his committee, who approached the problems as they exist today, and offered some very sensible conclusions and suggestions as to the way forward out of what is an impasse.

For the remainder of my remarks, I will register one footnote to the report, raise a slight query as to meaning and then look at where we are left by the report's conclusions. The noble Lord, Lord Burns, when talking about opting in, mentioned the 28% figure for Northern Ireland. I absolutely agree with the broad conclusion of the report: that it is unknowable what the provisions would mean in practice; we cannot be sure and there are different figures. However, the Northern Ireland figures are a bit deceptive. They are very low and relate to a wider problem, which is that the Labour Party will not organise in Northern Ireland, so it is asking people to buy nothing by opting in,

which is a unique situation in that part of the United Kingdom. That is a controversial issue inside the Labour Party. In the most recent leadership election, some important contenders, including the runner-up, made it clear that they were unhappy with their party's traditional position on the matter. None the less, you cannot really deduce anything from the Northern Ireland figures, not just because of the nature of the local traditions but because the Labour Party, unlike the Conservative Party, does not organise in Northern Ireland. That must be taken into account when looking at that very low figure.

To turn to the main thrust of the report, one important thing that the committee did was to commission certain types of evidence. There is an important document from the Conservative Party, given in evidence to the noble Lord's committee. Paragraph 35 states:

"Party funding reform has become the embodiment of Waiting for Godot. Notwithstanding our aspirations towards a comprehensive settlement",

which, implicitly, the Conservative Party thinks might take some time,

"we would practically suggest that—entirely separate to this Bill—there may be smaller reforms that could command some broad support, rather than trying … to achieve an all-or-nothing, 'big bang' solution".

That is an interesting observation. We could address certain aspects of what is a very difficult problem in its totality, in the event that we do not within this Parliament achieve the big-bang solution. I should be very keen to hear the Minister's reaction to that proposal, which comes from a Conservative Party document.

In conclusion, I want to say something about the Committee on Standards in Public Life. We would be very happy to play any role if a debate is initiated. We certainly intend to modernise our report and carry out new research. From some of the exchanges in the House this evening, we can see a need to do that. There is a debate about not just standards but what the current realities actually mean in political philosophical terms. That is something we can do, but if there is to be a debate and the Government choose to encourage it, we would be very happy to play a role.

8.26 pm

Lord Balfe (Con): My Lords, I add my congratulations to the noble Lord, Lord Burns, on his excellent report. I begin by reminding the House that we have this report because of the great unease in the House about the proposition put forward. I say further to my Front Bench that it is highly likely that if the noble Lord tabled an amendment based on the findings of his report, it would be carried—

Lord Cormack (Con): He has.

Lord Balfe: Okay, then it will be carried. I would therefore hope that the Government will devote a good proportion of their thinking power to working out where the acceptable compromise is between where they are and where the majority of the House will be, because I predict that the amendment will be carried.

Paragraph 61, which has not been mentioned, states that after 1927, unions raised the amount that they paid into political funds. That is a far more significant paragraph than has been realised. We have seen this with the political fund ballots. I remind the House that when the Conservative Government proposed political fund ballots, they thought that that would end political funds. Not only has it not: there are more political funds today in more unions than there have ever been. We should not underestimate the power of marketing. Also, if people look forward, they may say, "We may need a political fund to carry out certain functions".

I am not saying that we should therefore support the clause, but that the law of unintended consequences may well come home to roost. This will not find much favour on the Opposition Benches either. We talk about political funds, but not about giving people any choice within them. There is no proposal to tick a box so that the money can go to the Green Party or the 30% who vote for the Conservative Party. It is a straightforward sledgehammer approach, in the probably mistaken belief that it will somehow break the union political funds.

I notice that the proportion going to the Labour Party is about four-ninths of the amount collected so, for the last time, we can use an old Liberal slogan of ninepence for fourpence: you collect ninepence and you give fourpence to the Labour Party. That was how Lloyd George sold national insurance—for those who are not in the Liberal party.

In paragraph 107, the committee states, "We endorse". There are no minorities there. The Certification Officer needs a balance between proportionality and accountability. That is clearly evident, because it seems that things are being pushed on to the Certification Officer without thought being given to how he is going to carry out his functions. We need to think very carefully about what his role is. Is it just to receive the report? If you say, "Dear Certification Officer, we have spent £50,000 on Build a Better Society, a front organisation that will organise demonstrations at the Conservative Party conference", you have fulfilled all that you have asked the Certification Officer to do. He takes that and puts a stamp on it and says, "Oh, yes, they've declared that—it's jolly good, isn't it?". End of story. What are we trying to do with this Bill?

On the subject of funding reform, paragraph 115 has already been mentioned by the noble Lord, Lord Oates. We do not want to get into a unilateral tit-for-tat action; it is not going to do any of us any good. Paragraph 128 cites Sir Christopher Kelly, who is not normally found in the Jeremy Corbyn part of politics, but he called Clause 10,

"a partisan, cynical move that is likely … to bring the whole process into even greater disrepute".

I think we need to take note of what he had to say.

In conclusion, I hope that we will agree with paragraph 141(a), giving the new members time to opt in, and I hope that we will find a way of coming to terms with paragraph 142(a), which reflects the majority feeling of the committee and what is likely to be the majority feeling of this House. The benefit of this debate is that the Government can think their way out of the problems they have unfortunately got themselves into. I am sure that all noble Lords will be happy to help them to solve this particular, rather difficult problem.

8.32 pm

Baroness Drake (Lab): My Lords, I, too, was a member of the committee, and when we started our task the Government insisted that Clauses 10 and 11 were concerned only with how union members choose to contribute to political funds and were not about party funding. That insistence meant that the Government made no assessment of their impact on Labour Party funding. The Government assumed as their main estimate that there would be no change in the number of union members contributing to political funds. That assumption was not supported by the evidence of other witnesses, including the Government's own Behavioural Insights Team, whose evidence supported the proposition that a switch from opt-out to opt-in would result in a lower participation rate.

The committee concluded that Clause 10 could have a sizeable negative effect on the number of members participating in political funds and in turn on Labour Party funding. It observed that the question of whether Clause 10 is trade union or party funding legislation is a semantic one. Rather, the more important question is whether it will skew the party funding debate. Clause 10 will have an impact on party funding and is very far from commanding a desirable consensus. It does not deliver what Sir Christopher Kelly sought and the noble Lord, Lord Bew, seeks: that reforms to party funding should be fair and even-handed in their impact.

The committee reached two key conclusions: opt-in will significantly impact on Labour Party funding, and it is desirable that changes affecting the funding of political parties should proceed by consensus. The report acknowledges that the Conservative manifesto committed to an opt-in process. It also notes the Conservative manifesto commitment to seek agreement on a comprehensive package of party funding reform. The committee was disappointed by the Government's passive approach to this commitment. The overarching view of the committee was that the Government should take the lead and convene cross-party talks with a view to making a renewed and urgent effort to reach agreement. I, for one, sincerely hope that the Government will give that lead and that the other parties will engage positively. Reform is needed to increase public confidence; it needs to be fair in its financial impact on different parties and should not encourage tit-for-tat responses. Otherwise, it will damage our democracy and, importantly, undermine the opposition parties in holding the Government to account. It is the British people who will be the losers.

The Conservative manifesto commits to introducing some form of opt-in but, as the committee reports, the current Clause 10 presents obstacles to the successful implementation of opt-in. It does not make it easy for members; it provides points of friction that discourage opt-in. As Dr Halpern of the Behavioural Insights Team observed, people "go with the friction". The principle of opt-in is in the Communist—I mean the Conservative manifesto [*Laughter*]. The detail of the process for implementing it, as set out in this Bill, is not. The greater the obstacles, the greater the impact. Unless the obstacles are mitigated, the extent of the negative impact on Labour Party funding will be greater and even more unfair. The noble Lord, Lord O'Donnell, commented that people will do the simplest thing and that if post is much harder than online, you will not get them doing as much.

The committee looked at three aspects of the opt-in scheme—the transition arrangements; the requirement to opt in on paper, and the requirement to renew an opt-in decision every five years—from a range of perspectives: proportionality, cost to the union and impact. The average political fund contribution is just over 9p per week, and what became increasingly clear was the disproportionate nature of some of the requirements in this Bill in moving to opt-in. The views in the report on the way forward—I stress "on the way forward" because that phrase has not been repeated much—recognise the principle of opt-in going forward but mitigate some of the obstacles and are fairer in what they propose. That is even-handed.

The unanimous and majority views in the report taken as a whole do not breach the principle of transparency of opt-in going forward but, taken together, they restore some fairness, proportionality and even-handedness. That is not something the Government should discard lightly. That would be partisan. This evening, several noble Lords have expressed their surprise at what this committee achieved, which says something about what the members of the committee sought to do to respond to the terms of reference they were given. I hope the Government recognise that and embrace the recommendations in the report.

The House set a task to be completed within a tight timetable. The noble Lord, Lord Burns, was an excellent chair, maintaining patience, forbearance and good humour throughout and, as noble Lords can imagine, good humour was an essential quality in moving the committee to its position. The clerks were an exemplar of the support we as Lords receive. They did not allow speed to prejudice quality, and their drafting skills demonstrated a delicacy and sensitivity most appropriate to the task.

8.39 pm

Lord Callanan (Con): My Lords, as another member of the committee, I, too, join the paeans of praise winging their way towards the noble Lord, Lord Burns, for the job he did as the chairman of our committee. As a fellow lad from the north-east—I was delighted to discover that that is where he is from—I thought he did an excellent job in marshalling us all towards the inevitable compromises that are required in any report such as this.

This is the first Select Committee on which I have served during my membership of this House, and I greatly enjoyed it. I learned a lot from it. I freely admit that the world of trade unions was not one that I knew much about. I have never been a member of a trade union, I have no intention of ever joining a trade union and I learned a lot, particularly from the noble Baronesses, Lady Drake and Lady Dean, the noble Lord, Lord Whitty, and others about the operation of trade unions, the way they work and what they do.

A lot of points have been made, but I shall make three brief remarks. First, in essence, the principle that opt-in is the right way to proceed was accepted. It was

accepted unanimously by new members of trade unions, and if you leave it over a long timescale of 20, 30 or 40 years, eventually everyone will be opted in. It will not surprise noble Lords to know that I thought that it should be accepted in a relatively short timescale by existing members. Effectively, what we are disagreeing about is the timescale. If we leave it long enough, eventually everybody will be opted in anyway, and it seems to me that the principle of opting in was agreed by the noble Lord, Lord Collins, in his report to the Labour Party.

Secondly, we were asked to examine Labour Party finances. I was somewhat surprised to discover that only 50% of union political funds go to the Labour Party. Not being an expert on the subject, I assumed that the vast majority of political funds went to the Labour Party. If this legislation results in fewer members opting in to trade unions, trade unions have the option to increase the proportion of funds that they donate to the Labour Party. I was also surprised to discover the relatively tiny contributions of members who are effectively opted in by inertia, which the noble Baroness, Lady Dean, referred to earlier. It is a matter of pence a week. If the unions make sufficient effort to get a positive choice out of people to join and to contribute to political funds, it seems not beyond the bounds of possibility that they could ask for considerably more money. If somebody makes a positive choice to join a political fund, I cannot see anybody positively agreeing to contribute 16p a week. Surely they will contribute a number of pounds, so unions will probably end up with fewer members opted in but with that smaller number making a proportionately bigger contribution; however, that is a matter for unions to determine in their own time. I fully subscribe to the recommendations that the opt-in process should be made easier and more transparent. Members should be able to do it electronically, and I hope the Government will look at extending the transition period to give sufficient time for the new reforms to bed in.

My third point is the knotty issue, which has been explored extensively, of manifesto commitments. I fully accept that the manifesto commitments on which my party is relying were not particularly well drafted, but their intention is clear. There are of course two manifesto commitments in this area: the opt-in provisions that we have been talking about, and the commitment to convene cross-party talks. I accept that I was disappointed in the committee by the failure of the Cabinet Office Minister who came along to commit to convening cross-party talks; he said that he was in favour of them happening but did not say how the three parties would magically arrange to get together in a room and start them. It is for the Minister and indeed the Government to convene those talks; it is a relatively easy and straightforward thing to do, and I hope that the Minister will take that back to her colleagues. While I accept that this legislation is not directly related to the funding of political parties, to avoid it looking vindictive it is important for the Government to take forward the issue of cross-party talks as well.

Before Labour Members become too earnest about extending their argument that it is important for political parties to legislate on political finances only with the agreement of all other political parties, I remind them that in their own manifesto there was, yes, a commitment to take cross-party funding talks but also, not linked to that, a commitment, as my noble friend Lord Leigh has pointed out, to put a cap on political donations. That was not proceeding on a cross-party basis; if Labour had been fortunate enough to win the election, I assume that it would have wanted to pursue its own manifesto commitment. That would have been pursuing political-party funding reform without cross-party agreement.

As has also been pointed out in this debate, Labour legislated on a number of political-party issues during its time in government. For example, having to record all donations meant that my own lowly little constituency branch had to start recording every dinner donation and small amount of money that we were given. That was legislation implemented by the last Labour Government. Labour also, as has been said, legislated on companies having ballots of shareholders; again, that was political-party funding legislation done without cross-party consent. So let us not have too much preaching about this.

I think it is desirable that parties in government should proceed by cross-party funding talks, but that does not alter the fact that in my view this legislation is right in principle. It is right that people should make an informed and transparent decision whether to opt in to a political fund. I hope that the Government will bring forward appropriate transitional arrangements, but ultimately the principle that members should opt in is right.

8.46 pm

Lord Cormack: My Lords, one person has not yet been thanked today: the noble Baroness, Lady Smith of Basildon. She moved very passionately the Motion that led to the large majority in your Lordships' House and to the establishment of the committee under the noble Lord, Lord Burns. I opposed her, not because I disagreed; we agreed entirely on the principle but I advocated some form of sunrise clause before clauses that in their present form I regard as pernicious should come into force. She carried the day, though, and I am glad she did. Like the noble Lord, Lord Burns, who voted as I did, I think we were wrong, and he above all has proved that.

Something else has been proved to me: the extraordinary value of your Lordships' House, and the procedures that allow us to set up this sort of committee. It also illustrates the enormous value of having a sizeable number of Cross-Benchers. Some of your Lordships—indeed, a number are present this evening—know of the Campaign for an Effective Second Chamber, which I have had the honour of chairing since I founded it with the noble Lord, Lord Norton of Louth, 15 or 16 years ago. It argues for a House that is appointed, not elected. One of the central points that we have always argued is that a great virtue of an appointed House is that it is not dominated by a political party and that it has a large number of Cross-Benchers.

The noble Lord, Lord Burns, has been the Cross-Bencher par excellence. His committee, drawn from different wings of different parties, has produced an

[LORD CORMACK]
exemplary report. It is wise, balanced, judicious and precise in its recommendations, and no one can ask more from any report than that. I am entirely happy with its main thrust and recommendations and, had I had the good fortune to be on that committee, I would certainly have been one of those who voted for paragraph 142(a).

Whatever the motivation for these two clauses—and I am not seeking to criticise motivation; I always accept the good faith of people who put forward arguments but I am prepared to challenge their judgment and the good sense of the arguments—the effect is to bear down upon one political party, and I do not like that. I have said in your Lordships' House before that a passionate belief in fairness was fundamental to the Conservative Party that I joined. These two clauses in their present form are not fair. I said that on 20 January, when we set up this committee, and I repeat it again tonight. I very much hope that when my noble friend comes to respond she will heed the very wise words of my noble friend Lord Callanan. He and I would not necessarily be completely in accord, but we are certainly in accord in recognising that unless and until something is done about political funding which applies to all political parties, this will be perceived to be unfair. Where I differ from him is that he would go for paragraph 142(b) and I would go for paragraph 142(a). However, in every other respect we can be of one accord.

A committee set up to discuss funding should look at many things, such as whether donations to political parties should be tax deductible—I believe that they should—or whether there should be a cap on the amounts that individuals and organisations can give; I believe that there should be. However, it will not be an easy task, as the noble Lord, Lord Bew, made all too plain in his very perceptive contribution to our debate this evening. It will take time, so I hope the Government will recognise the cogency of the arguments in this exemplary report, as I have called it, and put on one side these two clauses—possibly by accepting the very long but extremely well-worked-out amendment tabled by the noble Lord, Lord Burns. They will do that; they will set up cross-party talks, at which all parties should be willing participants, each party realising that it will not get everything it wants. There would be quite a lot to be said—although it is a funny way of passing a vote of thanks—for asking the noble Lord, Lord Burns, to chair a committee of your Lordships' House that would look into this. If the Government do not act speedily and set this up, let us have another Smith resolution and see whether we can do it. With good will, we probably could.

However, if we can park these two clauses and deal with some of the other mean-minded parts of the Bill such as Clause 14, we can get something on to the statute book which both honours the manifesto commitments of the government party—I always wonder how many people read manifestos, but that is another issue—and does not bear down unfairly on a great party that has contributed much to the evolution of our democracy. I have never been tempted to join it but I have increasingly come to admire it and increasingly to mourn what has happened in very recent months. We need a credible Opposition who can be seen as a possible Government and we do not want tit for tat when that happens.

I commend the report very enthusiastically, thank again the noble Lord, Lord Burns, and his colleagues from all parts of the House, and I hope that this will give us a sensible, balanced approach on which we can build a Bill in which we can all take some pride.

8.55 pm

Lord Hart of Chilton (Lab): My Lords, like every other Member of your Lordships' House, it seems, I am an enthusiastic member of the Lord Burns fan club. I shall make a very short contribution because I was a member of the committee only briefly. I took the place of my noble friend Lord Richard, who had been taken ill. I am pleased to report that he has recovered and has returned to the House, although I expect that by now he is safely tucked up in bed.

On 20 January 2016 in the debate on the Motion to appoint the committee, an important theme emerged concerning the fairness and even-handedness of the approach to the funding of political parties and the effect of Clauses 10 and 11 on only one party. The noble Lords, Lord Forsyth, Lord Cormack, Lord Bew and Lord Kerslake, set the tone, together with the Leader of the Opposition, my noble friend Lady Smith, for constituting the committee and dealing with the issues involved. The concept of fairness, even-handedness and proportionality has lain behind most of the report that we have put forward to the House.

I do not have to repeat that there would be a significant negative impact on the number of union members participating in political funds on the basis of a complete opt-in, and it follows that there would be a significant reduction in the payments to the Labour Party. The first question for me was whether legislation which singles out the unions and the Labour Party for legislative change is even-handed, proportionate, fair and reasonable. I concluded that it is not.

As noble Lords have heard, the committee concluded that while there is no formal convention that all reform of party funding must take place by consensus, in the past both main parties have acted with a degree of restraint. As has been pointed out, the use of a parliamentary majority to inflict significant damage on the finances of opposition parties would risk starting tit for tat, which could harm parliamentary democracy. Accordingly, Clause 10 is very far from commanding a consensus.

On the other issues, fairness also featured. I asked myself whether, for example, it was fair, reasonable or indeed proportionate to demand an administrative burden on the unions of millions of pounds in order to change a system speedily when, as my noble friend Lady Dean pointed out, a political levy averages only 9p per union member per week. Was a three-month transition period fair and reasonable when the Certification Officer said that it was not feasible and, by contrast, retailers were allowed more than two years to introduce charges for plastic bags? And was a demand to renew a decision to opt in every five years fair and proportionate when, in similar situations, there is no such requirement? Was a requirement to opt in by paper, and its corresponding cost and risk of deterring members,

fair when electronic communications are more effective and less costly? Nevertheless, we had to acknowledge that the Government had a democratic mandate to introduce some form of opt-in for subscriptions to political funds.

It was in that context that we made our recommendations. I shall not repeat them, save to say that they deal with all the points that I have raised this evening. To deal with the manifesto commitment, we suggested an opt-in but for new members only. I declare that I formed part of the majority who recommended that opt-in for all other members must be considered only as part of cross-party talks on party funding, which should be convened in an urgent effort to reach agreement.

I conclude by saying that I, too, think that the Leader of the Opposition has been vindicated in calling for the formation of this committee. We completed our task within time and have illuminated the problems of Clauses 10 and 11 in the Bill ready for Report. I commend the report to the House.

9 pm

Lord Lupton (Con): My Lords, I declare my various interests in this debate: first, and somewhat posthumously, as the voluntary national treasurer of the Conservative Party until last month; secondly, as a continuing board member of the Conservative Party; thirdly, as a very willing and voluntary donor—past, present and no doubt future—to the Conservative Party. And that goes to the nub of the issue concerning Clause 10, which is not to do with the funding of political parties, despite the Opposition's attempts to obfuscate their position by claiming that it is. In my view, this clause is all to do with the principle that donations to political parties should be made with active intent, with a willingness and a desire to donate your money to a particular political party. This is, in the Conservative Party at least, a matter of transparency, personal choice and active intent.

As my noble friend Lord Leigh of Hurley reminded us earlier, many years ago, in 2001, the rules about public limited company donations to political parties changed so that the prior consent of shareholders in general meeting was required. Such a rule affected the Conservatives the most, but it became accepted, even though previously the decision had been left to the discretion of a board of directors appointed by those shareholders in general meeting. Although it may not satisfy my noble friend Lord Forsyth's point of principle, I thought that the numbers would at least inform that particular debate. According to Electoral Commission figures, since the rules changed in 2001, total donations—that is, the aggregate sum of all donations from all public limited companies, including the unlisted ones, which comprise most of those plcs—come to only £7.4 million in those 15 years, of which £4.4 million went to the Conservative Party and £3 million went to other parties. To put that in context—and the number has been declining over those years—that is under 2% of the average annual spending and funding of the political parties. It is a small sum.

The inappropriateness of the current opt-out practice was vividly demonstrated to me by one of my daughters in the usual lively debate over dinner about politics. I am, I mainly think, blessed with four quite brilliant adult children who have been raised to be fiercely independent in thinking, with the result that I think none of them votes for my party—although I live in hope. One of my daughters, who consented to me telling this tale, is in her third year as a fully qualified teacher in an academy school, having completed the remarkable and fantastic Teach First programme. In her first year she joined the NASUWT, which describes itself on its website as "The Teachers' Union". She joined mainly, I think, because it was free in the first year but also, I recall, because it offered litigation insurance for teachers. She was very surprised to hear, over our dinner table, that had she been paying union dues some of her money could have been diverted—horror of horrors—to my political party, or indeed to the Labour Party. She did not appreciate that she would have had to opt out of such a donation to prevent that.

Lord Balfe: I point out, if I may, that the NASUWT is not affiliated to the Labour Party.

Lord Lupton: It is not affiliated, but it has donated to the Labour Party according to statistics from the Electoral Commission.

My daughter was graceful enough to acknowledge that at least donations to the Conservatives are all—every one—an act of intentional benevolence.

I remind your Lordships that Clause 10, as the report states, is in effect moving us to the Northern Ireland system of opt-in, which unions, including UK unions, have offered to their Northern Ireland members since 1927.

It is quite wrong that trade unions should be allowed to bury an opt-out in the small print. Clause 10 is quite right to require a mens rea, an intent, to donate through the opt-in mechanism. The Select Committee agreed in its excellent report that all union members should be required to opt in eventually, even if there was disagreement about when and how existing members should be treated. Even if there is scope—and I hope there is—for listening to requests for extending the transitional arrangements in Clause 10, I strongly believe that the principle of manifest intent, as implied by that clause, should be adhered to. I see no reason why that principle should not apply to existing trade union members just as much as it should apply to future members, with appropriate transitional arrangements put in place.

9.06 pm

Lord Judd (Lab): My Lords, I join those who have paid tribute to the noble Lord, Lord Burns, for his highly successful and effective chairmanship of the Select Committee. I do not think that any of us should be surprised by that when we look at his distinguished background. We should all be grateful to the committee as well. As has become clear in our proceedings this evening, there was lively discussion within the committee because views were not shared by everybody.

I want to put on record as an older politician who was fashioned in a very different age in British politics my appreciation of the intervention by the noble Lord,

[LORD JUDD]
Lord Forsyth, and the contributions by the noble Lords, Lord Cormack and Lord Balfe, the latter of whom I knew in a different context at an earlier stage of my life. They brought to bear the wisdom and objectivity on which a successful parliamentary democracy must work. We are in a hopeless situation if we proceed from one crisis of confrontation to another, and if we slide into highly biased or subjective legislation on key constitutional matters. An effort at all times to generate consensus is indispensable. Those contributions to which I referred were courageous and should be listened to carefully.

This issue must be seen in the context of the reality of our society today. All of us who are serious about the stability and future of our society must be troubled by the increasing alienation of so many people from the traditional political system. It is alarming that the proportion of our population which votes in a general election is steadily declining. That cannot be a strong position for our future. Therefore the public will be watching us at this juncture. How do they think that political parties should be funded, if indeed they think the system of external funding for political parties is permissible at all?

If I had one observation about the committee's report—although the more I think about it the more I wonder how it could have been included—it is that it does not cover the historical dimension. The trade unions and the Labour Party have always been part of the same family. What has been very strong as a contribution to the health of our democracy is that their relationship has always been transparent. When I was growing up, there were these incredible party conferences at which there were tremendous debates between leaders of the trade union movement and other members of the party. What so many people in society are deeply concerned about at the moment is that on the part of the Conservative Party it is not all transparent. That transparency and vigorous commitment to party democracy is not as evident. I am being very blunt, but it is true.

Within this whole debate that we have been having about the future of funding of political parties it has been conspicuous to a wide section of the public that the Conservatives are just getting away with it. Who is funding what and what are the deals that are done behind closed doors? What do you get in future legislation in return for the money that is being donated? What are the private conversations? What are the dinner parties? In the Labour Party, it has always been much more transparent.

I do not want to conclude on that particular note, but will finish on this. I do not believe that there is a future for our country if we run it on confrontation. We want to build consensus within our country. That is important. What is not helping is that we have a hopelessly piecemeal approach to constitutional change. It is time that we had a large national convention on what kind of society we want to be, what systems of governance we want and what funding systems we want to have within that pattern of governance. Anything short of that will not solve the problems of the future. In the mean time, we have an incredibly helpful report from the noble Lord, Lord Burns, and his committee, and it would be a very sad moment if this House did not, on all sides, seize the opportunity to take that report seriously and see how we can build for the future.

9.12 pm

Lord Sherbourne of Didsbury (Con): My Lords, as the last Back-Bench speaker, I start at the beginning. The beginning was the Motion that set up the committee on which I sat, which was superbly chaired by the noble Lord, Lord Burns, and superbly served by the clerk, Mr Tom Wilson, and his team. The Motion asked us to consider two questions. The first was the impact of Clauses 10 and 11 of the Bill, which mainly concern the policy of moving from opting out to opting in, and to consider that in relation to the 2011 report on party funding. Secondly, we were asked to consider whether there was a need for urgent new legislation to implement the recommendations of that report.

The clear subtext of the Motion tabled by the noble Baroness, Lady Smith of Basildon, was that the Government should proceed with their policy of opting in only as part of a wider reform of party funding. That presented to me an immediate problem because the Conservative Government had a mandate to introduce opt-in—it was in their manifesto—but nowhere was it said that it should be part of or dependent on the wider policy of party funding. Moreover, as we know, there was no agreement between the parties on the report. I could see no logic in the Motion tabled by the noble Baroness, Lady Smith, which implied that we should not go ahead with the manifesto commitment without proceeding to legislate on a report on which there was no agreement, so I voted against the Motion, but it was passed by this House.

When I was then asked if I would serve on the committee, I gave the required response that I would be absolutely delighted to do so, and indeed as it turned out, I was. It was a real and genuine pleasure to work with the other members of the committee and because I believe that the report has produced some very helpful conclusions. Two of the most important of those conclusions were these. First, no one challenged the principle of moving from opt-out to opt-in. There were differences about when and how to make the move, but the report, without explicitly articulating the principle of opt-in, basically accepts the principle; there is no challenge to the principle. The second clear conclusion is the answer we gave to the question, "Is there a need for urgent new legislation on party funding?". The answer was a clear no, there is no such need.

However, I understand the concerns of the Labour Party. It is fearful that if we move to opt-in, many union members will decide not to contribute to the political fund. It is fearful that when the eyes of union members are opened to the choice before them they will, at least in Labour's eyes, make the wrong choice. So the cry goes up, "Not fair". I happen to believe that the fair approach is to let people decide for themselves. When the right honourable Nick Clegg appeared before our committee, I asked him if he supported the principle of opt-in. This is what he said:

"I regard political opinion, affiliation and support as a sovereign decision for an individual citizen".

I agree, and I support opt-in because people should not be assumed to support any proposition or organisation, any product or any service simply because they have failed, often through inertia, to say no. Companies were quite rightly pilloried when they assumed that the customer had signed up to something because they had failed to tick the box or see the small print. If a trade union decides that he or she does not wish to contribute to a political fund, that is their decision and theirs alone—no one else's.

If the trade unions want more members to contribute to their funds and to the Labour Party, they should go out, as the parties do, to persuade people—and it can be done. Last summer thousands and thousands of people could not wait to sign up to the Labour Party because they were inspired by the right honourable Jeremy Corbyn. The party opposite should take great heart from that; we do.

I turn now to the second question the committee was asked to consider: party funding in general. It is true, and the committee agreed, that there is no formal convention that all reform of party funding should take place by consensus, but we all acknowledge that the opposition parties, together with the Government of the day, are an integral part of our constitutional framework. The Opposition are graced with the title of Her Majesty's Opposition and the leader of the Opposition is paid a salary. The opposition parties also receive public funds to help them oppose the Government. So the wider question of party needs to be considered in the round. That brings me to the Conservative manifesto commitment, a separate commitment, which is:

"We will continue to seek agreement on a comprehensive package of party funding reform".

That is a commitment to be proactive, not reactive, and it also needs to be honoured.

I should further say in this context that I hope that the Government will think carefully about their policy on Short money. I direct this point not to my noble friend the Minister because she is not responsible for it herself, but to those of her colleagues in government who are. The Government have the right to implement their manifesto commitments on which they were elected and for which they have a mandate. They also have the duty to do so.

9.20 pm

Lord Stoneham of Droxford (LD): My Lords, the debate has shown that it has been very valuable to have this report, and that it was clearly an inspired choice to have the clarity of thinking, humour and diplomacy of the noble Lord, Lord Burns. It has vindicated the House asking for this work to be done. It should also confirm the view that the appropriate reform of political funding, which is long overdue, needs the involvement of independent and impartial voices if we are to overcome some of the differences. We need them in particular, I am afraid, to put pressure on the party politicians to do what is best for the political health of the country and not what is best for us in our respective parties.

The report has exposed the Government's arguments that these clauses are nothing to do with party funding, but are simply about transparency. As the noble Baroness, Lady Dean, and other several other Peers have reminded us, we are arguing over something worth 9p a week, or £4.68 a year—the price of a Big Mac family meal—for individuals. The Select Committee has also confirmed the view that there would be a sizeable negative impact on the participation rate of union members in political funds.

The report has exposed the partisan nature of the legislation. The noble Lord, Lord Sherbourne, talked about the right honourable Nick Clegg's views on the political levy, but he also said to the committee that he opposes legislation because of its partisan nature. The partisan nature of the legislation has been exposed by the Select Committee on the detailed transitional arrangements. Who really would have thought of a better way to get people to opt out than to have an unworkable three-month period of transition? The Certification Officer confirmed that individual unions would have to consult him on their rulebooks and that anyone conducting a process of this sort would clearly need a longer period to approach people and send them mailings.

I hope that the Minister will confirm her commitment to the digital world once again by saying that it is clearly inadequate to have a situation where people opt in simply in writing, not electronically. We know that those are barriers stopping people doing what is easy for them to do.

Despite the commitment of every member in a ballot already every 10 years, the Bill proposes that we now have it every five years, at the great expense of £5 million to £10 million—£5 million certainly, according to the input study, but almost certainly double that in reality. The Select Committee exposed the fact that the Certification Officer, amazingly, had never been consulted on the scale of the problem that we are meant to be dealing with in legislation, and, indeed, on how the process should be best implemented. Once again, the scale and proportion of the bureaucracy and regulation involved in the Bill is completely out of kilter with the scale of the problem. If the Government were wise, they would immediately look very carefully at the arrangements they are proposing.

I come back to what has been the theme of the evening. It is very important. We need to look again at whether we can ever get reform of political funding if we leave it simply to the politicians. This committee has produced, in six weeks, an amazingly consensual report. The first thing that should happen following it is that the Standards in Public Life Committee of the noble Lord, Lord Bew, should update its report. It can do it in three or four months—it took a year originally—and plonk a new report on the desk of the Prime Minister for him to receive when he comes back from the referendum in early July. Indeed, the Minister said in the debate on 20 January that there was nothing, in her view, to stop the noble Lord, Lord Bew, taking that action to move this forward.

If we look at what has happened since 2011, a number of new factors have come in. We have had a general election with a great disparity in donations between the main political parties. We have seen the Collins report, which I think shows very significant movement within the Labour Party in recognising the need for some process of opting in. We see a growing problem, still, following the general election, in the

[Lord Stoneham of Droxford]
fact that the 1983 legislation on controlling expenditure in individual constituencies has completely broken down through the national spending rules being abused in the way they were at the last election.

So we have all these issues and in the mean time we have, as we have seen in the debate tonight, a public contempt for politicians. Despite all the predictions of a close election in 2015, still 35% of the electorate did not bother to vote, because of their disillusion and disfranchisement from our political system. So there is huge scepticism about political funding and the lesson from tonight is that we need independent involvement in trying to resolve these problems—we should not go down the route of partisan tinkering.

9.27 pm

Baroness Smith of Basildon (Lab): My Lords, we have had a good debate this evening. I admit to a slight pang of guilt when the noble Lord, Lord Burns, started speaking, because I recall that he did not support the setting up of the committee when we first voted on it in your Lordships' House. I was gratified and reassured by his comments on how well the committee had gone. I know the work that he and his colleagues put in and we are very grateful to them. I am also grateful to the noble Lords, Lord Cormack and Lord Bew, who did not support such a committee originally, but saw the value of it and were prepared to say so tonight.

When we asked that the Select Committee be set up, we did so in the recognition that the only way to have the effective scrutiny we needed and to resolve these issues was to have more detailed information about the impact, both intended and unintended. At the time, I referred, as the Minister will remember, to a fundamental difference of opinion between the Government and the Opposition. For that reason, it seemed wise to have a more detailed examination of Clauses 10 and 11 of the Bill to better assist and inform the normal scrutiny process.

Having read the report and much of the evidence presented, it is very clear that the committee and its support team have, in the short time available to them, undertaken the task they were set in a focused, diligent, forensic and very fair way. It therefore allows your Lordships' House, as a scrutiny Chamber, to fully understand both the detail and the implications of the legislation before us. The detail is important. I was struck by the comment of the noble Lord, Lord Callanan, who confessed how little he know about trade unions and the terms in the Bill before he served on the committee. The way the hearings were conducted, the quality of the evidence provided, and the committee's final report reflect the work that was put in and illustrates your Lordships' House at its very best.

The report is, by any standards, impressive. I have to say that it contrasts very markedly and favourably with the Government's impact assessment. Noble Lords will recall that when I proposed the Motion to set up the committee, we had still not seen the impact assessment. It was, in fact, published the following day. That is quite extraordinary for a Bill that started its life in July 2015, had been through all its parliamentary stages in the House of Commons, and had had its Second Reading in your Lordships' House. After such a delay, we could be forgiven for expecting a comprehensive, analytical assessment of the potential consequences of the Bill. That is what an impact assessment would normally deliver. So let us compare the impact assessment the Government produced with the findings of our own Select Committee. Page 73 of the impact assessment states:

"Our main estimate is that there will be no change in the number of members contributing to the political fund. We do not have reliable data to estimate any changes in the proportions contributing".

On Page 75, it states:

"We have no evidence of whether there would be substantial attrition in membership participation … of active opting-in after 5 years. Therefore we have assumed no attrition".

How on earth is it possible to say on the one hand that there is no evidence and on the other reach a conclusion which is based on no evidence? That is pretty fuzzy thinking to my mind. In contrast, the rigorous assessment by the noble Lord, Lord Burns, and his committee colleagues, conducted after considerable evidence-taking and questioning, led to a different conclusion on the impact of going back to an opt-in process. Even without taking into account the Government's hurdles on opt-in of having to put it in writing on paper within three months, retrospectively including all new and existing members, and renewing every five years, the Select Committee still came to the conclusion that this,

"could have a sizeable negative effect on the number of union members participating in political funds".

As we heard from the noble Lord, Lord Burns, and the noble Baroness, Lady Drake, the Government's own behavioural analysis unit—or "Nudge Unit"—confirmed the evidence from Dr David Halpern that he would expect participation rates to be lower. He said:

"Yes, substantially so—20 or 30 percentage points lower".

The Government have insisted that the impact assessment did not consider the impact on political parties because the Bill—I quote the exact words that the Government used—"is not about" them. That point has been made repeatedly in debate, Parliamentary Answers, and in evidence to the Select Committee. I struggle with this, and not just because so much of the evidence points to the contrary. Page 62 of the Government's impact assessment deals with the reporting of expenditure from political funds and lists the six categories of spending. Top of that list in the Government's own impact assessment is:

"Contributions to the funds of a political party".

So how on earth can the Government claim that contributions to a political party would not be affected, and therefore would not even be considered by the impact assessment, when that very same impact assessment puts such contributions at the top of the list of the use of political funds? Again, this is pretty fuzzy logic. That comes back to my point about there being a duty in government impact assessments to consider all and any consequences.

The essential question here is: what effect will the political fund changes have? The Select Committee's report is again very clear. It states on page 25:

"A fall in the size of union political funds need not necessarily lead to the same percentage cut in union payments to the Labour

Party but, given the expected scale of the reduction in the size of political funds, it seems likely that there will be a significant reduction".

The conclusions of the impact assessment and the deeper and more rigorous analysis of your Lordships' Select Committee are clearly at odds on the impact of switching from opt-out to opt-in on both the trade unions themselves and the Labour Party. The Government contend that there is no impact, yet an analysis of the evidence concludes that there is, and that it is significant.

As regards the demand for change, the Certification Officer reported to the Select Committee that he,

"had not received any complaints specifically about a union's failure to tell members about the right to opt out of the political fund".

He received not one complaint. Other noble Lords have referred to that. However, the Government claim a mandate for the change on the basis of their manifesto commitment, which states on page 49:

"In the next Parliament, we will legislate to ensure trade unions use a transparent opt-in process for subscriptions to political parties. We will continue to seek agreement on a comprehensive package of party funding reform".

The committee highlighted that the terminology was inexact and the drafting clumsy, but I think we all know what the manifesto meant by that. The linking of these two issues, side by side in the manifesto, one following on from the other, further weakens the Government's claim that this is not about political parties. They were not in the same manifesto but separate from each other, they were not even on separate pages or in separate paragraphs; they sat, side by side, one sentence following another, declaring the Government's intentions. It takes some creative thinking to reconcile the vigour with which one issue is being pursued and the passive approach to the other, on which there is no government initiative.

When Ministers gave evidence to the Select Committee, they claimed that one of the key reasons for the legislation was a lack of compliance with an agreement between the then Employment Secretary, now the noble Lord, Lord King of Bridgwater, for the Government, and the then general secretary of the TUC, Len Murray, in the 1980s. Yet the noble Baroness, Lady Neville-Rolfe, had to admit that she was unaware of this agreement before it was drawn to her attention by the noble Lord, Lord King, a few weeks ago, and it has never been mentioned at any point in any of the debates here or in the other place. So how can that agreement be used in any way now to justify this policy when Ministers did not even know it existed?

I note the comments of the noble Lord, Lord King, who has apologised that he cannot be in his place for the wind-ups this evening and promised to read my comments tomorrow. He said that the agreement was not fully complied with. The evidence varies on that. I think in many cases it has been very well complied with. But even if we accepted that, even if that was the case in its entirety, surely there are cheaper, quicker and more effective ways of dealing with it than through this Bill.

A key issue pursued by the committee was whether the measures proposed by the Government are proportionate and reasonable. The noble Lord, Lord Burns, asked the Ministers, Nick Boles and John Penrose, whether,

"the whole content of 10 and 11, taken together, is disproportionate in dealing with that, particularly in many of the arrangements that are built around it, which are both expensive and make it less likely that—in the short term, certainly—consent will be achieved".

His point is clear.

One of the great strengths of the Select Committee report is the factual data. It shows that 25 unions have a political fund and, as we have heard already, that the average political levy is less than £5 a year—just over 9p a week. Clearly, to impose such costly bureaucracy on all the existing members of trade unions would be disproportionate for the amounts we are talking about here—a point that was made very powerfully by my noble friend Lady Dean. It also makes the opt-in much harder to achieve, and the financial reporting measures in Clause 11 are unnecessarily detailed beyond any genuine transparency need.

I am pleased to say that the Minister's tone in response to the noble Lord, Lord Burns was conciliatory—I think the noble Lord noted that in the report—and although he would not accept that the proposals were disproportionate, he said that,

"we need to make sure that the transition … is possible for the unions to do in a way that is successful for them and their members and not punishing in terms of costs. I know that Baroness Neville-Rolfe indicated yesterday in the debate that on questions of timing for transition and methods by which the opt-in could be declared she was very much open to arguments and would be reflecting on them before Report. I endorse everything she said".

To me, that implies that Ministers accept that these measures are disproportionate and that they are willing to consider changes. In Committee, the Minister stressed how she was—and I welcome this quote—"in listening mode" when she made the points referred to by Mr Boles.

I think it is fair that I be honest with your Lordships' House on this issue. I would prefer that we did not have the Bill at all. It is ill considered, it is likely to make employment relations more difficult, and the funding clauses that we are debating tonight are one-sided and, I believe, damaging to democracy. In a previous debate on this issue, I offered a view that the devil was not so much in the detail of the Bill but in the design. I remain of that view. But this report from the Select Committee is thorough and thoughtful and, in the best traditions of your Lordships' House, it seeks to find a way forward to resolve these issues—not taking my view or the Minister's but finding a way through this difficulty. It recognises the first part of the Government's manifesto commitment and accepts that an option to opt in to a political fund should be made when joining.

It is evident from tonight's debate, in contributions from across the House, that there is a genuine desire for a more measured, proportionate approach that is designed to ensure that opt-in happens, rather than make that as difficult as possible, as the clauses in their current form would do.

Among the many recommendations made in the report of the noble Lord, Lord Burns, is the conclusion, unanimously agreed by the Select Committee, that it would take, at the very least, 12 months to implement the proposed changes. There is no need to repeat all the recommendations that we have heard from the noble Lord, Lord Burns, and others, but I agree with the majority recommendation that any proposal to

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make these provisions retrospective—that is, to apply to all existing members—should be taken as part of wider party funding reforms.

In conclusion, I think that your Lordships' House should be proud of the work undertaken by the Select Committee and of its report, and I repeat my thanks to those who contributed. The Minister has an opportunity now, and I hope she will grasp it with both hands. As we have heard throughout this debate, the evidence is clear and the committee's recommendations are clear: this Bill will impact on trade union funding and, by consequence, on Labour Party funding.

I am grateful to the noble Lord, Lord Burns, for tabling his amendments for Report stage next week. On the point raised by the noble Lord, Lord Balfe, on Report your Lordships' House will have the opportunity to vote to make these reasonable and sensible changes in the amendments of the noble Lord, Lord Burns. However, would it not show some respect for the work and the evidence of the committee if, on behalf of the Government, the noble Baroness could say tonight that they are, at the very least, actively and seriously considering supporting those proposals? That would be not just the House of Lords at its best but government at its best. I look forward to the noble Baroness's response.

9.41 pm

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe) (Con): My Lords, before I address the substance of the issues before us today, I would like to join others in warmly thanking the noble Lord, Lord Burns, and endorse his warm thanks to the committee members and the clerks and staff for producing a clear, crisp report in such record time. This was an impressive achievement. As the noble Baroness, Lady Dean of Thornton-le-Fylde, said, the committee clearly worked really well together—apparently oiled by good humour.

What is most encouraging is that the committee has found cross-party consensus on the fundamental principle that lies at the core of the debate and our manifesto: that union members should be asked to make an "active choice" to contribute, or not to contribute, to a political fund. There are clearly a range of views as to how this principle should be implemented, but that does not detract from the consensus.

The report covers aspects of the Trade Union Bill, which we will be discussing again in this Chamber very shortly, and party funding. Let me first focus on Clauses 10 and 11 of the Bill. Taking a step back, these clauses are about the relationship between trade union members and trade unions; they are not—this is an important point on which I do not agree with the noble Lord, Lord Stoneham, or with the noble Baroness, Lady Smith—about relations between union members and political parties, although I will come on later to talk about the impact that freedom of choice might have on the Labour Party.

The relationship between trade union members and their unions should be based on transparency and on choice. This Government believe in trusting the people with choice—an "active choice", as the committee puts it, not a theoretical choice buried away in the fine print—and we were not alone in this. As my noble friend Lord Sherbourne reminded us, Nick Clegg told the committee that he sees the decision to opt in to a political fund as,

"a sovereign decision for an individual citizen".

At times, our discussions on these matters have covered overlapping matters in a complex way. It is therefore very helpful that the report makes it clear that the Bill does not contain the proposal that was contained in the 2011 report of the Committee on Standards in Public Life. That report referred to union members opting in to the payment of union affiliation fees to the Labour Party, whereas Clause 10 concerns union members opting in to union political funds. Nor is it the same as the proposals in the Labour Party's Collins review—the work, of course, of the noble Lord, Lord Collins—which also focused on the relationship between trade unions and the Labour Party.

Furnished with the facts provided by the committee, let me examine the argument put up by those who oppose Clause 10. Nearly 5 million trade union members did not opt out of the political levy in 2013. It has been claimed that were these people asked to choose, explicitly, whether they wished to pay money into their union's political levy, millions would decline to do so. Opponents of the Bill have suggested that that could cause union political funds to decrease by up to 90%. Personally, I doubt this assessment, but if it were true, up to 90% of union members would currently be making contributions when they do not want to. Across the 25 unions with political funds, 17 unions make no clear reference to the right to opt out on their membership forms, four only mention it in the small print requiring members to write in separately to opt out, two do not have membership forms which are publicly accessible and just two provide a clear choice on the right to opt out.

In other sectors, this would be called inertia selling and would normally be seen by this House as a wrong that we should put right. The same should apply here. We want members to make a positive choice to contribute at the point of sale. However, union rulebooks are not easily accessible, so how would a member know to look there unless they had been told of their right to opt out?

Earlier, noble Lords made much of an exchange in 1984 between my noble friend Lord King—who I am glad to see again in his place—and the TUC whereby, in effect, to avoid opt-in, trade unions would in future ensure their members were aware of their ability to make a choice not to contribute to a union's political fund. Crucially, it was also agreed that opt-in legislation would not be pursued as long as this agreement was adhered to by trade unions. As my honourable friend Nick Boles said in written evidence to the committee:

"We do not believe that the agreement between the then Employment Secretary and Len Murray, then general secretary of the TUC, has been fulfilled".

There is also an important commitment in the manifesto. It is the Government's intention to implement that clear manifesto commitment to create a clear and transparent opt-in process. The manifesto commitment is also intended to apply to all union members.

The commitment that matters for this Bill is on page 19 of our manifesto—there are in fact two different references in different places—which says:

"We will … legislate to ensure trade unions use a transparent opt-in process for union subscriptions".

That is part of the reforms that we are bringing forward in the Trade Union Bill.

I now turn to the impact this freedom of choice might have on the Labour Party. The facts are that of the UK's 163 listed trade unions, 25 have political funds, of which 15 have an affiliation to the Labour Party. As the Labour Party's general secretary told the committee, fewer than 50% of the political funds of trade unions affiliated to the Labour Party actually go to the Labour Party. As to the impact on the Labour Party, the committee said,

"we see no obvious reason why union payments to the Labour Party must decrease in size by precisely the same percentage as union political funds".

I agree. Indeed, according to the report, Helen Pearce of the Trade Union and Labour Party Liaison Organisation accepted that:

"Unions might decide to spend a slightly higher proportion of their political fund to increase slightly the amount of money they give to the Labour Party".

Clearly, much depends on the key point of how many trade union members decide to part with their money and opt to pay into the political fund.

Lord Tyler: I am very grateful to the noble Baroness. She said in the debate on 11 January that this section of the Bill is not about party funding. Does she accept or not the clear, unanimous recommendation of the Select Committee at paragraph 134:

"It is clear to us that clause 10 will have an impact on party funding and that it is very far from commanding the consensus which we have said is desirable in such situations"?

It seems to me that the noble Baroness is dancing on the head of a pin, which is not a desirable prospect at this time of night. Can she be clear: is she now accepting that the clause has a likely impact on party funding and that her previous statement was therefore, to some extent, misleading? Is she accepting the recommendation of the Select Committee or not?

Baroness Neville-Rolfe: I think I have already been very clear on the point. I do not accept the link, but I am trying to answer on the question of Labour Party funding, and to move forward to say something about party funding, because that is the subject of the debate and the report.

There is, in my view, no reason why a union that is using the political fund to advance the interests of its members could not get a large majority of them to contribute. In Northern Ireland, where the system has existed since the 1920s, some unions, such as the Prison Officers Association, have up to 89% of their members contributing. It is clear that if unions are providing a service that people want through their political funds, members will willingly pay for them. It is not unreasonable, as some have suggested, that some union members may want to contribute more.

I move on to what might loosely be described as the mechanics of the opt-in process. The committee has made a useful contribution to the debate on this issue, analysing the Bill's measures and suggesting changes to the opt-in process. I remind your Lordships that my honourable friend Nick Boles told the committee that he wanted,

"to make sure that the transition from the pre-existing approach to a modern approach of opt-in is possible for the unions to do in a way that is successful for them and their members and not punishing in terms of costs".

I repeat that because I think it is an important statement.

Baroness Smith of Basildon: I am grateful to the noble Baroness for repeating that quotation, because she talks about a modern method of opting in. Does she think that the hurdles placed in the way—that it has to be within three months in every five years but also that it has to be in writing, on paper—are a very modern approach?

Baroness Neville-Rolfe: If I may, I will continue and perhaps return to that point in due course.

No doubt on Report, which starts next week, your Lordships will wish to debate the further specific measures and suggestions contained in the report, but an important point is that the Government remain committed to introducing a transparent opt-in system for political funds for all union members, not just new ones. However, we will reflect on both the recommendations of the committee and the views of other Members of the House expressed in Committee on the Bill and this evening on the mechanism of the provisions.

As for the specific recommendations on the operation of Clause 11, I am pleased that the committee has endorsed the principle that union members are entitled to a reasonable amount of detail about the political expenditure of their unions, and agrees that the current level of reporting is insufficient. Again, we will reflect on the committee's technical recommendations and, as I said, continue to engage with the Certification Officer on this and other matters.

I turn to the wider issue that the committee was asked to consider in relation to party funding: the necessity of urgent, new legislation to balance those provisions with the other recommendations made in the Committee on Standards in Public Life report. As the committee itself noted, we have a democratic mandate to introduce the opt-in for political funds. Our manifesto did not state that that depended on there being party funding reform. So the Government agree with the committee's conclusion:

"While there is no agreement between the political parties, we see no scope for introducing urgent new legislation on party funding to balance the provisions of this Bill. We believe that the political parties should give effect to their manifesto commitments on party funding".

The Government agree in principle, but for any talks to be productive, there needs to be a sense that all parties agree on the basis for discussion.

Let us not forget that, despite the efforts of its members, the 2011 Committee on Standards in Public Life report did not get cross-party support. Indeed, both parties opposite objected to at least some of its conclusions. It is also important to note that the report predated the Government's 2015 manifesto.

[Baroness Neville-Rolfe]

There are clearly major stumbling blocks to progress. There is no appetite for state funding of political parties. As the noble Lord, Lord Wrigglesworth, a former treasurer of the Liberal Democrats, told the committee:

"I cannot see a time when political parties will be willing to go to the taxpayer and ask for money for their own organisations".

So what might the approach be? The unfortunate fact is that inter-party party funding talks over the last decade have failed to reach any consensus, in part because they have focused on controversial and complex structural changes. Evidence to the Select Committee suggested moving ahead with smaller reforms that might command cross-party support, such as finding practical ways in which to encourage more and smaller donations from wider audiences. As part of the Government's broader approach of promoting giving to good causes, the Government would be willing to take that forward for further consideration, such as publishing a discussion paper in the first instance, if there was a positive reaction to such a potential step from the political parties. I hope noble Lords will be pleased to hear that; I shall be particularly interested to hear the views of the committee chaired by the noble Lord, Lord Bew, on these issues.

To conclude, we are heartened that the committee agrees on the fundamental principle behind Clauses 10 and 11—that union members should be given an active choice to contribute or not contribute to political funds. We welcome the contribution and ideas on how that mechanism might work and commit to reflecting further on these recommendations, such as the transitional provisions for implementation and the methods of communication that a union is permitted to use in our digital world.

Lord Whitty: My Lords, before the noble Baroness sits down, I just reflect that that was a very disappointing performance in view of the sentiments that have been expressed all around the House. We all recognise that the present system of funding of political parties has a lot of problems and that we need a fundamental new review. Without a commitment from the Government to engage in that review, the compromise that we have come up with in this committee does not deliver what the committee wants and what I believe this House wanted in its decision to set up the committee, and what has been expressed quite widely in the debate tonight. I hope that between now and Report the Minister and her colleagues will reflect further on whether this is a sensible stance for the Government in the face of such widespread sentiment in this House.

9.57 pm

Lord Burns: My Lords, I am very grateful to all the speakers in tonight's debate. We have heard some very thoughtful contributions—I am particularly grateful for the extent of the support for many of the proposals in the report, as well as the very kind words about the working of the committee. There were some moments tonight when I feared that our carefully constructed agreement was coming under some stress in the Chamber. However, as well as anyone, I recognise the political aspect of these sensitive matters. Like the noble Lord, Lord Cormack, my approach has been to avoid questioning people's motives and to try to concentrate on those things that we can agree about.

I have listened carefully to the Minister and am very grateful to her for her response. I understand why she is reluctant to go into detail this evening but, as others have pointed out, I have tabled amendments for debate on Report that capture the essence of the majority view on the committee. I hope that at that point the Minister will be able to give us a clearer view of how the Government propose to take this forward.

Motion agreed.

House adjourned at 9.59 pm.

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