Vol. 771
No. 143

Wednesday
27 April 2016

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

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

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House of Lords

Wednesday 27 April 2016

3 pm

Prayers—read by the Lord Bishop of Leeds.

Children: Parental Separation

Question

3.06 pm

Asked by ***Baroness Jenkin of Kennington***

To ask Her Majesty's Government what steps they are taking to prioritise the wellbeing of children when their parents are going through separation.

The Minister of State, Department for Work and Pensions (Baroness Altmann) (Con): My Lords, we are prioritising the well-being of children by helping parents resolve conflict during separation. We have doubled funding for relationship support for couples to £70 million during this Parliament and our innovation fund has worked with around 30,000 separated families to help them collaborate in the best interests of their children.

Baroness Jenkin of Kennington (Con): My Lords, we are all aware that post-conflict separation is very harmful for children and is often exacerbated by disputes over child maintenance payments, especially when government agencies are involved. Will my noble friend update the House on how the 2012 child maintenance reforms are working as regards payments made within family arrangements?

Baroness Altmann: My Lords, I am delighted to report that our 2012 reforms have been a huge success so far. They have incentivised separating families to make their own arrangements rather than using the statutory system as a default option, as co-operation between parents is clearly better for their children. Seventy per cent of clients using the service are choosing direct pay.

Baroness Tyler of Enfield (LD): Will the Minister set out how her department is working with the Department of Health and the Department for Education to ensure that children whose parents are separating receive the support they need both through child and adolescent mental health services and counselling in schools?

Baroness Altmann: My Lords, the department is working with other departments in a cross-government strategy to support children, with a lot more funding for mental health issues and co-operation between the various departments.

Baroness Sherlock (Lab): My Lords, "so far" is a telling phrase. The Minister talked about the CSA but the Government are in the process of shutting down all CSA cases and telling parents that if they want to apply to the new scheme they have got to hand over one-fifth of all the money to the DWP in fees. However, they are allowed to apply to the new scheme only if they first ring a phone line and let someone on the other end of the phone try to talk them out of it and tell them to go away and make a deal with their ex directly. Mrs Thatcher set up the CSA to make sure that parents pay for their kids even if they are separated from the other parent. If there are any grounds to the growing concern that parents will end up paying less money to children than they have in the past, will the Minister accept that the strategy has failed and needs to be reviewed?

Baroness Altmann: The noble Baroness clearly has significant expertise in this area, but I have to say that the current system, which was set up in 2012, does not automatically take 20% of the payments. As I say, the point of the new system is to encourage parents to make their own arrangements. It is only if they do not use the direct payment method that they will pay the additional premium for that service.

Baroness Sherlock: My Lords, the noble Baroness has reminded me—

Noble Lords: No!

Baroness Sherlock: My Lords, I am sorry. It is a declaration of interest. I apologise to the House. I should have declared a historic interest in that five years ago I was a board member of the Child Maintenance and Enforcement Commission. That is all I wanted to say.

Baroness Butler-Sloss (CB): My Lords, it is obvious that children who are not informed about what is happening to their parents when they are separating do much less well than those who are kept in the loop. What will the Government do to make this one of the really important aspects? Parents must let their children know, even at an early age, what is actually happening and make them part of the decision-making, or at least give them an understanding of what the future is going to be.

Baroness Altmann: The noble and learned Baroness makes another good point. We have been trialling interventions with our innovation fund where we are using the voice of the child to make sure that we include children in the conflict situation. We are also working with the Ministry of Justice to make those interventions work.

Lord Forsyth of Drumlean (Con): My Lords, is my noble friend aware of the proposals from the Scottish Government, which will be implemented this summer, for every child in Scotland under the age of 18 to have appointed for them a state guardian whose job it is to make sure that the parents are doing their duty? Can she reassure the House that if Scottish parents or parents living in Scotland move south, this outrageous scheme will not be continued in England?

Baroness Altmann: I can indeed assure the House that there are no such plans.

Baroness McIntosh of Pickering (Con): My Lords, does my noble friend support the idea of child contact centres being made available in every local authority area to enable parents who are not of wealthy means to have contact with their children? Were one fortunate enough to have a Private Member's Bill on this in the next Session, would my noble friend support it?

Baroness Altmann: My Lords, the Government are considering their future policy on children's centres, which are currently the responsibility of the Department for Education, as part of the development of the cross-government life chances strategy. We will publish more details on that in the summer.

Baroness Hollis of Heigham (Lab): My Lords, the Minister said that since the 2012 Act, the new arrangements have been a great success. How much additional money has gone to separating parents and their children; in other words, how much better off are those children, knowing that in the past many fathers would change their job, their address, their country and their name to avoid paying maintenance? Can she tell us how much additional money is going to children? If she cannot, because a lot of this is now voluntary, how does she know that it has been a success?

Baroness Altmann: I can assure noble Lords that we will be making a full report in the 30-month review of the scheme. However, the indications so far are that it has achieved its objective of helping parents agree between themselves how to arrange maintenance.

Baroness Deech (CB): My Lords, the Minister will be aware that the cuts in legal aid have meant that parents, during the worst time of their lives, have been left to self-represent in court, struggling over the allocation of money to the detriment of the family. Will she tell the House if the Government have plans to reform the law on the allocation of money on divorce, preferably through my Private Member's Bill?

Baroness Altmann: I will write to the noble Baroness about any such plans.

Social Housing

Question

3.14 pm

Asked by ***Baroness McDonagh***

To ask Her Majesty's Government whether the recently published figures from the Department for Communities and Local Government are correct in stating that in 2009-10 Her Majesty's Government built 33,000 social rent properties that were let at 40 to 50 per cent of market rent, and spent £22.4 billion in real terms on housing benefit, and that in 2014-15 they are predicted to have built 9,600 social rent properties that were let at 40 to 50 per cent of market rent, and to have spent £24.7 billion on housing benefit.

Viscount Younger of Leckie (Con): My Lords, I will focus on the figures for England only. The housing benefit bill was £21.7 billion in 2014-15, and £19.6 billion in 2009-10. This is published in the tables showing housing benefit and council tax benefit expenditure by local authority. The noble Baroness is correct to say that in 2014-15 we delivered 9,600 social rent homes, but we also delivered 40,700 affordable rent homes—a total delivery of 50,300 social and affordable rent homes.

Baroness McDonagh (Lab): I thank the Minister for confirming my figures. When I asked the same question on 21 January I was told I was wrong and inaccurate. I think that was because these figures reveal the crisis in housing. The Government are driven by ideology to stop building social rented homes, and are pushing people into the affordable rental market, where rents are 80% of market rents, and the private sector. This sends families into generational poverty, as we have seen since the 1960s and 1970s, and it has cost the public £2.3 billion extra a year. Does the Minister agree that families' housing needs should be put before political dogma, and that the Government need to ditch this failed housing policy and build more homes for social rent?

Viscount Younger of Leckie: My Lords, building more homes is a clear priority for this Government. We take very seriously the building of affordable housing, and we want to ensure that we support the most vulnerable. The Government introduced the affordable rent, which allows us to deliver more homes for every pound of government investment. This means that more people in need can access good-quality homes at a sub-market rent.

Lord Beith (LD): My Lords, what assessment have the Government made of the future need for rented social housing in rural communities where properties that come on to the market tend to be taken for second or retirement homes by people with means beyond the resources of local people?

Viscount Younger of Leckie: Meeting the needs of the rural community is also very much a priority, and more than 85,000 affordable homes have been provided in rural local authority areas in England between April 2010 and March 2015. We are working with the Homes and Communities Agency, which supports a network of rural champions, to ensure that the profile of affordable rural housing remains high. The noble Lord makes a good point.

Lord Marlesford (Con): My Lords, which is in general more expensive—to provide social housing let at discounted rents or to pay housing benefit?

Viscount Younger of Leckie: There is a balance to be struck here, and one of the things the Government are doing is to reduce social rents by 1% per year for the next four years, until 2020. This means that the housing benefit bill will fall accordingly. It has grown by 25% in the last decade, reaching £13 billion in 2014-15.

Baroness Farrington of Ribbleton (Lab): My Lords, can the Minister help me by giving me the average sort of figure for the new homes he talks of being built for sale in London and the south-east? What sort of price range is he looking at, and are such homes affordable for the people who are in short supply, such as nurses, teachers and police officer recruits?

Viscount Younger of Leckie: The noble Baroness makes a good point. Again, that is part of our overall plan. We are spending £20 billion altogether to deliver 1 million more homes: that is the largest programme

by any Government. In terms of focusing on affordable housing, £1.6 billion is being put towards 100,000 homes at affordable and intermediate rents, and London is very much part of that programme.

Lord Harris of Haringey (Lab): My Lords, can the Minister then tell us what an affordable rent in London is, in his view?

Viscount Younger of Leckie: Well, we will be delivering 90,000 affordable home starts in London by 2021, and 20 housing zones have been designated. It is important that we deliver on those.

Lord Kennedy of Southwark (Lab): My Lords, I refer noble Lords to my declaration in the *Register of Lords' Interests* and declare that I am an elected councillor in the London Borough of Lewisham. The figures cited by my noble friend highlight the problem, and the soaring costs borne by the taxpayer. When are the Government going to get to grips with rents in the private rented sector?

Viscount Younger of Leckie: The private rented sector is also an important part of this. I am not quite sure what the noble Lord means by getting a grip but, again, that is part of the process of building more houses and making sure that we have houses that people want to live in at a reasonable rent.

Lord Hughes of Woodside: Will the Minister please tell us what the affordable rent is for London?

Viscount Younger of Leckie: I will write to the noble Lord with that detail.

Lord Roberts of Llandudno (LD): My Lords, what is the average wage in rural areas—I am thinking of the agricultural community—and what is the average rent or price of a house in those areas?

Viscount Younger of Leckie: Again, my Lords, I hope the House will forgive me but these are very specific questions and I will certainly write to the noble Lord.

Investigatory Powers Bill

Question

3.20 pm

Asked by ***Lord Strasburger***

To ask Her Majesty's Government whether clause 217 of the Investigatory Powers Bill will give them the power to force a company to break its own encryption in a similar manner to the United States Federal Bureau of Investigation's abandoned attempt to make Apple break the security of an iPhone.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, the Investigatory Powers Bill maintains and clarifies existing powers to ensure that terrorists and criminals cannot use technology to escape justice. The Bill provides our law enforcement and security and intelligence agencies with the ability to require communications service providers to remove encryption that they have applied themselves in tightly defined circumstances where it is reasonably practicable to do so.

Lord Strasburger (LD): My Lords, Clause 217 of the Investigatory Powers Bill gives the Government almost unlimited powers to force, in secret, companies to remove "electronic protection" from their products. How do the Government intend to use this power in the increasingly frequent cases where a company has designed the security of its products so that even the company itself is incapable of unlocking the equipment or decrypting the data? Will Apple and others be required to redesign their products so that they can break into them, or will they be required to stop selling them in the UK?

Lord Keen of Elie: With respect to the noble Lord, Clause 217 does not provide anyone with unlimited powers with respect to these matters; it deals with technical capability notices—a notice which is given after discussion with the Technical Advisory Board to a company requiring it to retain the ability to decrypt information if and when an appropriate warrant is served pursuant to Clause 36 of the Bill. Therefore, it applies only to the extent that it is reasonably practicable for the company to comply. The relevant tests are clear in the Bill, as the noble Lord may recall, as he sat on the Joint Committee that considered the Bill between November 2015 and February 2016.

Baroness Jones of Moulsecoomb (GP): My Lords, will the Minister explain Clause 217 a little more clearly? It suggests that a warrant might be sent overseas from the UK. Does the opposite apply as well—that UK tech companies might get an overseas request to break encryption, with which they have to comply?

Lord Keen of Elie: I am obliged to the noble Baroness. Let me be clear: Clause 217 is not concerned with warrants but with technical capability notices. They precede any question of a warrant. A warrant or a notice would proceed under a different part of the Bill. I do not want to elaborate on this because the Bill will be before this House in the very near future, at which time these details can be considered. However, to pick up on the noble Baroness's last point, on companies that are overseas but have a presence here and provide services here, the warrant does extend to those companies. With regard to companies overseas, the warrant may be served there. They may have an answer that it is not reasonably practicable to respond because, for example, their own domestic law forbids them doing so. However, the Government have already initiated discussions with the United States of America to come to an agreement on reciprocal enforcement of these relevant and important provisions.

Lord Rooker (Lab): Before scare stories about this Bill start being run, can the Minister confirm that there is no case whatsoever for unlimited powers? One strength of the Bill is that it strengthens the oversight of the security agencies, to give people the confidence that those who are doing the work are being watched, and the watchers are also being watched on behalf of the public in order, therefore, to keep us safe.

Lord Keen of Elie: I entirely concur with the noble Lord's observations. The introduction of the double-lock mechanism in the context of the warrant underlines

[Lord Keen of Elie]
the importance of these developments. When the noble Lord, Lord Rosser, responded to the Statement on the Bill in November last year, he observed that it appeared that, in broad terms, the Bill had struck the difficult balance between public interest and privacy.

Lord Paddick (LD): My Lords, the part of GCHQ responsible for ensuring the security of our national infrastructure, such as the national grid and our telecommunications network, is very keen on enhancing encryption. Another part of GCHQ wants to weaken encryption, so that it can access confidential information. Can the Minister say which side of GCHQ the Government are on?

Lord Keen of Elie: It is not necessary to be on either side of the wrong question. The position is simple: encryption is effected by means of an algorithm, which is sometimes called an encryption key. If you sequence an encryption key, you encrypt; if you reverse the process, you decrypt. This Bill will not give any party access to the encryption key, which will be held by the provider.

Lord Blair of Boughton (CB): Would the Minister agree with me when I say that I can find no moral justification for Apple's refusal to open its own equipment, when it had been used by a dead terrorist?

Lord Keen of Elie: I note what the noble Lord says, but the Apple case was one of some complexity. The court order that was eventually granted was in fact superseded because a third party came forward and provided the Federal Bureau of Investigation with access to the relevant material. The Apple case of course raised very real questions about the scope of responsibility of communications providers, and that is what this Bill seeks urgently to address. The providers have responsibilities to the public—not just the public to whom they provide their initial services.

Lord West of Spithead (Lab): My Lords, in support of my noble friend Lord Rooker, I ask the Minister this. In the final analysis, is it not absolutely essential—no matter what the complexities—that we do not allow criminals, terrorists, paedophiles, to exchange data, plan, and swap photographs in an area where there is no possibility of scrutiny by law enforcement agencies? Whatever happens, we must enable ourselves to monitor that, or else we are all less safe.

Lord Keen of Elie: I entirely concur with the noble Lord. There must be no dark pools in which these criminals and terrorists can operate.

Lord Harris of Haringey (Lab): My Lords, the Minister did not like the question that the noble Lord, Lord Paddick, put to him. However, there is a real issue here: if the encryption keys are weakened because the companies concerned know they might be asked to release them under certain properly moderated circumstances, they will also have been weakened for other people who wish to do harm by breaching privacy, intellectual property and so on. What assessment have the Government made of how to mitigate that and to balance those two conflicting objectives?

Lord Keen of Elie: I note that the noble Lord has associated himself with the noble Lord, Lord Paddick—it will become apparent why I make that connection. There is no question of encryption keys being weakened or of their being made available in response to a warrant. The encryption key will remain wholly in the possession of the provider of the service. The warrant will ask that they apply the encryption key in order to provide the decrypt. There is no weakening of any encryption in these circumstances.

Airport Expansion: Road and Rail Upgrades

Question

3.29 pm

Asked by ***Baroness Randerson***

To ask Her Majesty's Government whether, as part of their decision on expansion of airports in the South East, they are considering the figures from Transport for London that upgrades to rail and roads will cost £16 billion more than estimated by Heathrow.

The Parliamentary Under-Secretary of State, Department for Transport and Home Office (Lord Ahmad of Wimbledon) (Con): My Lords, the Airports Commission assessed the surface access requirements of each shortlisted scheme as part of its work published in July 2015. Transport for London's views were considered by the commission as part of this work. The Government have been clear that we expect the promoter of any airport expansion scheme to meet the full cost of any surface access proposals that are required to enable the expansion and from which they will directly benefit.

Baroness Randerson (LD): My Lords, does the Minister accept that there is a balance to be struck between responsibility for general improvements to London's transport and those improvements required specifically for Heathrow Airport, if it were decided to expand it? But the striking thing is the dramatic difference between the figures given by Transport for London and the price put on the improvements by the Airports Commission. Do the Government accept that they need to bottom out these figures and the difference between them, and who will be responsible for building new infrastructure, and that they need to do so before they make their decision on airport expansion?

Lord Ahmad of Wimbledon: My Lords, the noble Baroness is right to point out the difference between the figures from TfL and from the commission itself—and indeed the figures that Heathrow Airport itself presented. One thing I would say is that the figures refer to the different content in each proposal, and different timelines.

On her second, more substantive point about who is responsible, the Government's 2013 aviation policy framework makes it very clear that developers should pay for the costs of upgrading, and that where the scheme has a wider impact and benefit the Government will look at it on a case by case basis.

Lord Higgins (Con): My Lords, could not the cost of Transport for London be significantly reduced if so many of its executives were not paid excessive amounts compared with, say, the salary of the Prime Minister? What can be done to reduce the costs of congestion caused by the policies of Transport for London?

Lord Ahmad of Wimbledon: It is for the Mayor of London to review both those issues. But I say to my noble friend that with any salary paid to any public servant serving in any government—central, devolved or local—public scrutiny is important and needs to be reflected.

Lord Rosser (Lab): A newspaper report today said that the Government's decision on airport expansion in the south-east could be pushed back to September at the earliest, and possibly later, because of a government decision-making log-jam caused by the EU referendum. Do the Government stand by their position that a decision will be announced in the summer, and, if so, can the Minister say on what date the Government consider that this coming summer will end?

Lord Ahmad of Wimbledon: I say to the noble Lord, who has wide experience, that you should not always believe what you read in the papers. The Government's position, as I have said, is that we intend to conclude the additional work around the issues and the concerns rightly raised about the environment and noise pollution in the summer. He asked for a specific date but, as I have said, I cannot give that at this time.

Lord Spicer (Con): Have the Government given up the idea that somehow high-speed trains to the Midlands are a substitute for expanding Heathrow? If so, they are very wise.

Lord Ahmad of Wimbledon: As my noble friend will appreciate, the Government are making the biggest investment in transport infrastructure not just for a generation but, in the case of the railways, since the Victorian age. Aside from the HS2 project we are making more than £60 billion of investment in this Parliament alone, which underlines the Government's commitment to ensure expansion of the transport infrastructure across all modes of transport.

Baroness Ludford (LD): My Lords, the environment committee in the other place has today called for urgent action to stop 50,000 premature deaths a year from air pollution-related illnesses. Is it not mad to expand Heathrow Airport when we are already in serious breach of European air quality laws? Would it not also be mad to pull out of the protective umbrella of EU pollution rules?

Lord Ahmad of Wimbledon: I am sure that the noble Baroness was not suggesting that I was mad—but I will read *Hansard* carefully. She is quite right to raise the issue of air pollution. As I said, it will be given due consideration in the wider environmental impacts that the Government are looking at.

Lord Berkeley (Lab): My Lords, does the Minister recall that a few years ago, the solution to the problem of emissions around Heathrow was to put the M4 and the M25 in a tunnel, so that the emissions would come out at the ends, away from the airport? That would have reduced the level of emissions. Is that still on TfL's agenda?

Lord Ahmad of Wimbledon: That is an interesting suggestion—but I cannot say that it is something to which I personally subscribe.

Lord Naseby (Con): Is my noble friend aware that these figures are about as colourful as the Mayor of London? They really ought to be taken with a pinch of salt—and, perhaps, with a declaration of interest behind them.

Lord Ahmad of Wimbledon: Again, just for clarity, I am sure that my noble friend was referring to the figures provided by TfL, which are for others to analyse, and not to the commitment that the Government have given to spending £65 billion on transport infrastructure in this Parliament.

Lord McKenzie of Luton (Lab): My Lords, I draw attention to my interest in the register. On the matter of upgrading infrastructure for airports, will the Minister take this opportunity to acknowledge and welcome the decision of London Luton Airport to invest £260 million in a new passenger transit system to speed transfers between the parkway rail station and the airport terminal? For the UK's fastest-growing airport it will mean, when concluded, that journey times from London to the airport terminal will be about half an hour.

Lord Ahmad of Wimbledon: This Government welcome the investment in surface transport and airports across the country. As I have said to the noble Lord before, I am looking forward to my visit to Luton airport to see the wider facilities and investment.

Hillsborough

Statement

3.37 pm

The Parliamentary Under-Secretary of State, Department for Transport and Home Office (Lord Ahmad of Wimbledon) (Con): My Lords, with the leave of the House I shall now repeat a Statement delivered in the other place by my right honourable friend the Home Secretary.

"With permission, Mr Speaker, I would like to make a Statement on the Hillsborough stadium disaster, the determinations and findings of the fresh inquests presided over by Sir John Goldring, and the steps that will now take place.

Twenty-seven years ago the terrible events of Saturday 15 April 1989 shocked this country and devastated a community. That afternoon, as thousands of fans were preparing to watch the FA Cup semi-final between Liverpool and Nottingham Forest, a crush developed in the central pens of the Leppings Lane terrace. Ninety-six men, women and children lost their lives as a result. Hundreds more were injured, and many more were left traumatised. It was this country's worst disaster at a sporting event.

For the families and survivors, the search to get to the truth of what happened on that day has been long and arduous. They observed the judicial inquiry led by Lord Justice Taylor. They gave evidence to the original

[Lord Ahmad of Wimbledon]
inquests, which recorded a verdict of accidental death. They have seen further scrutiny, reviews and a private prosecution. They suffered the injustice of hearing the victims—their loved ones and fellow supporters—being blamed. They have heard the shocking conclusions of the Hillsborough Independent Panel and they have now, once again, given evidence to the fresh inquests presided over by Sir John Goldring.

I have met members of the Hillsborough families on a number of occasions and, in their search for truth and justice, I have never failed to be struck by their extraordinary dignity and determination. I do not think it is possible for any of us to truly understand what they have been through. Not only in losing their loved ones in such horrific circumstances that day, but to hear finding after finding over 27 years telling them something that they believed to be fundamentally untrue. They have quite simply never given up.

I would also like to take this opportunity to pay tribute to the right honourable Member for Leigh, who has campaigned so tirelessly over the years on their behalf, and also the honourable Members for Liverpool Walton, for Garston and Halewood, for Halton, for Liverpool Riverside and for Wirral South.

Yesterday, the fresh inquest into the deaths at Hillsborough gave its determinations and findings. Its establishment followed the report of the Hillsborough Independent Panel, chaired by the right reverend Bishop James Jones. The contents of that report were so significant that it led to the new inquests and two major new criminal investigations: one by the Independent Police Complaints Commission examining the actions of the police in the aftermath of Hillsborough, and a second criminal investigation—Operation Resolve—led by Jon Stoddart, the former chief constable of Durham.

Since the fresh inquests opened in Warrington on 31 March 2014, the jury has heard 296 days of evidence. It ran for more than two years and was the longest running inquest in British legal history. I am sure the whole House will want to join me in thanking the jury for the important task it has undertaken and the significant civic duty the jurors have performed.

I will turn now to the jury's determinations and findings. In its deliberations, the jury was asked to answer 14 general questions covering the role of South Yorkshire Police, the South Yorkshire Metropolitan Ambulance Service, Sheffield Wednesday Football Club and Hillsborough stadium's engineers, Eastwood and Partners. In addition, the jury was also required to answer two questions specific to each of the individuals deceased relating to the time and medical cause of their death.

I would like to put on record the jury's determinations in full. They are as follows:

Question 1: do you agree with the following statement which is intended to summarise the basic facts of the disaster?

'Ninety-six people died as a result of the disaster at Hillsborough stadium on 15 April 1989 due to crushing in the central pens of the Leppings Lane terrace, following the admission of a large number of supporters to the stadium through exit gates.'

Yes.

Question 2: was there any error or omission in police planning and preparation for the semi-final match on 15 April 1989 which caused or contributed to the dangerous situation that developed on the day of the match?

Yes.

Question 3: was there any error or omission in policing on the day of the match which caused or contributed to a dangerous situation developing at the Leppings Lane turnstiles?

Yes.

Question 4: was there any error or omission by commanding officers which caused or contributed to the crush on the terrace?

Yes.

Question 5: when the order was given to open the exit gates at the Leppings Lane end of the stadium, was there any error or omission by the commanding officers in the control box which caused or contributed to the crush on the terrace?

Yes.

Question 6: are you satisfied, so that you are sure, that those who died in the disaster were unlawfully killed?

Yes.

Question 7: was there any behaviour on the part of football supporters which caused or contributed to the dangerous situation at the Leppings Lane turnstiles?

No.

Further to Question 7: was there any behaviour on the part of football supporters which may have caused or contributed to the dangerous situation at the Leppings Lane turnstiles?

No.

Question 8: were there any features of the design, construction and layout of the stadium which you consider were dangerous or defective and which caused or contributed to the disaster?

Yes.

Question 9: was there any error or omission in the safety certification and oversight of Hillsborough stadium that caused or contributed to the disaster?

Yes.

Question 10: was there any error or omission by Sheffield Wednesday FC (and its staff) in the management of the Stadium and/or preparation for the semi-final match on 15 April 1989 which caused or contributed to the dangerous situation that developed on the day of the match?

Yes.

Question 11: was there any error or omission by Sheffield Wednesday FC (and its staff) on 15 April 1989 which caused or contributed to the dangerous situation that developed at the Leppings Lane turnstiles and in the west terrace?

No.

Further to Question 11: was there any error or omission by Sheffield Wednesday FC, (and its staff), on 15 April 1989 which may have caused or contributed to the dangerous situation that developed at the Leppings Lane turnstiles and in the west terrace?

Yes.

Question 12: should Eastwood and Partners have done more to detect and advise on any unsafe or unsatisfactory features of Hillsborough stadium which caused or contributed to the disaster?

Yes.

Question 13: after the crush in the west terrace had begun to develop, was there any error or omission by the police which caused or contributed to the loss of lives in the disaster?

Yes.

Question 14: after the crush in the west terrace had begun to develop, was there any error or omission by the ambulance service, SYMAS, which caused or contributed to the loss of lives in the disaster?

Yes.

Finally, the jury also recorded the cause and time of death for each of the 96 men, women and children who died at Hillsborough. In all but one case the jury have recorded a time bracket running beyond the 3.15 pm cut-off point adopted by the coroner at the original inquests.

These determinations were published yesterday by the coroner, and I would urge the reading of each and every part in order to fully understand the outcome of the inquests.

The jury also heard evidence about the valiant efforts made by many of the fans to rescue those caught up in the crush. Their public-spiritedness is to be commended, and I am sure that the House will want to take this opportunity to recognise what they did in those terrible circumstances.

Clearly, the jury's determination that those who died were unlawfully killed is of great public importance. It overturns in the starkest way possible the verdict of accidental death returned at the original inquests. However, the jury's findings do not, of course, amount to a finding of criminal liability, and no one should impute criminal liability to anyone while the ongoing investigations are still pending.

Elsewhere the jury noted that the commanding officers should have ordered the closure of the central tunnel before the opening of gate C was requested, as pens 3 and 4 were full. They should have established the number of fans still to enter the stadium after 2.30 pm. And they failed to recognise that pens 3 and 4 were at capacity before gate C was opened.

While the inquests have concluded, this is not the end of the process. The decision about whether any criminal prosecution or prosecutions can be brought forward will be made by the Crown Prosecution Service on the basis of evidence gathered as part of the two ongoing investigations. That decision is not constrained in any way by the jury's conclusions.

The House will understand that I cannot comment in detail on matters that may lead to a criminal prosecution. I can however say that the offences under investigation include gross negligence manslaughter, misconduct in public office, perverting the course of justice and perjury, as well as offences under the Safety of Sports Grounds Act 1975 and the Health and Safety at Work etc. Act 1974.

I know that those responsible for the police and IPCC investigations anticipate that they will conclude the criminal investigations by the turn of the year. We must allow them to complete their work in a timely and thorough manner, and we must be mindful not to prejudice their outcome in any way.

I have always been clear that the Government will support the families in their quest for justice. So throughout the ongoing investigations we will ensure that support remains in place in three ways.

First, the family forums, which have provided the families with a regular and structured means of engaging with the investigative teams and the CPS, will continue. They will remain under Bishop James's chairmanship, in a similar format, but will reflect the fact that they will be operating after the inquests. The Crown Prosecution Service, the IPCC and Operation Resolve will remain part of the forums.

Secondly, now that the inquests have concluded it is the intention to reconstitute the Hillsborough Article 2 Reference Group, whose work has been in abeyance during the course of the inquests, under revised terms of reference. The group has two members: Sir Stephen Sedley, a retired Lord Justice of Appeal, and Dr Silvia Casale, an independent criminologist.

Thirdly, we want to ensure that the legal representation scheme for the bereaved families continues. This was put in place, with funding from the Government, following the original inquests' verdicts being quashed. Discussions are currently taking place with the families' legal representatives to see how best the scheme can be continued.

In addition, I am keen that we capture and learn from the families' experiences. I have therefore asked Bishop James, who is my adviser on Hillsborough, to write a report that draws on these experiences. This report will be published in due course, to ensure that the full perspective of those affected by the Hillsborough disaster is not lost.

I would also like to express my thanks to Bishop James again for his invaluable advice over the years. There is further work to be done, so I have asked Bishop James to remain as my adviser and I am pleased to say that he has agreed to do so.

The conclusion of the inquests brings to an end an important step since the publication of the Hillsborough Independent Panel's report. Thanks to that report and now the determinations of the inquests, we know the truth of what happened on that day at Hillsborough. Naturally, the families will want to reflect on yesterday's historic outcome, which is of national significance. I am also clear that this raises significant issues for the way that the state and its agencies deal with disasters. Once the formal investigations are concluded, we should step back, reflect and act, if necessary, so that we can better respond to disasters and ensure that the suffering of families is taken into account.

I want to end by saying this. For 27 years, the families and survivors of Hillsborough have fought for justice. They have faced hostility, opposition and obfuscation, and the authorities that should have been trusted have laid blame and tried to protect themselves instead of acting in the public interest. But the families have never faltered in their pursuit of the truth. Thanks to their actions, they have brought about a proper reinvestigation and a thorough re-evaluation of what happened at Hillsborough. That they have done so is

[Lord Ahmad of Wimbledon]
extraordinary. I am sure that the whole House will want to join me in paying tribute to their courage, determination and resolve. We should also remember those who have sadly passed away while still waiting for justice.

No one should have to endure what the families and survivors have been through. No one should have to suffer the loss of their loved ones through such appalling circumstances, and no one should have to fight year after year, decade after decade, in search of the truth. I hope that for the families and survivors who have been through such difficult times, yesterday's determinations will bring them closer to the peace they have been so long denied. I commend the Statement to the House".

3.52 pm

Lord Falconer of Thoroton (Lab): My Lords, I declare an interest as someone who has given advice to the Hillsborough families over the last five years. I thank the noble Lord for repeating the Home Secretary's Statement. The Home Secretary promised the families that she would do her best to see the wrongs that they had suffered righted, and she has been true to her word.

The facts that the Home Secretary's Statement narrates are truly terrible. Yesterday the jury gave an unequivocal verdict. They found that the 96 who had died were unlawfully killed and that there was no fan behaviour that did or might have caused or contributed to their death. How could it have taken 27 years for the truth to emerge? The South Yorkshire police force put protecting itself above care for the fans, the families and the truth. It had relationships with the media that made it possible for it falsely to smear the families and the fans. In all too many cases, the media colluded with the police in perpetrating those smears. In the justice system, the families for too long could never compete with the resources of the public bodies and the private companies that they faced in court.

The inquest that has just concluded has produced a verdict that completely vindicates the fans and the families. The jury delivered its verdict, which clearly was thought out as it included reasons, not just the yes/no answers that the Minister rightly went through in the Statement. It was clear that it had thought about the matters and come to clear and simple conclusions. The inquest itself, though, involved the smears continuing. Lawyers for retired police officers repeated the slurs about drunken behaviour. The current South Yorkshire force tried to establish that others were responsible for the opening of the gate. Apologies made now by the South Yorkshire Police ring very hollow indeed.

There are a number of areas that this House and the other place should look at in relation to what happens in future. First, I agree with all that the Home Secretary has said in relation to subsequent criminal proceedings. Can the Minister give us an update on the timing of decision-making? In particular, do we really have to wait until the end of the year before decisions are made?

Secondly, on the issue of disciplinary proceedings against the police, the Policing and Crime Bill currently going through the other place proposes a 12-month time limit after retirement during which disciplinary proceedings can be taken. Will the Minister consider whether, in the appropriate cases, there should be no time limit so that people cannot retire in order to avoid proper disciplinary proceedings?

Thirdly, there is the position of the South Yorkshire police force. As I have indicated, it continued with a number of allegations detrimental to the fans in this inquest, despite what it said immediately after the Hillsborough Independent Panel reported, and despite the remarks of the Lord Chief Justice when he set aside the previous inquest verdicts. What steps does the Minister think should be taken to deal with the present position of the South Yorkshire Police? Does a root-and-branch review of the South Yorkshire Police now appear appropriate? Is the position of the chief constable of the South Yorkshire Police now untenable?

Fourthly, there is the collusion between the media and the police. No one has ever been held to account for the smears in the media relating to the families and the fans. Noble Lords will know that on the Wednesday after the Saturday, the *Sun* produced a headline saying, "Hillsborough: The Truth", and made entirely false allegations about the behaviour of the fans. Libel proceedings were obviously not a possibility, for a whole range of reasons. The relationships between the police and the media were to be investigated by the second stage of the Leveson inquiry. That is no longer going ahead. The relationships between the police and the media were a considerable source of the 27-year delay. Is it the Government's intention to go back on their promise—not to these families, although they were included in the group, but to all those who had suffered from media smears—or is the second stage of the Leveson inquiry going to take place?

Lastly, there is the unlevel playing field. The inability of the families properly to fund themselves at the first inquest led to findings of accidental death and a cut-off time of 3.15 pm that meant there was no proper inquiry in the first inquest. There was an appeal to the Divisional Court but that was rejected. What steps are the Government now going to take to ensure that families such as the Hillsborough families are not left alone and outgunned in court?

It was wonderful to be in the court yesterday, on the day when the justice system acknowledged the truth. The families were vindicated. However, it was filled with so much sadness about the lives ruined by the darkness of those 27 years and the very many people who had died over the period, never seeing the person they loved being able to rest in peace. Our institutions failed the families time and again. Liverpool Football Club and the City of Liverpool never wavered in their support of the families. They were with them during the years when there was no hope, but mostly the families were alone. The best of our country and its true values were demonstrated by the families who never gave up. We should honour them and do our best to ensure that what happened to them will never happen to anyone else.

Lord Storey (LD): My Lords, I thank the Minister for the thorough and important Statement. When you meet the Hillsborough families, you are immediately in an emotional bond with ordinary, loving and decent

people—remarkable and loving people—who, over 27 years, with great dignity and heads held high, have taken on the establishment to get to the truth. Much is owed to those who researched the evidence; to the indefatigable supporters' groups led by families; to the independent panel chaired by the then Bishop of Liverpool; to those who finally listened and agreed to a second inquest; to the jurors who spent years examining the evidence, and to all those involved in legal support for the family, including the noble and learned Lord, Lord Falconer of Thoroton.

On this day of all days the front page of the *Sun* speaks volumes for the real levels of remorse shown by that newspaper. There will be no complete justice until those responsible for the events at Hillsborough—for the monstrous cover-up, the lies and the years of organised deceit—are properly called to account. Thanks to many people, the families of the 96 dead and nearly 700 injured have never walked alone. What plans do the Government have for arrangements for access to justice to ensure that ordinary people always have full opportunity to get their complaints heard in the face of inaction or opposition from the authorities? In my city we say, "At the end of the storm there's a golden sky". My thoughts and prayers are with the families and survivors today.

Lord Ahmad of Wimbledon: My Lords, I thank both noble Lords for their contributions. In doing so, I acknowledge the noble and learned Lord's own contribution. I know he has worked with the families and I pay tribute to his work in this respect. The noble Lord, Lord Storey, said that he is of Liverpool, as are many in this House, and I declare an interest as a lifelong Liverpool fan. I remember the tragic events of Hillsborough very well. The verdict yesterday was a very notable moment for the whole city and particularly for the families.

Turning to the specific questions raised by the noble and learned Lord, Lord Falconer, about subsequent criminal proceedings and the timeline, he will know better than many that there is obviously due process to be followed. It is right now that we look towards the CPS and the two ongoing investigations and he and many others will know from their own experience that the CPS has been working very closely with both those inquiries so one would hope, with the evidence that has already been shared and assessed, that they will move forward. In terms of those two particular inquiries, we are certainly looking towards the end of the year.

The noble and learned Lord suggested an amendment to the Policing and Crime Bill relating to police officers who may choose to retire, or indeed resign, to absolve themselves of responsibility for such tragic events. It was certainly the Government's intention to bring forward such an amendment, and that is why the Home Secretary and my right honourable friend the Minister for Policing inserted a clause in the Bill that reflected the 12-month retirement period. I am informed that, following representations by the shadow Home Secretary, the right honourable Member for Leigh, the Home Secretary has agreed to meet him and the shadow Minister for Policing to see how we can best take forward that provision in the Bill.

Turning to South Yorkshire Police and the statements that have been made, one would have hoped that the force would have accepted without any reservation the findings of the inquest. At this juncture, I just say that what we have seen coming out from South Yorkshire Police is both of concern and regrettable. It is important to ensure that anyone who serves in any area of public life, but particularly in the important role of policing, takes responsibility and has the confidence of the public, which has clearly been lacking in this instance.

The noble and learned Lord also talked about the media, the police and Leveson part 2. As he will know, and as I am sure many noble Lords will be aware, criminal proceedings connected to the subject matter of the Leveson inquiry, including the appeals process, have not yet been completed. The Government have been clear that these cases must conclude before we consider part 2 of the inquiry.

I turn to the very valid issue of access to justice and legal representation. I pay tribute to all those who were involved in the inquest—in particular, the jury. As I am sure noble Lords know, they sat for 296 days over two years, and that shows their resilience. I pay tribute to them and am sure all noble Lords across the House join me in doing so. The inquest underlined the importance of having not just access to justice and legal representation but access to quality legal representation. Therefore, I am delighted that the Bishop of Liverpool has agreed to stay on as an adviser to the Home Office, and to the Home Secretary directly, on this issue to ensure that all the lessons learned from this tragedy are encapsulated. I am sure that they will be presented in his report and in his direct advice to the Home Secretary. We hope that through that process the issues that have arisen, including access to quality legal support, will be addressed—a point raised by the noble Lord, Lord Storey.

Lord Taylor of Holbeach (Con): My Lords, this is a solemn occasion for the House and I hope noble Lords will be brief and courteous to each other as we go round the House in our customary fashion. Perhaps we might start with the noble Lord, Lord Blunkett.

4.07 pm

Lord Blunkett (Lab): My Lords, I crave noble Lords' indulgence for a moment while I say where I come from. I was a new Member of Parliament covering the area around the Hillsborough stadium in 1989 and I am now married to a doctor who was a volunteer in the hospital in Sheffield on that evening. I myself visited some of those who were injured that weekend.

I commend the Statement and I commend the families and those working with them for seeking and gaining the truth and looking for justice. I hope very much that the work of Bishop James Jones will be able to incorporate the proposals of my noble friend Lord Wills, which were debated three months ago in this House and to which I contributed. I hope that the Minister agrees that they would contribute towards meeting the challenge of ensuring that families in circumstances such as these do not have to go through what those families have gone through over the last 27 years.

[Lord Blunkett]

I have a question for the Minister. In dealing with the immediate future, it will surely be crucial that the people of South Yorkshire, many of whom played a signal part on that day by taking people into their homes, letting them use their landlines and, in many cases, running people back to Merseyside, do not now pay the penalty of costs arising from further investigation and work on top of the costs that have been incurred. Nor should members of the force, most of whom are dedicated, committed officers, find themselves in a situation where they cannot carry out their duties properly. Would it not be a fitting tribute if we were able to move forward with sensitivity and rationality in ensuring that the people of Merseyside receive the justice and truth that they have sought, and that the people of South Yorkshire do not find themselves penalised, financially or in terms of policing, because of what happened 27 years ago?

Lord Ahmad of Wimbledon: My Lords, first, I agree with the noble Lord about the ordinary people on that tragic day who did indeed open their doors. In other tributes that have been paid, it has been widely acknowledged, even by those who were themselves suffering the tragedy, that the people around the stadium of Hillsborough—the ordinary people of Sheffield—showed the warmth and hospitality that really defines our nation, opening their doors to strangers at a time of acute need. That was reflected by many.

On the issue of police officers specifically, as we witnessed on our television screens, and as those in the stadium witnessed, there were individual police officers who tried to act in the best interests of the fans who were clearly suffering in this tragedy. It is important that we now see that the people of Liverpool—particularly the families of the 96 tragic victims—have suffered far too long. Twenty-seven years to wait for justice and truth in a country such as ours is plainly and simply unacceptable. Therefore, I am sure that I express the sentiments of all—and it is resonating—when I say that we look forward to the conclusion of the two ongoing inquiries and the inquiry that the CPS will launch to ensure that we get the justice that the 96 tragic victims need.

Lord Dear (CB): My Lords, my question concerns Lord Justice Peter Taylor, whom noble Lords may remember was later appointed Lord Chief Justice of England and Wales and who sadly died in office in 1992 or 1993. It was Peter Taylor who conducted the first inquiry into the Hillsborough disaster. He published his report only three and a half months after the disaster had taken place. Although he laid blame in a number of directions, he was quite clear in the main thrust of his report that he wanted to focus on three issues: first, that the fans were absolutely blameless; secondly, that South Yorkshire Police had largely caused the disaster by their lack of control of the crowds at the Leppings Lane end; and thirdly, in fulsome manner, he criticised South Yorkshire Police for the then emerging criticism from South Yorkshire, who were trying, as he put it, to shift the blame from themselves on to the fans. His clear findings were largely submerged by the growing flow of lies, half-truths and misinformation that occurred before, during and after the first inquest. Bearing in mind that what he said and what he found was entirely mirrored and repeated by the inquiries carried out by the Lord Bishop of Liverpool and by Lord Justice Goldring in the current and shortly to be concluded inquest, will the Minister do everything possible on every appropriate occasion to reflect on the fact that it was Lord Justice Taylor who got to the truth first, even though that truth was later obscured? He was the man who spoke the truth and gave the signpost. In making this statement, I remind the House that it was I who led his inquiry and produced to him the evidence on which he based his findings.

Lord Ahmad of Wimbledon: As I have said, we acknowledge all those who have made a contribution to ensure that truth and justice prevail for the tragic victims of the Hillsborough disaster.

Viscount Hailsham (Con): My Lords, the moral culpability of those who participated in the cover-up is particularly grave. Will the Minister do all he can to encourage the prosecution authorities to come to an early conclusion as to whether criminal proceedings should follow?

Lord Ahmad of Wimbledon: As I have said, we all agree that it is important that we reach an early decision, but it is also important that the CPS carries out whatever investigations it needs to and that the two ongoing inquiries reach a full conclusion. I reiterate that the two ongoing inquiries will report back at the end of this year.

Lord Wills (Lab): My Lords, as a Minister involved in setting up the Hillsborough Independent Panel, I add my thanks to the Government and congratulate them on the way they have followed through the setting up of that panel and its aftermath and on the outstanding work done by that panel, which led to the verdicts yesterday. However, most of all, like other speakers, I once again briefly pay tribute to the courage, dignity and persistence of the bereaved families and their campaign for justice. Their extraordinary work has ensured that their loved ones who died at Hillsborough will never be forgotten, and they have honoured their memory.

However, now that the jury has reached its conclusions, the wider public policy lessons must be learned; I very much welcome what the Minister said about that today. In particular, however, I pick up on the point made by my noble friend Lord Blunkett and ask whether the Government will now agree to adopt at least the principles and the guts of my Private Member's Bill, which seeks to provide all similarly bereaved families in future with a right to the support and transparency which, finally, the Hillsborough families have received. There must be no complacency about what has happened. It is time to ensure that no other similarly bereaved families in the future have to suffer and endure what the Hillsborough families suffered and endured for 27 years.

Lord Ahmad of Wimbledon: I pay tribute to the noble Lord's efforts in this respect. With regard to his Private Member's Bill, I will be delighted to meet with him and I suggest that we also include the Bishop of Liverpool in that to see how best we can move this forward.

Lord Alton of Liverpool (CB): My Lords, during the 27 years that have elapsed since the Hillsborough disaster, the double spectre of loss and injustice has hung over the people of Liverpool. Among the 96 who died were former constituents of mine, including a child. Those deaths of loved ones were compounded by the denial of criminal negligence, callous indifference, the subversion of our justice system, collective character assassination and demonisation. If the Minister has had a chance to read the material I sent him this morning, including the letter I sent before the game was played at Hillsborough which questioned the safety of the ground, he will realise that there are still many unanswered questions. I would be grateful if he told us more about the timetabling of the continuing inquiry, which is being held with great diligence and meticulousness at Warrington; I have had a chance to visit it and talk to the people about the way they are going about their work. Will he also answer the question which the noble Viscount, Lord Hailsham, put to him a few moment ago about the further judicial proceedings that will be necessary and the timetabling for decisions? We certainly cannot wait another three decades.

Lord Ahmad of Wimbledon: To take the noble Lord's last question first, it would certainly be inappropriate for me to straitjacket the CPS in any respect, but the CPS, the two ongoing inquiries and everyone involved in them are fully aware of the sensitive nature of this issue. As we said, there is a responsibility on all involved in these inquiries to make sure that we reach a decision which ensures that justice prevails as soon as is possible and practicable, but it is very much for the CPS to lead on this. I confess that I have not had time to reflect on the detail of the information the noble Lord sent to me this morning, but I certainly will, and look forward to discussing it with him.

The Lord Bishop of Leeds: My Lords, I declare an interest because I come from Liverpool and most of my family still live there. My grandmother lived on Anfield Road at the time of the tragedy—no one in Liverpool was so remote that they did not know someone who was affected by it. People who have not been recognised in the comments so far are those such as Steven Gerrard and Rafa Benitez, who gave huge amounts of money to support families and did so without expectation of gratitude or publicity. A lot of individuals, like them, showed enormous generosity at a time when the cause was not popular. Can the Minister assure us that the independent panel sets a model for how such investigations ought to be continued in the future in similar circumstances, with objective scrutiny of documentation? Also, does he think that current levels of press regulation under IPSO—before we get to Leveson stage 2—would be in any way stronger in preventing the sort of press abuse that continued until only three years ago?

Lord Ahmad of Wimbledon: I thank the right reverend Prelate for those questions. We have learned lessons from every element of the inquiry, and from the panel in particular. We will take forward all the issues, particularly good governance. We have set up an ongoing relationship with the former Bishop of Liverpool. On the issue of press regulation, as I have said already, we are waiting until the Government can look at the second part of the Leveson report to ensure that a comprehensive response can be given. On press regulation and review, we live in a very different world now from that of 27 years ago—indeed, of 10 years ago—and the press, along with everyone else, need to reflect on their responsibilities, particularly when reporting such tragedies as Hillsborough.

Lord Wood of Anfield (Lab): My Lords, the Minister said earlier that we would have to wait until criminal cases had finished before we—to use his phrase—"consider" phase 2 of Leveson. However, I remind him of what the Prime Minister said after phase 1 of Leveson in November 2012:

> "When I set up the inquiry, I also said that there would be a second part to investigate wrongdoing in the press and the police".—[*Official Report*, Commons, 12/11/12; col. 446.]

He went on to say:

> "It is right that it should go ahead, and that is fully our intention".—[*Official Report*, Commons, 12/11/12; col. 458.]

I understand why criminal cases have to proceed before phase 2 can begin. However, can the Minister assure us that it will begin once those cases have finished, and that the Government will not then reconsider whether it should happen at all?

Lord Ahmad of Wimbledon: It is quite right that we ensure that any ongoing criminal investigations are completed, and the Prime Minister has given a commitment.

Lord Scriven (LD): My Lords, we must consider the crass statement that was put on the South Yorkshire Police website this morning, and the fact that the chief constable of South Yorkshire Police has just been suspended. In the light of what the noble Lord, Lord Blunkett, said, and whoever is elected as Police and Crime Commissioner next week, South Yorkshire Police is going to need extra support. What support will the Government look at giving to solve the problem of the clearly dysfunctional senior management within the South Yorkshire police force?

Lord Ahmad of Wimbledon: The noble Lord raises an important point, particularly regarding the responsibility of the Police and Crime Commissioner. They will have an important role to play, but we will certainly be reviewing the situation. As further details emerge, I will write to the noble Lord about the steps we are taking. The important point is that there is a responsibility in the higher echelons of that police force. The noble Lord mentioned the statement put on the website which, as I said earlier, was both concerning and regrettable. There is a history of their making a statement and then retracting it. One would have hoped that, on this occasion, they would not have done so, but that is exactly what has happened.

Lord Faulkner of Worcester (Lab): My Lords, I may be the only member of your Lordships' House who was present at Hillsborough 27 years ago. I subsequently gave evidence to Lord Justice Taylor's inquiry and to the Hillsborough Independent Panel. I join all other Members in commending both the Statement and the contributions from all sides of the Chamber today.

[Lord Faulkner of Worcester]
This House has matched the mood perfectly. I think that the victims' families will feel that they have been vindicated, certainly as far as this House is concerned. I have just one question. Does the Minister agree that what has made the victims' families' agony so much more unbearable has been the refusal by the South Yorkshire police force, consistently over the last 27 years, up to and including the period of the inquest itself, to put up their hands up and admit that they were at fault?

Lord Ahmad of Wimbledon: I totally agree with all that the noble Lord has said. As for what he said about South Yorkshire Police, I think that that sentiment is reflected across the House.

Lord Paddick (LD): My Lords, perhaps I may express a personal view coloured by my experience of more than 30 years in the Police Service. I am concerned that what appears to have happened in this case—the police attempting to protect their reputation by covering up what happened—is not isolated to South Yorkshire Police and may be prevalent across the Police Service as a whole. This is based on a genuine concern that, in order to operate effectively, they have to have the trust and confidence of the public. However, clearly, they cannot cover up wrongdoing to win that trust and confidence because, inevitably, the truth will come out, as we have seen in this case. Can the Minister give an undertaking that this wider issue across other police forces will not be ignored and will be looked into as part of the Government's response to this disaster?

Lord Ahmad of Wimbledon: The noble Lord is right to raise the issue of trust in a general sense. Speaking as any citizen would, we look to our police forces up and down the country—many of which do an incredible job—to provide safety and security for all of us. A high level of confidence in your police force is an essential part of going about your daily life. Where that has failed, particularly in the instance of South Yorkshire Police—I know an earlier question related to the fluid nature of what is happening in South Yorkshire at the moment—it is important that police forces and all those associated with their governance not only accept direct responsibility but make and act on the right decisions for themselves and, more importantly, for the people of their areas.

Lord Watts (Lab): The Minister is aware of the damage that was done by the media over this issue but one individual, Kelvin MacKenzie, has special responsibility. Does the Minister agree that no broadcaster should employ Kelvin MacKenzie, given his past record?

Lord Ahmad of Wimbledon: That is a matter for individual broadcasters. However, I am sure that if they are watching us or read *Hansard*, they will reflect on the noble Lord's comments.

Lord Clark of Windermere (Lab): My Lords, I declare an interest as a director of Carlisle United Football Club. The composition of football fans today is rather different from 27 years ago, but I know that I speak for every single football fan the length and breadth of the British Isles when I say that we are pleased and proud that our fellow fans at Liverpool have been vindicated. They have shown up some of the key elements of British society—the police, the media and the legal trade. I am also pleased that nowadays, under our new freedom of information legislation and the mood that goes with it, the Minister is able to make such a Statement, which we all admire.

Lord Ahmad of Wimbledon: I agree with the noble Lord. Whichever club you support or wherever you live in this country, football is part of what defines our nation; it is part of our DNA. The exoneration yesterday of not only the victims but everyone who attended the event, or was involved with the football club or with the city, was a historic moment in moving forward in the right manner. I hope that, ultimately, once the CPS inquiry and the two other inquiries are concluded, we can give final solace and peace to the 96 tragic victims and ensure—if I may quote the noble Lord as a final comment on this—that they never walk alone.

Housing and Planning Bill

Third Reading

4.28 pm

Clause 54: Meaning of "property manager" and related expressions

Amendment 1

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

1: Clause 54, page 25, line 27, at end insert—

"( ) But a person is not a property manager for the purposes of this Part if the person engages in English property management work in the course of that person's employment under a contract of employment."

Viscount Younger of Leckie (Con): My Lords, before we get into our discussion of the main issues of the day, we will start with a group of amendments that are undoubtedly minor and technical in nature. I hope, therefore, that we will be able to make rapid progress. The amendments address a small number of technical amendments that are required to provide additional clarity or implement technical corrections to a number of measures.

I shall start with Amendment 1. I hope that it is clear that it was always the intention that Clause 54 would not apply to individuals who carry out property management work under a contract of employment, in the same way that Clause 53 does not apply to individuals engaged in letting agency work as part of their contract of employment. However, the current drafting is not explicit on this point. The amendment inserts a minor and technical amendment to Clause 54 that makes it clear that it does not apply to employees.

Amendment 9 makes a minor and technical change to the interpretation of the chapter as a consequence of the changes to the housing administration objectives already agreed on Report. Unfortunately, in making the other changes, the definition of the objectives of

housing administration in the interpretation chapter became inaccurate. This amendment corrects that inaccuracy.

Amendment 12 amends the new clause tabled by my noble friend Lord Lucas on Report on planning freedoms. We understand that the intention was that Clause 154 would allow the Secretary of State to make planning freedom schemes only in England. However, the current drafting is not explicit on this point. I am therefore proposing, in the interests of clarity, simply to add the words "in England" to the end of subsection (1). This will make it explicit in the legislation that the power to make planning freedom schemes applies only in England.

Amendment 13 removes a superfluous consequential amendment from Clause 181 on the appointment of an inspector, while Amendment 14 is a minor amendment to Clause 196 about the payment of interest on late payments of advance payments of compensation, which is consequential on an amendment made on Report. It inserts a reference to new Section 52(4ZA) of the Land Compensation Act 1973, inserted by Clause 195(2)(b) of the Bill, which refers to the date by which an advance payment must be made.

As I mentioned, these amendments are intended to provide clarity and remove any ambiguity that might remain within their respective clauses. I beg to move.

Lord Campbell-Savours (Lab): My Lords, I am sorry to delay proceedings, but I am a little confused by Amendment 1. As I understand the Bill, the banning order offences are to be specified in regulations which we have not seen. They will define the nature of the offences that can lead to a banning order. Under Clause 14(2), if a banning order is made against a corporate body, it must be made at the same time in the case of "any officer" involved in "the same offence". Under Clause 13(1)(c), the banning order applies to people involved in "property management work", yet the amendment seeks to exclude people employed under a contract of employment. The Bill goes on at page 26 to define who these employees are. They are defined as,

"any director, secretary or other similar officer of the body corporate, or … any person who was purporting to act in any such capacity".

How can we possibly exclude people who are the directors of a company? I understand that it is quite usual for directors themselves to have contracts of employment. Are they somehow to be excluded from responsibility which might lead to a banning order when in fact they may well have taken the decision that led to the banning order having to be introduced? I wonder whether the Minister can clarify the position.

One of the problems is that in the Bill there are references to different groups of people, but I think they are actually all meant to be the same—that is, people who are involved in property management, people who are property managers and people who are officers, and I think that there is another category as well. Perhaps the Bill should have been clearer in defining these particular different individuals and describing them in one particular form instead of under three different headings.

Lord Kennedy of Southwark (Lab): My Lords, I refer noble Lords to my declared interests, and also declare that I am an elected councillor in the London Borough of Lewisham. I see the Minister's point—that the amendments appear, on the face of it, to be minor and technical. But my noble friend Lord Campbell-Savours has raised an issue, and I hope that we get a response from the Minister. None of us would want to agree something today that had unintended consequences at a later date.

Viscount Younger of Leckie: My Lords, I hope I can provide some clarity. It is true that the amendments are minor and technical, but let me try to explain. The purpose of the amendment is to make it explicit in the legislation that Clause 54 does not apply to individuals engaged in property management work under a contract of employment. The noble Lord, Lord Campbell-Savours, may remember that on Report we made a number of amendments to the housing administration section of the Bill, and unfortunately, during this process the definition of housing administration objectives became inaccurate. This amendment corrects the definition.

To give a little more detail, it may help the noble Lords, Lord Kennedy and Lord Campbell-Savours, if I say that I believe that officers are defined as directors or executive members of a company. Given that this is technical, it would be wise if I gave a fuller answer than the one I am giving at the Dispatch Box now, so I will write to all noble Lords with a description.

Lord Campbell-Savours: The amendment says:

"But a person is not a property manager for the purposes of this Part if the person engages in English property management work in the course of that person's employment under a contract of employment".

A director of a company involved could have taken the decision that led to the banning but, as far as I can see, would not be responsible under this clause. Is that the intention, or am I simply misunderstanding what the Bill says? I think we should have a bit more information while the Bill is in this form, on Third Reading, because this is our final opportunity.

Lord Kennedy of Southwark: Yes, it is. I see the point that the Minister is making about wanting to write to us, but I am also conscious that this is Third Reading. Other than maybe a bit of ping-pong, these are almost the last throes of the Bill. If my noble friend Lord Campbell-Savours is right, the Government will unintentionally have created a bit of a pickle for themselves. Before we move on, we need more than the Minister saying that we will get a letter in the post.

Lord True (Con): My Lords, this may well be Third Reading, but the amendment will go to the other place as a Lords amendment, so it is perfectly possible, as my noble friend has courteously offered, for the matter to be clarified and, if there is a need for further technical clarification, that could be made in the other place.

Lord Beecham (Lab): May I just point out that in Clause 53, on the same page, there is a definition of a letting agent, and that it is pretty much the same as how Clause 54(1), and the amendment, would define a

[LORD BEECHAM]
property manager. So there would be consistency between the two positions. If there is to be clarification, it would presumably, on whatever basis, apply the same rules to both a letting agent and a property manager.

Viscount Younger of Leckie: My Lords, I think it would be right for me to endeavour to get a full explanation during the debates that we are going to have this afternoon. I take on board the comments of the noble Lord, Lord Kennedy, and that will be the aim. Already those behind me, and perhaps also those beside me, have put in motion a process to get some further information on top of the explanation that I have attempted to give. I will absolutely endeavour to get back to noble Lords as soon as I possibly can.

Amendment 1 agreed.

Clause 73: Reduction of payment by agreement

Amendment 2

Moved by ***Baroness Williams of Trafford***

2: Clause 73, page 33, line 15, leave out subsections (2) and (3) and insert—

"(2) The terms and conditions of an agreement must include—

(a) the amount of the reduction mentioned in subsection (1), and

(b) any terms and conditions required by subsection (3) or (4).

(3) Where the agreement is with a local housing authority outside Greater London, it must include terms and conditions requiring the authority to ensure that at least one new affordable home is provided for each old dwelling."

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford) (Con): My Lords, Third Reading is normally a time to reflect on the passage of a Bill through your Lordships' House and thank all those who have taken part. However, just two days after we finished Report, I believe we have reached consensus on one thing—that this is not a normal Third Reading.

The amendments I move today are a reflection of the quality of the debate we have had, and I thank all noble Lords whom the Secretary of State, the Minister of State and I have met over the past few days. I hope that the amendments in my name today will be helpful.

On Report, I committed to return to your Lordships' House with an amendment to put in the Bill the Government's commitment to deliver one new affordable home for every one sold. This is a key feature of our policy, which ensures that the sale of higher-value council housing funds the building of new affordable homes, as well as providing home ownership opportunities through extending the right to buy.

I hope noble Lords agree that Amendment 2 provides the assurance that this House has been seeking that, where the Government make an agreement with a local authority outside London about building new homes, at least one new affordable home is provided for each dwelling that is assumed to be sold. This was always our intention, and is what I committed to on Report. This amendment chimes with the provision for the London authorities, which recognises the housing pressures in the capital and means that any agreement with the Secretary of State must ensure the construction of at least two new homes for every one that is assumed sold. Amendments 4, 5 and 7 are consequential minor changes to clarify the text on agreements.

Alongside this, it is the Government's intention to give local authorities with particular housing needs the opportunity to reach bespoke agreements about the delivery of different types of new homes in their areas. If a local authority can demonstrate, for example, that there is a clear need for new affordable rented homes, then the Government should aim to make an agreement with them reflecting that, while taking into account the normal considerations of value for money and so on. On Report, I undertook to work with the noble Lord, Lord Kerslake, on how we might reflect that in the Bill. I am grateful to him for meeting me to discuss the issues. I believe that we all want to see local authorities in the driving seat, making the case for the type of new homes which are right for their communities, with an opportunity also to enter into agreements with the Government to deliver those homes, either directly or through partnership with other organisations. Of course, the Bill already enables local authorities to enter into agreements with the Government for the delivery of new homes but I acknowledged on Report that the House was keen to see some further detail in the Bill.

I am sorry to say that I am not able to return with a government amendment on this element at this stage. As I said, I believe that we share the view on the role that local authorities should play in delivering housing, but I am not able to accept the amendment which the noble Lord, Lord Kerslake, has retabled, which is too restrictive, as I made clear on Report. I will respond formally when we discuss his amendment.

Replacement of housing in rural areas is another area where noble Lords have made a strong case. Pressure on housing in some rural areas is exceptionally high and it is right that we should sometimes take a different approach to reflect that. Recognising these pressures, on Report I made a commitment to exclude—in the regulations which will govern the payment to be made by local authorities in respect of their higher-value vacant housing—housing in areas of outstanding natural beauty and in national parks.

On Report, I also undertook to look at the detailed points that had been raised in your Lordships' House about housing in rural areas more generally. I have since looked at this issue further. I have also explored the issues that the noble Lords, Lord Best and Lord Cameron, raised. I am pleased that I can confirm that the Government will consider other rural areas when making exclusions in regulations to the housing to be considered for payment in respect of higher-value vacant housing. In particular, we will consider whether there is a case to exclude rural areas that have particular difficulty in replacing housing. We would be able to use the same regulation-making powers that we will use to exclude national parks and areas of outstanding natural beauty.

4.45 pm

Defining an exclusion in secondary legislation would take a little time. We would need to ensure that any definition is fair and reasonable yet retains existing local authority housing in communities where the accommodation would be hard to replace. We would also want to think through the relationship with the other rural aspects of the Bill, as raised by your Lordships' House. As part of this, we will be looking closely at how the Secretary of State could designate particular rural areas to see if that would provide the basis for a clear definition. I will of course involve my noble friends Lord Best and Lord Cameron—I am sorry, the noble Lords, though I think that they have become my noble friends—in discussions.

Another commitment that I made on Report was on offering flexibility on the starter homes requirement for rural exception sites. I committed to return to the House at Third Reading with an amendment giving local discretion on the national starter homes requirement on rural exception sites. This was in response to the amendment by the noble Lord, Lord Cameron, to seek flexibility for local councils for rural exception sites. However—I spoke to noble Lords about this—the amendment by the noble Lord, Lord Kerslake, to remove the power to set a national statutory requirement for starter homes was accepted by the House. This therefore renders the proposed amendment for rural exception sites invalid: if there is no nationally set requirement for starter homes, there is no need to disapply it for rural exception sites.

I would like to be clear to the House that the Government have listened carefully to the debate on starter homes and are carefully considering our response to the amendments. We will return to them during Commons consideration of Lords amendments. I reassure the noble Lord, Lord Cameron, and other noble Lords that, although I am not able to table our amendment to give the promised flexibility on rural exception sites today, our intention is to honour that commitment and that the amendment should be made at a later stage.

Amendment 15 is a technical amendment to ensure that no hybridity issues arise in respect of the regulations to define "higher value". I beg to move.

Amendment 3 (to Amendment 2)

Moved by ***Baroness Bakewell of Hardington Mandeville***

3: Clause 73, in subsection (3), after "dwelling" insert "in the same local plan area"

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I rise to speak to Amendment 3 in my name, and to Amendment 6 in the name of the noble Lord, Lord Kerslake. I remind the House of my declaration in the *Register of Lords' Interests* as a district councillor, a vice-president of the LGA and chair of the National Community Land Trust Network.

We had long discussions and deliberations in Committee on not only the replacement of the right-to-buy homes sold to tenants but the thorny issue of the sale of high-value local authority housing. I will not rehearse in depth here the arguments about local authorities and their housing needs assessments and local plans, and about the need to have the homes that residents require now and into the future in the areas in which they live, work and educate their children. I welcome the Minister's commitment to one-to-one replacement outside London. It is essential that the higher-value homes that are sold off to fund both the starter home discount and those sold under the right-to-buy extension are replaced in the same area, if at all possible. There will be occasions when this will not be possible or when the housing needs assessment does not indicate that replacements are needed but, wherever possible, they should be in the same area. There is very real concern that, in some areas, homes will be sold by housing associations in one area of the country and that replacements will be in another area completely, thus depriving one area of a much-needed asset. That is a very real threat, as housing associations merge to create larger organisations that cover a wide area of the country.

I tabled Amendment 3 to limit the negative impact of homes being replaced in the wrong area, by restricting replacements to the local plan areas. Most local plans have boundaries contiguous with the local authority boundaries, but this is not the case everywhere. Allowing local plan areas rather than local authority boundaries to be the limiting factor will, I hope, provide the flexibility to ensure a steady supply of homes for those who most need them. I welcome the Minister's commitment to look at exclusions for rural areas besides AONBs and national parks.

On Amendment 6, I support the noble Lord, Lord Kerslake. It is essential that local authorities—whose budgets have been reduced year on year for some considerable time—are not expected to sell off their high-value homes and hand over the entire receipts to the Secretary of State. Local authorities should be able to fund the replacement homes from the proceeds of the sales less administrative costs, before making the necessary transfer of resources to the Secretary of State. Noble Lords will be aware that the Government's intention with this Bill is not just to ensure an increased and steady supply of homes that are desperately needed, but to contribute to the Government's budget deficit. When responding on 18 April to the debate on Clause 78, as it was then, on the introduction of mandatory rents for high-income local authority tenants, the Minister said:

> "We will not be allowing local authorities to retain any money raised, however. The money has been identified as a contribution to reducing the national deficit and, on that basis, it must come back to government".—[*Official Report*, 18/4/16; col. 452.]

While sympathising with the Government on their need to reduce the budget deficit, I am not prepared for this to happen at the expense of providing homes identified by local authorities as needed to accommodate residents in their areas. If the noble Lord, Lord Kerslake, wishes to divide the House on this issue, I will support him.

Lord Kerslake (CB): My Lords, I shall speak to Amendment 6, and I declare my interests as chair of Peabody and president of the Local Government Association. My other interests are listed in the register.

This is an amendment that, until 5 pm last night, I did not expect to be speaking to. We have, I fear, travelled a long way on this issue only to end up back

[Lord Kerslake]
at the same place. Amendment 6, as now drafted, formed part of my Amendment 64A, moved on Report on 13 April. It concerns the replacement of council house stock forced to be sold to fund the extension of the right-to-buy discounts to housing associations. The first part of that amendment, the so-called one-for-one provision, was agreed to be taken on by the Minister as drafted. This has been honoured and is reflected in government Amendment 2. I am grateful to the Minister for acting on it. The amendment is a crucial change and ensures that the Government's manifesto commitment that every affordable property sold outside London would be replaced by at least one other affordable property is on the face of the Bill. I welcome that.

The second part of my amendment, however, was equally crucial. It provided that where a local authority so wished and could demonstrate need, it would be able to retain from the council house sale receipts the funding necessary to reprovide a house of a similar type to the one it had sold. So if a social-rented family house has been sold to fund the government levy, and there is a desperate need for such housing in its area, the council could retain the funding needed to build a new social-rented house. It would be its choice and a case would have to be made, but if it made the case the funding would be there. On this issue the Minister replied constructively, recognising the different needs of different areas. She said:

> "I totally agree that in our dialogue with local communities, local authorities should be empowered to make the case for the right balance of housing in their area, and that there should be a strong expectation that the Government will listen".

She went on to say,

> "I am very happy to work with the noble Lord, Lord Kerslake, to give local authorities with particular … needs in their areas the opportunity to reach bespoke agreements with the Government about the delivery of different types of new homes in their areas".—[*Official Report*, 13/4/16; col. 304.]

In the light of these assurances, I withdrew my amendment.

Since 21 April, constructive discussions have taken place with Ministers and their officials on the drafting of a new amendment. This discussion has taken place with the close involvement of the noble Lords, Lord Best and Lord Porter. As at lunchtime yesterday, I understood that we had reached agreement on the form of words for such an amendment. Sadly, when the amendments came through at 5 pm last night, that crucial part of the amendment was missing. In the circumstances, I felt that I had no option but to resubmit my original amendment, and I am enormously grateful to the Table Office for allowing me the time to do this beyond the normal time limit.

I should say at once that the Minister has acted with great integrity on this matter, as indeed she has on the whole of the Bill. The Secretary of State, Greg Clark, has been equally open and responsive, and I recognise that the time between Report and Third Reading has been short. I also suspect that the responsibility for this turn of events lies elsewhere in government. However, the simple fact is that we have only half an amendment from the Government, with the crucial issues of funding, local need and like-for-like replacement—not just one-for-one—not covered. I fear that this just will not do. It adds to what has been a difficult journey for the Bill in this House. What may look like a technical amendment goes to the heart of the concerns of local authorities and their communities about one of the most contentious parts of the Bill: the forced sale of higher-value properties, typically the larger properties in the most sought-after areas, to fund large discounts for housing association tenants with the wherewithal to buy. Local government is paying for a central government policy. Those most in need are denied the opportunity of a new home to rent when it becomes vacant. The only saving grace for local authorities was the prospect of replacement funding.

With the definition of affordable housing now so widely drawn, the Bill needs to provide specifically for the opportunity for new rented accommodation, affordable to those on low incomes. This is doubly so given the uncertainty as to whether the sums involved here actually add up. This issue was of such importance that the leaders of all the political parties at the Local Government Association wrote a letter to the *Guardian*, expressing their concern and supporting my original amendment. It is essential that this is addressed in the Bill and not through general ministerial assurances, welcome though those are.

5 pm

Lord Lansley (Con): My Lords, I will briefly contribute to the debate on this group of amendments. I am pleased that the Government have brought forward Amendment 2. As many of your Lordships will recognise, we have always felt strongly that it was likely in many places across the country that the need for additional housing was such that the desire of local authorities, the local development community and local people for that housing would mean that we would very much be looking for an agreement of this kind with the Government. I declare again my interest as chair of the Cambridgeshire Development Forum. Cambridge and the surrounding area is one of those places. So Amendment 2 seems to be very welcome.

Amendment 3, the amendment to Amendment 2, in the name of the noble Baroness, Lady Bakewell of Hardington Mandeville, would be very unwelcome. In Cambridgeshire we have a number of local plans, for East Cambridgeshire, South Cambridgeshire, Cambridge City, and many of these development sites cross the boundaries of two local authorities. The local authorities work closely together, but it would be very unwelcome for them to feel that the decisions that they were making and the agreements reached with the Government led directly to rigid and potentially distorting requirements about where the new homes could be built. At Trumpington Meadows, to the south of Cambridge, there is a new development with considerable demand. It would be great to have more affordable housing as the development is extended and we would want the City Council and South Cambridgeshire District Council to be able to support the new affordable housing through these kinds of agreements.

I simply did not understand the noble Baroness's references to the revenue that is to be returned to the Government under Chapter 3 of this part, which is not relevant to the determinations and agreements under Chapter 2. That part of her speech was irrelevant to the question we are considering. This part is about

liberating value in vacant high-value local authority housing, both to build more houses and to support the extension of right to buy to housing association tenants. It is not about funding the deficit.

Baroness Bakewell of Hardington Mandeville: My comments about the money being retained for local authority replacement homes was entirely related to the amendment of the noble Lord, Lord Kerslake, and not to Amendment 3.

Lord Lansley: We are debating the extent to which the Government allow local authorities to retain money that would otherwise be payable to support the right to buy for housing association tenants, in recognition of building houses, and that is under Chapter 2 of this part. If at the same time under this legislation separately under Chapter 3 they are returning money to the Government as a result of the rents for high-income social tenants, that is not about the business of funding right to buy for housing association tenants under this part; it is separate. Anyway, it is a digression.

I was not a party to the procedural discussions on Amendment 6 to which the noble Lord, Lord Kerslake, refers. As a participant in the debates in this House, it was always clear to me that the Government were viewing sympathetically and would bring back proposals on Third Reading for one-for-one replacement. I never understood my noble friends on the Front Bench to say that they would do so on a like-for-like basis. There is a distinction.

Leaving aside the processes concerned, the Government are quite right not to have brought back an amendment to mandate like-for-like replacement. They should not do so. The amendment of the noble Lord, Lord Kerslake, seems to me to be thoroughly defective, because it places in the hands of local authorities the decision whether or not there is an agreement with the Government. It does not give the Government any discretion in that matter—it says the Government "shall enter" into such an agreement. Placing a rigidity on the Government in this respect is wholly undesirable. It would remove the flexibility to replace one kind of tenure with another and the flexibility to respond to the demand for new affordable housing in an area in a way that matches the needs of that area. It would also remove from the Government the flexibility of whether to enter into an agreement with a local authority at all, which is a central part of the Bill.

Baroness Hollis of Heigham (Lab): I wonder whether the noble Lord, Lord Lansley, could help me. He makes the point that the Secretary of State would have no flexibility, but the amendment says:

"If a local housing authority so wishes, and that authority can demonstrate, whether by reference to its local housing plan or otherwise, that there is a need in its area for social housing of the kind that it proposes to build".

That demonstration is presumably to the Secretary of State, so I do not see that the noble Lord's point has any substance.

Lord Lansley: I am sorry but I do not agree with that at all. The amendment says, in so far as an authority,

"can demonstrate … that there is a need in its area for social housing of the kind that it proposes to build".

I know from my experience in local authorities that there are many places across the country where there is a need for new affordable housing and a need for social housing. Many local authorities will be able to demonstrate that they could build social housing and that there is a need for it. I do not doubt that, but it does not necessarily mean that it would be right for the Government to enter into an agreement, at the instigation of the local authority and with no discretion on their part, to support it in building social housing for its purposes, as distinct from supporting the provision of other new affordable housing on a more flexible basis. That is what the legislation is designed to achieve.

Baroness Hollis of Heigham: I am grateful to the noble Lord. Is he therefore saying that the Government know better than the local authority what the local housing need is in its area, when the local authority has demonstrated a continuing need for social housing to replace that which is being sold?

Lord Lansley: No, I am saying that in many places there is a need for affordable housing. Local authorities may well be able to demonstrate a need for affordable housing with a range of tenures, including starter homes, which are included within the Bill's provisions, but the local authority itself may choose in some circumstances to prioritise its own building of social housing over the needs of the community for other forms of affordable housing. I would not accept that: it is the responsibility of the Government to respond to the need for affordable housing in these areas.

Lord Porter of Spalding (Con): I thank the noble Lord for giving way. I do not disagree with either of your Lordships, but they are dancing on the head of a pin. We are asking not for a type of tenure but for sufficient capital receipts to be retained to build a replacement home. A starter home will cost as much to build as a home for rent. Your Lordships do not need to be having this row and should just concentrate on the things we should be talking about. Let us move on.

Lord Lansley: We will move on, but I will just say to my noble friend that I do not think this is irrelevant. We should not build into the legislation, through Amendment 6, this rigidity of tenure and the character of affordable housing that should be funded by a reduction in the payment that local authorities would otherwise have to make.

Lord Best (CB): My Lords, I thank the Minister for her ongoing efforts to give special consideration to housing in rural areas, on my behalf and that of the noble Lord, Lord Cameron of Dillington. We are both very confident that the final result will be a significant improvement on where we started.

I support Amendment 6, in the name of the noble Lord, Lord Kerslake. To bring a little more clarity to the issue, it might be worth recapping where we have come from. An influential policy paper from the think tank Policy Exchange suggested the compulsory sale of the most valuable council homes, when they fell vacant, to raise funds for building new affordable housing. Although local authorities do not like to be

[Lord Best]
told how to run their affairs, if they were compelled to sell their best council housing, at least they would be able to recycle all the proceeds to boost new housebuilding, either by themselves or by supporting housing associations.

However, in the run-up to the last general election, a new policy was announced for housing association tenants to have the right to buy at big discounts. A significant problem with that plan was that, at a time of continuing austerity, several billion pounds would be needed to pay for those discounts—£4 billion to £5 billion, if the expected number of housing association tenants were to buy their properties. It was proposed that the proceeds from the compulsory sale of more expensive council properties should be used to cover the costs of those discounts. However, to allay fears that the compulsory sales policy would simply mean the loss of good-quality council homes that would all be sold on the open market to any buyer, a manifesto pledge was given that the sales proceeds would also fund the replacement of the sold properties with new,

"affordable housing on a one-for-one basis".

That sounds rather too good to be true: billions would be found from compulsory sales to pay for the extended, new right to buy, and billions would also be found to replace the vacant council housing that is sold. If things sound too good to be true, they probably are. The hazard clearly identified by local authorities is that, to square this circle, the one-for-one replacement might not be remotely a like-for-like replacement. It might mean selling a three-bedroom, semi-detached suburban council house with a garden, previously let for a very reasonable rent, and replacing it with a one-bedroom starter home for sale—one for one, but not like for like. Sometimes replacing on a like-for-like basis would not be necessary, because local needs are for a product that is different from traditional council housing. Obviously, local authorities are best placed to know what their area needs. However, the Government are worried that if councils are always given the option, many will go for a truly like-for-like product, and then an awful lot of the proceeds from selling vacant council homes would be needed to pay for those replacement homes, leaving insufficient funds to cover the housing association right-to-buy discounts.

Some kind of compromise seems to be needed so that sales funds can be used for like-for-like replacement where that is patently needed—that is, principally in areas of intense demand for affordable, rented family homes—but with the Government having some chance of raising a significant contribution toward funding their right-to-buy discounts. As the Minister said,

"local authorities should be empowered to make the case for the right balance of housing in their area, and … there should be a strong expectation that the Government will listen".—[*Official Report*, 13/4/16; col. 304.]

I found the discussions with the Minister on this to be helpful and constructive, as they have been throughout the progress of the Bill. However, nothing has appeared to that effect as a government amendment to the Bill, although the one-for-one amendment confirms the other manifesto pledge. Perhaps this is a matter of timing; if the amendment before us is not acceptable, a government amendment in the other place may take care of the matter. As things stand, the reassurances on Report, which led the noble lord, Lord Kerslake, to withdraw this amendment, have not been translated into any change to the Bill.

As Cross-Benchers, those of us concerned to improve legislation have no desire to score points and would much prefer to reach agreement with Ministers than win votes, because there is always the strong possibility that a vote is won but the amendment is overturned in the other place. Putting an issue to the vote, though, is the only course available when we run out of road in negotiations. At least that can keep alive the possibility of a change to the Bill; and a change really is important. Otherwise, there will be a significant loss of affordable homes when the finest council housing falls vacant and would have been re-let to a family in very serious need, but will now be sold off to the highest bidder, with no comparable replacement for that precious asset. That would be a terrible outcome. I support the amendment.

5.15 pm

Lord Shipley (LD): My Lords, now that we are at Third Reading, I declare my vice-presidency of the Local Government Association. I support Amendment 6, the case for which has been so well put by the noble Lords, Lord Kerslake and Lord Best, and the noble Baroness, Lady Bakewell of Hardington Mandeville. The noble Lord, Lord Kerslake, said that Amendment 6 goes to the heart of the issues in the Bill. I agree entirely. The amendment contains a crucial matter of principle about the need to have social homes built for rent. It is a reasonable and important amendment.

Government Amendment 2 reminds us:

"Where the agreement is with a local housing authority outside Greater London, it must include terms and conditions requiring the authority to ensure that at least one new affordable home is provided for each old dwelling".

As we pointed out during earlier stages of the Bill, the terms of that amendment could be met by building starter homes for sale rather than social homes for rent, since in Clause 158 the Bill amends the definition of "affordable homes" to include starter homes for sale. That is why we should support Amendment 6: because it would make it clear in the Bill that a replacement home should be let as social housing on terms similar to those on which the old dwelling was let, where there is a demonstrated need.

Given that many households now renting could never aspire to a starter home even with a 20% discount, we really have an obligation to protect the needs of low-income households by ensuring a new supply of social homes for rent. The amendment from the noble Lord, Lord Kerslake, would do that, while the Government's Amendment 2 on its own does not. If the noble Lord is minded to test the opinion of the House, he therefore should be supported in that.

I noted that in opening the debate on this group of amendments the Minister used a particular phrase: I think she said that the Government could not accept Amendment 6 "at this stage". I noticed those three words and wondered at which stage the Government might decide that they could accept the amendment or something extremely close to it. I hope the Minister might explain that to us.

Lastly, the noble Lord, Lord Best, has quoted from the Conservative Party's manifesto. I remind the Minister that another part of that manifesto states that the party would require,

"local authorities to manage their housing assets more efficiently, with the most expensive properties sold off and replaced as they fall vacant".

The implication of that to a neutral reader is that they are going to be replaced with something very similar. Replacing them with starter homes with a 20% discount for owner-occupation—that is now in Clause 158 as part of the definition of "affordable housing"—seems to miss the crucial point that there is a crying need to build social homes for rent in this country. I wonder whether the Minister understands that. If the blockage here lies with the Treasury, I hope very much that your Lordships can demonstrate a deep strength of feeling on this issue. Otherwise, those who depend upon renting are going to find it increasingly difficult to rent at levels they can afford.

Lord Porter of Spalding: My Lords, if noble Lords will excuse me, I have a note here because I intend to quote a few people and I do not want to get any of the quotes wrong. Before I start, I refer noble Lords to my interests in the register. Specifically, I am the leader of South Holland district council and the chairman of the Local Government Association.

I am not going to support the amendment tabled by my noble friend Lord Kerslake, as I said last time, because it restricts some of what I would like to see in the Bill, and I cannot support the noble Baroness's amendment because, again, it restricts something that we are doing. Noble Lords may not know this but we are in negotiation with the Government to allow the capital receipts from right-to-buy sales of our own properties to be spent across more than just our own area, and I would like the flexibility of being able to spend the money that we retain across other areas if that is how we, as local government, determine that it would best be used. That could be on the basis of interest-free loans to our friends next door who might not necessarily be in the same housing market area. For that reason I think that it is restrictive and I cannot support it.

It is worth pointing out that we have had this Bill for about a month now and it is better than when we started. If we had it for about two years it would probably be perfect. But we have not got two years and I have already been told to speed up so I am going to speed up a little bit—but not completely.

The Minister confirmed last week that we would be sticking to our manifesto commitment about how we dealt with the capital receipts from these buildings and I said last week that I would probably offer to sell all of the council homes that I have in South Holland on the basis that the capital receipts would be greater than the sum of money that I would need to be able to replace those units and therefore I would be able to put money towards the Government's noble aim of freeing up social mobility and allowing more people to buy their own property and at the same time replace my own housing stock, most of which was built between the 1930s and the 1950s, with brand-new units and therefore save my housing revenue account money.

I am not going to read all this now. I was going to read what the Prime Minister said but noble Lords will all have read our manifesto, which is really good. People voted for it so we are going to stick to it, which is what we said we were going to do. That is why I disagreed with my noble friend Lord Lansley and the noble Baroness, who argued about the tenure. The tenure is not important; the important part of this is that the Government allow councils to keep sufficient capital receipts to build replacement units.

The tenure needs to be decided locally: whether we need rented units or starter homes. In South Holland I would do a mixture because if I build starter homes I will keep all the capital receipts when I sell them. A starter home built for £80,000 and sold for £110,000 will increase the sum of money that I have to build more council houses. Noble Lords probably will not know this but South Holland got back into building council houses in 2006 when the party opposite was in charge of the Government and the noble Lord, Lord Prescott, who is not in his place, issued a challenge to build those homes. So I am pro-council housing but I am also pro-social mobility and the only part of this discussion that I do not like is the fact that the capital receipts are going to go to RSLs. I begrudge giving any of that money away but it is clear that the Government are not going to give way on that, so I am not going to keep banging on about it.

Let us not lose sight of the fact that this is not going to be about us selling high-value homes; it is about a new form of levy being put on councils with council stock. All I want is for us to be able to minimise the size of that levy and maximise the amount of capital we have to spend in our own areas. Neither of the amendments tabled do that. The Government have a clear manifesto commitment to do something about it and I am prepared to challenge them to make sure that at some point, when we do this ping-pong thing that I am not yet familiar with, the Bill comes back even better than it currently is. I am sure the noble Lord, Lord Kerslake, will press his amendment to a Division and I will be going through on the Government's side.

Baroness Hollis of Heigham: My Lords, the substance of the noble Lord's speech, based on his very real experience of South Holland, is that he wants the flexibility, once all of his 1,500 houses are sold, to determine himself whether they become starter homes or homes for social rent—that he determines that, not the Government. That is what this amendment is asking for. Therefore, I hope that he will join us in our Lobby if the noble Lord presses it to the vote.

Lord Porter of Spalding: I have already made it clear that I will not because the amendment goes beyond that and becomes too restrictive because of the way that it is worded. I have made it clear several times that if any amendment restricts the flexibility of a council to operate in the best interests of its own community, I will not support it.

Lord Horam (Con): Perhaps I may add a third Conservative variant to the two that we have already had. The noble Lord, Lord Shipley, absolutely put his finger on the issue that we must not forget in all of

[LORD HORAM]
this, which is social housing for rent. This is the fundamental point, among all the others, on which we have to focus in these amendments.

To illuminate that, perhaps I may give the House some facts, as opposed to words where one is dancing on the head of a pin, as my noble friend Lord Porter said. The Government's own figures for housebuilding in the last financial year show that in 2014-15 in the UK we built 152,440 houses. That is quite a big figure and it goes some way towards the 200,000 which the Government want to reach, so that is good. The bad side is that, of that number, only 2,510 were council houses—an appalling figure in the light of the history of council housing in this country—and, of those, only 1,360 were in England.

Not only that but—this is the whole point of the debate—some of those houses are being sold off under the enhanced right-to-buy provisions that are already in place. As a former London MP, I went round London looking at the houses sold in each London borough and calculated that last year 3,805 council houses were sold off. So we are losing council houses, which are predominantly social houses for rent, in London and no doubt in other places in the country.

The National Audit Office also looked at whether the Government are replacing lost council housing. The Government maintain that they are but unfortunately the NAO questioned their statistical methods and made the point that the Government have to increase social housing for rent by a factor of five to replace that which is currently being lost under the right to buy. Therefore, it seems to me that the amendment of the noble Lord, Lord Kerslake, has considerable merit because it tries to get an element of replacing like for like into the broad mix.

I congratulate the Government on giving a huge boost to housing in this country. Their plans are admirable, and my noble friend Lady Williams has been noticeably listening. But I do think that the amendment of the noble Lord, Lord Kerslake, has greater merit. Even if, in these last few hours, the amendment that he has tabled is not quite right and is considered too restrictive in some respects, as my noble friend Lord Lansley said, surely in the toing and froing between the two Chambers a sensible amendment that deals with this point, which has been discussed at length, can be put down to satisfy all sides of the House.

Lord Kennedy of Southwark: My Lords, I generally welcome the amendments in this group. There has been a good debate but I am disappointed that the Government, having heard today's debate and those during the course of the Bill, are not able to accept the amendments in the names of the noble Baroness, Lady Bakewell, and the noble Lord, Lord Kerslake.

However, Amendment 2, in the name of the noble Baroness, Lady Williams of Trafford, is very welcome. It puts on the face of the Bill that one new affordable home will be provided for each old dwelling that is sold. That is very good and I thank the noble Baroness for it very much.

We on these Benches fully support the amendment in the name of the noble Lord, Lord Kerslake. It would put in the Bill a provision whereby, if a local authority can demonstrate to the satisfaction of the Secretary of State that it needs to provide new social housing locally, it can retain the funds to do that. I do not disagree with the noble Lord, Lord Lansley, about the words "can demonstrate". I think it is for the Secretary of State to make the decision; it is not a matter for the local authority. The amendment certainly gives the Government the power to look at that and, if they are not satisfied, they will not go ahead. So I do not see why the amendment cannot be accepted.

It is disappointing that the discussions over the last few days have not been fruitful. I agree very much with the comments of the noble Lords, Lord Porter and Lord Horam, and I hope that, by supporting this amendment, we can impress upon the Government how strong the feeling is in this House. As the noble Lord, Lord Horam, said, perhaps we can find an amendment during ping-pong next week that all sides can agree on.

5.30 pm

Baroness Williams of Trafford: My Lords, I thank the noble Lord, Lord Kerslake, and the noble Baroness, Lady Bakewell, for their amendments, both of which relate to agreements with local authorities in respect of the delivery of new homes. The powerful points that have been made in your Lordships' House today show just how important this issue is.

I turn first to Amendment 6 from the noble Lord, Lord Kerslake. I am grateful to him for working with me over the past few days on the issue of additional homes. I hope that he will agree that in our discussions we were clear that the agreement process was the best way to ensure that new housing is built using these receipts, giving local authorities the ability to build additional homes to suit their local communities—I press that point quite firmly. As I said earlier and on Report, we intend to give authorities with particular housing needs in their area the opportunity to reach bespoke agreements about the delivery of different types of new homes. Responding to the diverse housing needs in this country is at the heart of the Government's drive for localism. The Government's aim is to support this through agreements, taking into account other normal considerations of funding such as value for money and delivery plans.

Amendment 6 focuses on social housing. This regresses to the discussion that we have been having on developing the agreement process to acknowledge the potential desire for many different types of housing that would best meet local housing need, and it is not in line with the commitments that I made in Committee and on Report.

Amendment 3 from the noble Baroness, Lady Bakewell, would require new housing delivered under these agreements to be within the same local plan area. I understand the concern that the noble Baroness is seeking to address—that new homes should be reasonably local to those that were sold. However, in my view the best way to address this is for local authorities to decide where the new homes should be delivered, as part of the agreement process. This could be within the local authority's boundaries or it could involve

working with a neighbouring authority to deliver homes across boundaries, as my noble friend Lord Lansley says. This enables a local approach to decide where the new homes should be. This co-operation may be important particularly in places where there is less available land, and flexibility is needed for local authorities and partners to deliver the new homes that they need. Through our engagement, local authorities have been very clear that they are looking for this flexibility, and it is important that we do not put an additional barrier in the way.

Rather than restrict flexibility at the local level, the Government want to allow local authorities the opportunity to work with neighbouring authorities to build new homes, as they already do on a number of developments. Many local authorities already own housing outside their own boundaries, and many are working together across areas such as mine in Greater Manchester—where 10 local authorities are working together—or Oxford or Cambridge, as my noble friend Lord Lansley says. As my noble friend Lord Carrington of Fulham said in Committee, the location of new housing should not be imposed in the Bill. The amendment would be unnecessarily restrictive because it predetermines the type and tenure of the housing, as my noble friend Lord Lansley says, and it removes the ability of local authorities to work together to find the most appropriate solution for their area.

The noble Baroness, Lady Bakewell, raised the issue of receipts from the sale of high-value assets, and she quoted from our proceedings on Report; I think that she was speaking about the high-income social tenants policy. On Report, I recall making it clear that receipts from the sale of higher-value vacant houses will be used only to fund voluntary right to buy and the provision of new homes. Where a local authority enters into an agreement with the Secretary of State to retain a portion of the receipts to build new homes, where the authority does not enter into an agreement, those receipts will be returned to the Government and will be used to build new homes. I hope that clarifies things for noble Lords this afternoon.

We need to build new homes in this country, and these amendments would limit the ability of the Government to ensure that they are delivered. Therefore, I hope that the noble Baroness and the noble Lord will not press their amendments.

Baroness Bakewell of Hardington Mandeville: My Lords, I thank the Minister for her comprehensive response and thank other noble Lords who took part in this debate. I am aware that local plan areas are not necessarily as neat and tidy in other areas of the country as they appear to be in my area. I have also been influenced by my noble friend Lord Shipley, who tells me that in Newcastle the division between two local plan areas runs down the middle of one street. I can imagine that this causes a great deal of hassle and complication for those involved. I am committed to local authorities having flexibility on all housing matters and I am reassured by the Minister's comments. On that basis, I beg leave to withdraw Amendment 3.

Amendment 3 (to Amendment 2) withdrawn.

Amendment 2 agreed.

Amendments 4 and 5

Moved by ***Baroness Williams of Trafford***

4: Clause 73, page 33, line 20, leave out "require" and insert "include terms and conditions requiring"

5: Clause 73, page 33, line 24, after "responsible" insert "by terms and conditions"

Amendments 4 and 5 agreed.

Amendment 6

Moved by ***Lord Kerslake***

6: Clause 73, page 33, line 25, at end insert —

"( ) If a local housing authority so wishes, and that authority can demonstrate, whether by reference to its local housing plan or otherwise, that there is a need in its area for social housing of the kind that it proposes to build, the Secretary of State shall enter into an agreement with that authority whereby it shall retain such part of the payment as may be required to fund the provision of a new dwelling to be let as social housing on terms (as to tenure, rent or otherwise) which are similar to those on which the old dwelling was let."

Lord Kerslake: My Lords, I am grateful for the wide-ranging contributions on this amendment, which have been heartfelt and informed. I am also grateful to the Minister for her response. There are many areas where we are in complete agreement, such as the importance of one for one and the need for local arrangements to suit local need.

But there is one crucial issue on which we are not in agreement, which is the need for a safeguard within the Bill for a local authority that seeks to replace a social rented property that has been sold with a new social rented property. The noble Lord, Lord Horam, captured the point perfectly. It absolutely does not impair flexibility, because it will be where the local authority so wishes and where a case can be made by the local authority. So this would be a sensible and important safeguard in the Bill to address a deep, wide-ranging concern across the whole of local government and local communities. In the circumstances, notwithstanding huge efforts and my support for my noble friend Lord Best's arguments about compromise, we have failed to find the right formula here this time. Regretfully, therefore, I would like to test the opinion of the House on this issue.

5.37 pm

Division on Amendment 6

Contents 275; Not-Contents 197.

Amendment 6 agreed.

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5.51 pm

Amendment 7

Moved by ***Baroness Williams of Trafford***

7: Clause 73, page 33, line 26, after "subsection" insert "(3) or"

Amendment 7 agreed.

Clause 80: Meaning of "high income" etc

Amendment 8

Moved by ***Lord Beecham***

8: Clause 80, page 36, line 28, at end insert—

"( ) make provision for the level of household income, for the purposes of defining "high income", to be increased every three years to reflect any increase in the consumer price index."

Lord Beecham: My Lords—

Lord Kennedy of Southwark: Agreed.

Lord Beecham: My noble friend is anticipating the result, I hope correctly. This amendment deals with one aspect of the pay-to-stay provisions which have been very controversial. I shall reiterate briefly that the rationale for the provisions is based on a myth; namely, that council housing in particular is subsidised and therefore people with what is regarded as a high income are being subsidised by the taxpayer. In fact, of course, the housing revenue accounts of councils are not subsidised. Councils are obliged to balance the books and do so through the rent system. Paradoxically, however, what we may find under the pay-to-stay provisions is that the so-called high-income residents will be subsidising the taxpayer, rather than the other way round, because the money raised from the increase to be applied will go to the Treasury.

In a useful discussion with the Secretary of State and the Minister, I suggested that at the very least there should be some indexation of the income levels to reflect the increases which one anticipates will continue to take place in the consumer prices index. The amendment seeks to provide that this could take place on the basis of a triennial review to update the levels by the rise, if there is one, in CPI. That seems reasonable and the Secretary of State thought so too. I had hoped that the Government might come forward with an amendment, but they have not done so. I assume, however, that their view has not changed and I trust that the noble Baroness will—

Lord Lansley: I thank the noble Lord for giving way. I am not sure why he has chosen the consumer prices index rather than the retail prices index, since the difference between the two is that the retail prices index reflects housing costs.

Lord Beecham: I chose the CPI because it is generally the Government's preferred option. I thought it might be pushing the boat out a little too far to go for RPI. However, if the amendment is carried, I hope very much that the noble Lord will have a word with his colleagues in the other place and improve on it in the way he suggests. I would be perfectly happy with that outcome and I suspect he is more likely to persuade them than I am. I beg to move the amendment as it stands at this point.

Baroness Lister of Burtersett (Lab): My Lords, I support Amendment 8 because I have still not been given a satisfactory explanation for why the thresholds have been reduced from those that were used in the voluntary scheme. There is no evidence base for that. However, my main reason for speaking now is to seek clarification on a point raised by the Minister on Report and to reiterate a concern that I have raised all along.

Twice on Report, at cols. 470 and 472 on 18 April, the Minister said that tax credits, child benefit and disability living allowance would not be taken into account as income. That is welcome, but as she knows, DLA is gradually being replaced by the personal independence payment and only those who are currently of retirement age will continue to receive DLA in the long term. Can she confirm that PIP will also be excluded, because otherwise the commitment to disregard DLA is not worth very much? She also made it clear that other exemptions would be made in the regulations and kindly referred to the case I made with regard to those with caring responsibilities and people who are subject to domestic violence. Is she yet able to say, first, whether carer's allowance will be exempt under the regulations and, secondly, what provision will be made to protect those whose accommodation has been adapted, either for reasons of accessibility or under the domestic violence sanctuary scheme?

Baroness Williams of Trafford: My Lords, I thank the noble Lord for the amendment and, if I may, I will turn to the point made by the noble Baroness, Lady Lister, about the commitments I made on Report. We have confirmed that a taper will be in place. Our preferred approach is for a taper of 20%, although clearly noble Lords disagreed and have decided to include a taper of 10%. I do not want to say any more about that today, but I am sure we will return to the operation of the taper in due course.

I said that our preferred income thresholds were £31,000 nationally and £40,000 in London. Again, noble Lords disagreed and this is another area where we will need to agree to disagree at this point in the Bill. I can confirm that the definition of income for the purposes of the policy will be taxable income, which means that certain state benefits would not count when a household is determining what income to declare. DLA and tax credits will not need to be included. The definition of a household will be the tenant, joint tenants and their spouses, partners and civil partners. This will ensure that non-dependent children living at home who are not a joint tenant will not have their income counted for the purposes of determining the rent payable. Finally, I confirmed that anyone in receipt of housing benefit and universal credit will not pay any additional rent. This is important as it will protect those most in need and ensure that state resources are not used to fund the increase in rent.

The noble Baroness asked whether PIP would be exempt, and I can confirm that it will be. She also talked about victims of domestic violence, to whom I am very committed. That would be one of the considerations that I have committed to dealing with in regulations. I hope that that gives her comfort about my intentions.

Baroness Lister of Burtersett: I am sorry to interrupt, but I mentioned two other issues: carer's allowance and adaptations made for reasons of accessibility. What will happen to someone who may feel that they have to move?

Baroness Williams of Trafford: I think I said at an earlier stage that I want to work through all these issues in regulations to ensure that we do not miss anything out as the result of unintended consequences. There are groups of people that we will want to include, and I commit to working with the noble Baroness on those exclusions in due course.

I turn now to the proposal for an increase in the income thresholds based on CPI. I have previously committed to ensuring that the policy is developed fairly and that in particular it protects those on the national living wage. Uprating the thresholds by the CPI may help us to achieve that aim as it would ensure that the thresholds rise as the living wage does. Therefore, I ask the noble Lord to withdraw the amendment as it stands because that will ensure that further work can go on and all the options on this issue are undertaken.

6 pm

Baroness Hollis of Heigham: I am left unclear. Is the Minister saying on the record that she accepts the substance of the amendment but wishes to ensure that the drafting of an appropriate form will come back via the other place?

Baroness Williams of Trafford: What I am saying is that noble Lords and I have talked about several things in the round, including CPI, and I would like to work further with them on those other issues as we work towards a satisfactory outcome on this area of policy.

Baroness Hollis of Heigham: I am sorry, but I still do not know what the Minister's answer is.

Lord Beecham: I am sorry, but I am at a loss to understand quite where the Minister stands on this. It is a perfectly simple proposition. She seems sympathetic to it, as indeed the Secretary of State was in our discussions, yet no conclusion seems to have been reached. I think we ought to send a signal to the other end—possibly, with the help of the noble Lord, Lord Lansley, even improving the provision when it gets there. We ought to make our position clear, and I wish to test the opinion of the House.

6.02 pm

Division on Amendment 8

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Amendment 8 agreed.

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6.14 pm

Clause 115: Interpretation of Chapter

Amendment 9

Moved by ***Baroness Williams of Trafford***

9: Clause 115, page 53, line 39, leave out "means the objectives in" and insert "is to be read in accordance with"

Amendment 9 agreed.

Clause 150: Permission in principle for development of land

Amendment 10

Moved by ***Baroness Williams of Trafford***

10: Clause 150, page 77, line 27, leave out from beginning to end of line 6 on page 78 and insert—

"(4) Permission in principle granted by a development order takes effect—

(a) when the qualifying document takes effect, if the land in question is allocated for development in the document at that time;

(b) otherwise, when the qualifying document is revised so that the land in question is allocated for development.

But a development order may provide that, if the local planning authority so directs, permission in principle does not take effect until the date specified by the local planning authority in the direction.

(5) For the purposes of subsection (4)(a)—

(a) a register maintained in pursuance of regulations under section 14A of the 2004 Act takes effect when it is first published;

(b) a development plan document takes effect when it is adopted or approved under Part 2 of the 2004 Act;

(c) a neighbourhood development plan takes effect when it is made by the local planning authority.

(6) Permission in principle granted by a development order is not brought to an end by the qualifying document ceasing to have effect or being revised.

(7) Permission in principle granted by a development order ceases to have effect on the expiration of—

(a) five years beginning with the date on which it takes effect; or

(b) such other period (whether longer or shorter) beginning with that date as the local planning authority may direct.

(8) Permission in principle granted by a local planning authority ceases to have effect on the expiration of—

(a) three years beginning with the date on which it takes effect; or

(b) such other period (whether longer or shorter) beginning with that date as the local planning authority may direct.

(9) The Secretary of State may by regulations amend subsection (7)(a) or (8)(a) by substituting a shorter period for the period for the time being specified there.

(10) A development order—

(a) may make provision in relation to an application for planning permission for development of land in respect of which permission in principle has been granted;

(b) may require the local planning authority to prepare, maintain and publish a register containing prescribed information as to permissions in principle granted by a development order.

(11) In exercising a power of direction conferred by virtue of subsection (4), or conferred by subsection (7)(b) or (8)(b), a local planning authority must have regard to the provisions of the development plan and any other material considerations.

(12) In exercising any other function exercisable by virtue of this section, or in exercising any function in relation to an application for planning permission for development of land in respect of which permission in principle has been granted, a local planning authority must have regard to any guidance issued by the Secretary of State.

(13) In relation to an application for permission in principle which under any provision of this Part is made to, or determined by, the Secretary of State instead of the local planning authority, a reference in subsection (1) or (8) to a local planning authority has effect (as necessary) as a reference to the Secretary of State.""

Baroness Williams of Trafford: My Lords, during discussion on this measure on Report, I agreed that I would reflect on the comments of the noble Lord, Lord Beecham, as well as those made by the Delegated Powers and Regulatory Reform Committee in its 28th report. I am pleased to return with our new government Amendments 10 and 11 that set how long permission in principle can be granted for on the face of the Bill. Unless local authorities choose to vary these locally, these are now five years in the case of permission in principle granted through locally prepared plans and registers and three years for permission in principle granted on application to a local authority.

The amendment will also enable the Government to reduce these timeframes in the future through secondary legislation made by affirmative procedure. This is an approach suggested by the DPRRC and I hope noble Lords agree that it will strike a good balance between allowing some flexibility to change the timings for permission in principle while still ensuring appropriate parliamentary scrutiny.

In addition, Amendment 10 returns with some features of our previous government amendment. It still enables local authorities to vary the start date of permission in principle granted through plans and registers to give great flexibility to better align with the planned delivery of sites. The amendment still also extends our statutory guidance power to enable the Secretary of State to issue guidance on how local authorities should handle the technical details consent process. This will help make all aspects of the permission in principle system accessible to all users. I hope noble Lords will agree that this amendment demonstrates that we have listened to views raised on the timeframes of permission in principle.

I place on record my thanks to the noble Lords, Lord Kennedy and Lord Beecham, for working with me on a draft of this amendment. I hope that they are now supportive of the approach we are taking. I therefore beg to move.

Amendment 10 agreed.

Amendment 11

Moved by ***Baroness Williams of Trafford***

11: Clause 150, page 78, line 34, at end insert—

"( ) In section 333 of that Act (regulations and orders), after subsection (3) insert—

"(3ZA) No regulations may be made under section 59A(9) unless a draft of the instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament.""

Amendment 11 agreed.

Clause 154: Planning freedoms: right for local areas to request alterations to planning system

Amendment 12

Moved by ***Baroness Williams of Trafford***

12: Clause 154, page 81, line 11, after "area" insert "in England"

Amendment 12 agreed.

Clause 181: Confirmation by inspector

Amendment 13

Moved by ***Baroness Williams of Trafford***

13: Clause 181, page 97, line 38, leave out subsection (4)

Amendment 13 agreed.

Clause 196: Interest on advance payments of compensation

Amendment 14

Moved by ***Baroness Williams of Trafford***

14: Clause 196, page 108, line 2, leave out "end of the period mentioned in section 52(4)" and insert "last day on which payment could have been made in accordance with section 52(4) or (4ZA)"

Amendment 14 agreed.

Clause 214: Regulations: general

Amendment 15

Moved by ***Baroness Williams of Trafford***

15: Clause 214, page 121, line 1, after "section" insert "68(8),"

Amendment 15 agreed.

Schedule 7: Secure tenancies etc: phasing out of tenancies for life

Amendment 16

Moved by ***Baroness Evans of Bowes Park***

16: Schedule 7, page 149, line 35, at end insert—

"(dd) introductory tenancies of dwellings in England granted on or after the day on which paragraph 4 of Schedule 7 to the Housing and Planning Act 2016 comes fully into force;"

Baroness Evans of Bowes Park (Con): My Lords, we now turn to Amendments 16 to 32, which respond to commitments I gave on Report to bring forward amendments that would enable local authorities to grant longer-term tenancies in certain circumstances.

Before speaking to the amendments, it may be helpful to remind noble Lords that the Government's aim with these provisions is to assist local authorities to get the most out of their social housing and to help the 1.24 million households on housing waiting lists by ensuring that it is firmly focused on those who need it the most for as long as they need it. That is why we want to ensure that local authorities carry out regular reviews of a tenant's household circumstances so that tenants can be moved into more appropriate housing as their needs change over time, or supported into home ownership where this is a viable option. However, we recognise that there may be situations in which it makes sense to offer longer-term tenancies.

These amendments will give local authorities discretion to offer tenancies of up to 10 years in length, and potentially longer for families with children, to which I shall return. The amendments include a power for the Government to issue statutory guidance to which local authorities must have regard. This means there will be clear expectations on what the local authority should consider when making these decisions, and they can be held to account if they fail to follow the guidance. We will use the guidance to set out the circumstances in which we expect local authorities to issue shorter-term tenancies and the circumstances in which they may exercise their discretion to offer longer-term tenancies. This will enable councils to consider appropriate provision for households where there is someone with a disability or a long-term illness, older people, and those who provide long-term care for a person in this situation. This will help local authorities to get the best use out of accommodation which has been adapted and give those with longer-term needs a sense of stability. We will work with local authorities in developing the guidance and we will ensure that noble Lords have an opportunity to consider it before it is finalised.

As I have said, the amendments also enable local authorities to grant tenancies to cover the period that a child is in school. We have listened carefully to the debate on this issue. We absolutely agree that it is important that children are brought up in a stable environment and recognise that frequent moves can be disruptive to a child's education. To keep this relatively simple for local authorities, the amendment provides that where a local authority is notified that a child lives in the household, they may provide a tenancy with a fixed term that lasts until the child turns 19. This will allow local authorities to ensure that the relevant child has completed secondary education.

The amendments also make consequential changes to allow landlords to continue to operate an introductory tenancy regime in relation to longer fixed-term tenancies and make necessary changes to the legislation governing demoted tenancies and family intervention tenancies to deliver the policy.

We have listened carefully to the debate and hope that the changes I have set out will be welcomed. With this, I beg to move.

Lord Shipley: I welcome what the Minister has said. It is an improvement on the Bill when first published. I repeat that I think it is a matter for the local housing authority to have the discretion to make decisions—I suppose that the Localism Act, as it stands, is probably adequate. However, given that the Government are keen to see changes, I acknowledge that the amendments here are a marked improvement on the original Bill, because of the extension from five to 10 years and, of course, longer where there are children and young people under the age of 19. I thank the Minister for the flexibility that the Government are showing. Section 86A of Schedule 7 makes it clear that this change does not impact current secure tenancies and that a new secure tenancy of a dwelling house can be offered to a tenant at the end of the current tenancy, so in that respect the power to grant a further secure tenancy lies with the local authority. Although I would have preferred no change at all, what we have now is better than what we had a few weeks ago and I thank the Minister for that.

Baroness Lister of Burtersett: My Lords, I welcome the amendment and what the noble Baroness has said. I have two brief but related points. First, on reading *Hansard*, I realised that I never formally said thank you on the record for the concession that was made on Report with regard to those who give up a secure tenancy because of domestic violence—I am pleased to do so now. I also suggest that, when the work is done to put this into regulations, the department works with organisations, such as Women's Aid and, particularly, Solace Women's Aid, whose research I drew on heavily in drafting my amendment. I think that they can give insight into how this works on the ground.

Secondly—I am sorry to sound like a broken record—I have still not received the frequently promised equality statement on this clause, despite the noble Baroness's promise in col. 512 of *Hansard* to come back to me on it as soon as possible. I raise this now only because it raises questions about the status of equality statements. It suggests that they are being treated as an add-on rather than integral to the policy process, as they are supposed to be. I suggest that the department may want to reflect on how it treats equality statements.

Lord Porter of Spalding: My Lords, I thank the Minister for taking on board the concerns that we raised on Report and I am pleased to see that the need for security for families has been recognised, to a certain degree. I must admit to still being a little disappointed as I am not sure what the point is of a 19-year tenancy. If a child is one and can stay until they are 19, and then the family does what families do and has a second child, does it mean that a new 19-year period starts? When they then have the inevitable third child—as people are surely prone to, if the average is 2.2—does a successive 19-year period start, so that the people will probably live there for around 30 years anyway before a council will look to remove them? On that basis, I am not sure that we will add to the additional supply of houses. A fixed-term period that is not for life when a family lives there is silly, as the family will not invest in the house, the garden or the community. Although the Government have moved a heck of a long way, I am still disappointed that we have not done what we should have done, which is to exclude families from this altogether.

Lord Kennedy of Southwark: My Lords, I thank the noble Baroness for her comments and for moving this amendment. As other noble Lords have said, this has come a long way and we welcome that, but in some ways it has not gone far enough. I thank the Government and noble Baroness for what she has proposed today. It would be helpful when the noble Baroness responds if she can repeat her remarks about disabled people and elderly people. I think I was distracted and did not quite hear what she said.

Baroness Evans of Bowes Park: I said that this would enable councils to consider appropriate provision for households where there is someone with a disability or a long-term illness, older people and those who provide long-term care for a person in this situation.

I barely dare say to the noble Baroness, Lady Lister, that I understand the equality impact assessment will be available in due course. I hope that she does not have to return and quote the promise again when we come back to this. We will reflect on her comments. As I say, I am sorry—that is all I can say at this stage.

Amendment 16 agreed.

Amendments 17 to 32

Moved by ***Baroness Williams of Trafford***

17: Schedule 7, page 150, line 1, leave out "place" and insert "places"

18: Schedule 7, page 150, line 1, at end insert—

""""introductory tenancy" has the same meaning as in Chapter 1 of Part 5 of the Housing Act 1996;""

19: Schedule 7, page 150, line 12, leave out "5" and insert "10"

20: Schedule 7, page 150, leave out line 16 and insert—

"(b) no longer than the permitted maximum length."

21: Schedule 7, page 150, line 16, at end insert—

"(1A) The permitted maximum length is 10 years, unless subsection (1B) applies.

(1B) If the person granting the tenancy has been notified in writing that a child aged under 9 will live in the dwelling-house, the permitted maximum length is the period—

(a) beginning with the day on which the tenancy is granted, and

(b) ending with the day on which the child will reach the age of 19."

22: Schedule 7, page 150, line 18, at end insert—

"( ) In deciding what length of tenancy to grant in a case to which this section applies a person must have regard to any guidance given by the Secretary of State."

23: Schedule 7, page 159, line 2, leave out "less than 2 or more than 5 years" and insert "—

(a) less than 2 years, or

(b) more than the permitted maximum length."

24: Schedule 7, page 159, line 2, at end insert—

"(2BA) The permitted maximum length is 10 years, unless sub-paragraph (2BB) applies.

(2BB) If the landlord has been notified in writing that a child aged under 9 will live in the dwelling-house, the permitted maximum length is the period—

(a) beginning with the day on which the tenancy becomes a secure tenancy, and

(b) ending with the day on which the child will reach the age of 19.

(2BC) In deciding what length to specify in a notice under sub-paragraph (2A)(a) the landlord must have regard to any guidance given by the Secretary of State."

25: Schedule 7, page 159, line 8, at end insert—

"Landlord and Tenant Act 1985 (c. 70)

17A(1) Section 13 of the Landlord and Tenant Act 1985 is amended as follows.

_(2) After subsection (1A) insert—

"(1AB) Section 11 also applies to a lease of a dwelling-house in England which is an introductory tenancy for a fixed term of seven years or more granted on or after the day on which paragraph 4 of Schedule 7 to the Housing and Planning Act 2016 comes fully into force."

_(3) In subsection (1B)—

(a) for "In subsection (1A)" substitute "In this section", and

(b) after the definition of "assured tenancy" insert—

""introductory tenancy" has the same meaning as in Chapter 1 of Part 5 of the Housing Act 1996;"."

26: Schedule 7, page 159, leave out line 41 and insert—

"(b) no longer than the permitted maximum length."

27: Schedule 7, page 159, line 41, at end insert—

"(1A) The permitted maximum length is 10 years, unless subsection (1B) applies.

(1B) If the person entering into the tenancy has been notified in writing that a child aged under 9 will live in the dwelling-house, the permitted maximum length is the period—

(a) beginning with the day on which the tenancy is entered into, and

(b) ending with the day on which the child will reach the age of 19."

28: Schedule 7, page 160, line 3, at end insert—

"( ) In deciding what length of tenancy to enter into in a case to which subsection (1) applies, the local housing authority or housing action trust must have regard to any guidance given by the Secretary of State."

29: Schedule 7, page 162, line 20, leave out "more than five years" and insert "longer than the permitted maximum length"

30: Schedule 7, page 162, line 21, at end insert—

"(3B) The permitted maximum length is 10 years, unless subsection (3C) applies.

(3C) If the landlord has been notified in writing that a child aged under 9 will live in the dwelling-house, the permitted maximum length is the period—

(a) beginning with the day on which the tenancy becomes a secure tenancy, and

(b) ending with the day on which the child will reach the age of 19.

(3D) In deciding what length to specify in a notice under paragraph (3)(b) the landlord must have regard to any guidance given by the Secretary of State."

31: Schedule 7, page 162, line 40, leave out "the definition of "flexible tenancy" in subsection (1)," and insert "in subsection (1)—

(a) in the definition of "flexible tenancy","

32: Schedule 7, page 162, line 42, at end insert—

"(b) in the definition of "relevant social housing tenancy", after paragraph (a) (but before the "or" at the end) insert—

[Baroness Williams of Trafford]

"(a) a secure tenancy of a dwelling-house in England granted on or after the day on which paragraph 4 of Schedule 7 to the Housing and Planning Act 2016 comes fully into force,

"(ab) an introductory tenancy of a dwelling-house in England granted on or after the day on which paragraph 4 of Schedule 7 to the Housing and Planning Act 2016 comes fully into force,";

(c) at the appropriate places insert—

""introductory tenancy" has the same meaning as in Chapter 1 of Part 5 of the Housing Act 1996;";

""secure tenancy" has the meaning given by section 79 of the Housing Act 1985;"."

Amendments 17 to 32 agreed.

6.27 pm

Motion

Moved by ***Baroness Williams of Trafford***

That the Bill do now pass.

Baroness Williams of Trafford: My Lords, I place on record my thanks to my noble friends Lord Younger, Lady Evans and Lord Bridges. It has not been the shortest or the least complex of Bills and I have greatly appreciated their help. I have also greatly appreciated the help and good humour—well, not necessarily the help but certainly the good humour—of the noble Lords, Lord Beecham and Lord Kennedy, the noble Baroness, Lady Bakewell, and indeed other noble Lords who are not in their places at this moment. I also thank noble Lords for bearing with us on the sheer number of amendments that we have dealt with, which have seemed so many at some points that we have almost lost track—excuse me, my Lords, I think I am suddenly losing my voice at a terrible time. I also pay tribute to the work of my officials and parliamentary counsel, many of whom have become known to noble Lords during the passage of this Bill.

I fear that this is not the last time that I will appear at this Dispatch Box on this subject, but I hope that the discussions in the other place will be on the whole as amicable as those in this House have been. On that note, I beg to move.

Viscount Younger of Leckie: My Lords, just when you thought it was nearly over, I want to return to the issue raised by the noble Lord, Lord Campbell-Savours, about the application of amendments discussed earlier. He asked questions about the definition of a letting agent and the difference between someone who works for a letting agent and a member of its management. Clause 53 provides that a letting agent is a person who engages in letting agency work but qualifies that definition by stating that a person who engages in letting agency work in the course of their employment, under a contract of employment, is not to be regarded as a letting agent. This distinction means that someone who simply works for a letting agent is treated differently from someone who owns the business or is a director, company secretary or other similar officer of that company.

Clause 54 provides that a property manager is a person who engages in English property management work. The intention has always been to exclude ordinary employees of a property manager from that definition, for the same reason that we excluded ordinary employees of a letting agent. That is why we have tabled an amendment at Third Reading which excludes ordinary employees of a property manager from the definition. The amendment, however, is not intended to capture a director, company secretary or other significant employee of the company. For example, if a property management company faces a banning order, the directors could also be banned if they had committed the banning offence, but we would not want to ban every employee who had simply been acting under their contract of employment. I hope that helps to make the distinction.

Lord Campbell-Savours: That is not what the amendment says. It does not draw a distinction between the two classes of employee that the noble Viscount has referred to. He is drawing a distinction between directors and what he calls normal employees, and it is not clear from the amendment that that is what he is doing there.

Viscount Younger of Leckie: I was trying to make that clear distinction between those who own the business and those who are employees, and the difference between those under a contract of employment and those who own the business. As I said earlier, it would help if I left the matter here and wrote to the noble Lord.

Lord Campbell-Savours: I am very sorry, but both have contracts of employment. That is my point.

Baroness Bakewell of Hardington Mandeville: My Lords, I also thank the Minister for her enormous patience during the passage of this labyrinthine and complicated Bill. The Minister and her colleagues on the Government Front Bench have demonstrated great stamina on what has been a bit of a marathon. I and my colleagues are grateful to her for the many briefings that she has organised to assist us in getting to grips with the Bill and for attempting to meet us half way on what are major issues for us. I thank also the Labour Front Bench—the noble Lords, Lord Kennedy and Lord Beecham—and on the Cross Bench the noble Lords, Lord Best, Lord Kerslake and Lord Cameron, for their very positive approach towards co-operating with us on the Liberal Democrat Benches to ensure that proper in-depth scrutiny took place throughout the passage of the Bill.

Finally, but by no means least, I thank my colleagues on the Benches beside and behind me for their unfailing support over two months: my noble friends Lord Shipley, Lord Foster, Lord Stoneham, Lord Tope, Lord Palmer of Childs Hill, Lord Taylor of Goss Moor, Lord Teverson, Lord Greaves, Lady Parminter, Lady Grender and Lady Doocey, and in particular my noble friend Lady Maddock, who has sat with me for many hours into the late evenings. Without their in-depth involvement in taking on various sections of the Bill, my role would have been extremely arduous; I am grateful to them for sharing and lifting the burden.

Lord Kennedy of Southwark: My Lords, as we come to the end of the Bill, I will not start a debate on the regulations, which we have discussed many times.

I have some concluding remarks. I start by thanking the Bill team, and all the officials who have worked on the Bill. They have been willing to engage with us at all times, and we are grateful for that. I pay tribute also to Ian Parker from the opposition office for all his work on the Bill, and especially to Molly Critchley from the opposition office, who has helped, directed and guided me and my noble friend Lord Beecham and other noble Lords on the Opposition Benches. She has proved knowledgeable, technically skilled and valuable to our debates as we hold the Government to account on this Bill.

I thank, too, noble Lords from all sides of the House, certainly the noble Baroness, Lady Bakewell, and the noble Lords, Lord Best, Lord Kerslake and Lord Cameron, and many noble Lords on the Government Benches as well, including the noble Lords, Lord Porter, Lord True and Lord Lansley. I have enjoyed our debates. I think that we have all helped to improve the Bill. It is fair to say that at many times local government has spoken with one voice. It is also clear from the contributions of noble Lords that there is great experience here and that we all care deeply about housing. We may not often agree what needs to be done, but that is another matter. We are all concerned about the housing crisis and that it is dealt with.

I pay tribute also to the noble Viscount, Lord Younger of Leckie, and the noble Baroness, Lady Evans of Bowes Park. They engaged willingly with the House and dealt with all noble Lords in a courteous manner.

My penultimate remarks concern the noble Baroness, Lady Williams of Trafford. I have sometimes wondered what she had done to be given such a controversial Bill—an ill-prepared Bill—and to have the poise to deal with all sorts of points from around the House, often on her own. She has done so with great skill and courtesy; I have appreciated that very much, as has the whole House.

Although the Bill is in better shape than when it arrived in your Lordships' House, it will not particularly help to tackle the housing crisis. In some respects it may actually make things worse. We may get back to the Bill next week in ping-pong fashion but I hope we do not—I hope that the Government accept all the amendments from your Lordships' House. We shall wait and see about that. What is certain, however, is that we have not seen the last of those regulations. We have not seen them at all yet, but I can guarantee that we will have a return performance by the same group of noble Lords in the autumn. We will discuss the regulations and how they should have been here now, and maybe one or two Motions from the Opposition. I do not know what we will see, but I thank everybody most sincerely.

Baroness Gardner of Parkes: It is quite unusual for anyone to say anything from this side at this stage, but I support the remark about the regulations and would like to say how good the noble Baroness, Lady Williams, and her team have been. It has been a superhuman task. The Bill came to us in a very difficult form and I have never seen a Minister do better than the Minister has done on this Bill.

Bill passed and returned to the Commons with amendments.

Armed Forces Bill

Report

6.36 pm

Amendment 1

Moved by ***Lord Thomas of Gresford***

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

"Majority verdicts

For section 160 of the Armed Forces Act 2006 (decisions of Court Martial: finding and sentence) substitute—

"Majority verdicts

(1) The finding of the Court Martial need not be unanimous if—

(a) in a case where there are not less than seven members of the court, five of them agree on the finding;

(b) in a case where there are five members of the court, four of them agree on the finding;

(c) in a case where there are three members of the court, two of them agree on the finding.

(2) The judge advocate shall not vote on the finding.

(3) Where the finding of the Court Martial is guilty, the judge advocate shall not accept the finding unless the President has stated in open court the number who respectively agreed to and dissented from the finding.

(4) The judge advocate shall not accept a non-unanimous finding under subsection (1) unless it appears to the judge advocate that the members of the Court Martial have had such a period of time for deliberation as the judge advocate thinks reasonable having regard to the nature and complexity of the case.""

Lord Thomas of Gresford (LD): My Lords, the issue raised by Amendments 1 and 2 is whether a serving member of the Armed Forces is a citizen in uniform and entitled to the same protection of his rights and freedoms as any other citizen, or indeed as a member of any other disciplined service, such as the police, or whether, as a matter of policy, he and his family should, if they come with the character of persons subject to service law, be subject to a fundamentally different judicial procedure in respect not just of breaches of the disciplines inherent in his trade or calling, but, under Section 42 of the Armed Forces Act 2006, of the entire body of criminal law, including the most serious charges.

The system of jury trial probably predates the Norman Conquest. It involves the trial of serious criminal charges by 12 members of the public. It has been like that for the best part of 1,000 years. From at least 1367, unanimity was required, whether the verdict was guilty or not guilty. Six hundred years later, by Section 13 of the Criminal Justice Act 1967, majority verdicts were allowed in the ordinary criminal courts. With the consent of the trial judge, after a period of appropriate deliberation and directions, a verdict by a majority may be received. Where there is a finding of guilt, the vote has to be stated in open court. Where there is an acquittal, no majority is stated.

The criminal standard of proof is guilt beyond reasonable doubt: the jury has to be sure. Sir Patrick Devlin said, in his famous book *Trial by Jury*:

"The criminal verdict is premised upon the absence of reasonable doubt. If there were a dissenting minority of a third or a quarter

[Lord Thomas of Gresford]

that would of itself suggest to the popular mind the existence of a reasonable doubt and might impair public confidence in the criminal verdict".

That was in 1952, when majority verdicts might suggest that a reasonable doubt existed.

Public confidence is everything. I do not propose to repeat everything that I said at Second Reading and in Committee but it is obvious, by the series of media storms that we have endured and the public demonstrations that have taken place, that the verdict of a court martial does not command public confidence. To draw a very topical parallel, it is inconceivable that if police officers involved in the Hillsborough disaster were to be tried for gross negligence and manslaughter by a panel of senior police officers, the outcome would be acceptable.

The system of courts martial has its origins in a statute of Edward I in 1279, which enacted that, by virtue of the royal prerogative, the sovereign of England has the right to command, and thereby the power to regulate and discipline, the military forces of the nation. The Court of the Constable and Marshal administered military law, although the office of constable was effectively abolished when Henry VIII beheaded the then Lord High Constable—so the right to try military offences devolved to an ad hoc committee of officers, known first as Marshal Courts and then as courts martial. The authority of courts martial later derived from a succession of Mutiny Acts passed between 1678 and 1878, then subsequently by the Army Act of 1881 and its successors, which will shortly include this Bill. So the two systems of civil and military law had quite different origins and it is only very slowly that they have converged—but converged much more rapidly since the European Court of Human Rights delivered a devastating verdict upon the system back in about 1989.

Every move has met with resistance from the military and the civil servants advising them. For example, I read with interest today a debate of 1926 in the other place where Ernest Thurtle, the Member of Parliament for Shoreditch and the son-in-law of George Lansbury—later leader of the Labour Party—sought the abolition of the death penalty for cowardice or desertion. The same old familiar arguments were produced: that it was bad for discipline and would reduce the determination of soldiers to fight if the death penalty for cowardice were abolished. The Government of the day had no answer to the argument that the Australians were under no such constraint when their bravery and discipline at Gallipoli and elsewhere could not be doubted. That Bill eventually got through in 1930 under a Labour Government but was rejected by the House of Lords, notably led by Lord Allenby and other retired generals. The House of Commons had to insist upon it for it to go through.

My Amendment 1 seeks to replace the current Section 160 of the Armed Forces Act 2006 to take another step towards convergence. In the third edition of *Rant on the Court Martial and Service Law,* edited by the current Judge Advocate-General, Judge Blackett, paragraph 5.126 states:

"An undisclosed simple majority decision in a serious case where the defendant is at risk of a significant custodial sentence might be perceived as being inherently unsafe, since the outcome rests on a knife edge … This provision is a legacy from the past, which represents a significant weakness in the Service justice system and a striking contrast with the much more secure arrangements in the Crown Court. When there is legislative opportunity the law should be changed",

in a court martial, said the Judge Advocate-General,

"to require either a unanimous verdict, as, for example, is the case in the Court Martial system in other Commonwealth countries such as New Zealand or at least a significant and disclosed majority".

6.45 pm

When I put forward this amendment in Committee, the Minister argued as follows. First, he said that, "The great advantage" of a simple majority,

"is that it avoids a 'hung jury': there is no need for a retrial".—[*Official Report*, 1/3/16; col. GC 51.]

That puts the cost and expense of a retrial ahead of justice—and is a court martial swift and final? Judge Blackett said last week, in the Ellement case:

"This case should have been heard five years ago".

Talking to the family, he said:

"I apologise to you that it has taken so long to resolve this issue. The extreme delay … prejudiced the defendants, Anne-Marie and justice generally".

That is a current case with five years' delay; and there are other cases in the pipeline where there are long delays from the date of the alleged offence.

Secondly, the Minister said in Committee that,

"there are no lingering doubts outside the court",

if it is not,

"apparent whether the verdict is unanimous or by majority"—

I repeat, "no lingering doubts". But my amendment expressly provides that only when there is a guilty verdict would there be an announcement that it is by a majority, which is what happens in the Crown Court. Nothing is said when it is an acquittal.

The Minister asked whether a defendant can return to his unit after an acquittal without murmurings. Of course he can, as much as if he were acquitted under the current system. Thirdly, the Minister said that,

"the deliberations of the lay members of the court",

would be exposed and that confidentiality is an,

"important safeguard of the independence of the lay members".—[*Official Report*, 1/3/16; cols. GC 51-52.],

and an ingredient of a fair trial which would be destroyed. But majority verdicts are accepted in the Crown Court and nobody says that the deliberations of the jury are exposed—they never are—or that the jury lacks independence.

The forces need to recruit and to retain their recruits. They may be prepared to be disciplined and trained, but will they or their parents be prepared to subject themselves to a system of justice in which the public generally have no confidence? In the case of Sergeant Blackman in the Court Martial Appeal Court the Lord Chief Justice, having found against the appellant, nevertheless commented that there would be an opportunity for Parliament to legislate on the question of majority verdicts. That was the main point of the appeal against conviction by Sergeant Blackman: that it was a simple majority that had convicted him.

The purpose of Amendment 2 on sentencing is so that the judge advocate should be the sole sentencer after consultation with the panel. At the moment it is

the panel which decides the sentence, with a judge advocate having a vote on that decision. The Minister rejected that argument in Committee and said that the change would be,

"an erosion of an important difference between the civilian criminal justice system and the service justice system".

It is my case that they should be brought closer together and that no question of erosion should arise.

Secondly, the Minister said:

"The military context and service experience should be considered during sentencing as well as in findings of guilt or innocence".—[*Official Report*, 1/3/16; col. GC 53.]

My amendment says that the judge should sentence after consultation with the panel and that any input can come from the panel about service issues.

Thirdly, the Minister said that the court martial was part of an overall system of justice and discipline and that the statutory principles as set out in the 2006 Act—the maintenance of discipline and the reduction of service offences—meant that there had to be the direct involvement of the panel in sentencing. I am suggesting the direct involvement of the panel in sentencing, but not in making the decision. In any event, said the Minister, the judge will advise and has a casting vote.

Let us take a panel of seven. If the judge is added to it, eight people are deliberating on a sentence. That means that the professional judge with experience of sentencing can be outvoted seven to one, six to two, five to three. It is only if the panel is split four-four that he has the casting vote. My case is that sentencing is an art. It requires a great deal of training. Judges of great seniority still go for training in sentencing. I have been out of the criminal courts for about three years but I would hesitate very much to go into court now and suggest what a sentence should be.

Crime has come down but prison numbers have gone up. Why? It is because prison sentences are longer. There are different types of criminal sentences. Some involve custody and some do not. Sentencing is a professional job. The panel members are individual officers or warrant officers who come and sit on one case. They may never have had any connection at all with the criminal justice system. They sit on one case and have the responsibility of deciding the sentence. It should be the judge who decides, with the advice and help of panel members who have military service and experience. I beg to move.

Lord Hope of Craighead (CB): My Lords, I shall say something about the Scottish system of justice. If one is talking about convergence, which part of the United Kingdom one comes from may be relevant to a consideration of the issues. I did my national service in a Scottish regiment and I live in Scotland. The Scottish system of justice differs from the English in relation to verdicts.

The Scottish system at the moment depends on the simple majority. There is a jury of 15 and someone can be found guilty so long as eight on the jury are in favour of guilty. Verdicts are from time to time returned by a simple majority as narrow as that, although most majority verdicts are much more in the area of 13 to two. The fact is, however, that a simple majority verdict is enough for a conviction to be recorded.

So far as the question of lingering doubt or confidence in these verdicts is concerned, my experience as a prosecutor and a judge in Scotland is that that system is accepted without question. There is, of course, an additional element in the Scottish system in that there are three verdicts, not two, and a jury of 15, not 12. I am not concerned to explore the size of the jury or the use of the not proven verdict. The important point is that a simple majority verdict is good enough.

The system has one feature that I think is absent from the proposal in Amendment 1. There is never a question of a failed trial because no verdict has been reached. A Scottish jury always reaches a verdict. There is no question of a failure to reach the required majority because a simple majority will do. If it is not achieved, there is an acquittal. It may be that an acquittal is good enough. When the jury comes to return its verdict, it is either not guilty or not proven. If it is guilty, the jury is then asked, "Is that unanimous or by a majority?" and the foreman will say whether it is a majority or unanimous verdict. The real point and the value of the system for the Scots is that retrials are not required because there is a failure to reach a verdict. If the required figure is not reached, acquittal follows. There is some value in that.

I do not know how far one takes the principle of convergence, but it might be relevant to consider how it applies to those who come from Scotland to serve in any of the three services, who in their domestic system do not have the system which applies in England and Wales, and in Northern Ireland.

Lord Tunnicliffe (Lab): My Lords, I worked out before this evening that Amendments 1 and 2 were, in fact, Amendment 3 in Grand Committee on 1 March. Mindful of the guidance in the *Companion*, that arguments fully developed in Committee should not be repeated on Report, I took the trouble to read the report of the Grand Committee. At the time, I indicated that I was to some extent attracted to some of the arguments of the noble Lord, Lord Thomas of Gresford. I said:

"I am putting a burden on the Government, today and perhaps in subsequent meetings and in writing, to argue the case for why we should not move in the general direction of these amendments and make the whole process for the defendant more analogous to that of a civil court".—[*Official Report*, 1/3/16; col. GC 48.]

I still cleave to that general direction. The Minister then made a spirited defence, stretching from col. 50 to col. 54, which I read and also found persuasive in the sense that making small changes is likely to have unforeseen consequences which might be difficult. I have heard nothing today to change my general direction of travel. The Government should consider examining in the Ministry of Defence, perhaps in concert with the Ministry of Justice, whether the decision-making process where the citizen is on trial—the member of the Armed Forces becomes a citizen at this point—should not be closer to the civil system.

Moving in that direction would create some significant change and there may well be some significant consequences. I am not convinced that today's amendments would not have unforeseen deleterious effects. Accordingly, these Benches will not be able to support them. We ask the Government to think seriously about the arguments that have been brought forward in Committee and on Report, and to look at the extent

[LORD TUNNICLIFFE]
to which there should be some movement towards the citizen when on trial having much closer rights and a similar process to the civilian courts.

Earl Attlee (Con): My Lords, I remind the House that I am still a commissioned officer in the reserves, although I am not training. This is my 60th year of life, so I will not be doing it for much longer. The noble Lord, Lord Thomas of Gresford, suggested that both the general public and those in the Armed Forces do not have confidence in the system of discipline in the Armed Forces. My experience is different. I have never had members of the Armed Forces come to me and say that they lack confidence in the system of military discipline. I have to admit that it is a robust system.

I have also never heard a member of the public—someone who is not in the Armed Forces—say that there is something seriously wrong with the system of military discipline, apart from when one reads articles in the *Daily Mail,* some of which are not very well researched.

One of the problems with what the noble Lord suggests is that we do not understand the dynamics of how the court martial panel works. In Committee, I suggested to the Minister that we need to do research, along the lines proposed by the Opposition Front Bench, to understand what the effect would be. We need to war game it before we start altering the system. I suggested to my noble friend that he keeps this under review and makes sure that we are going in the right direction.

7 pm

Amendment 2 is on sentences. I have done two or three courts martial, for very minor offences, and my experience is that the judge advocate explains in great detail about the tariff and whether the offender is at the high or low end of it. I do not see that the panel can go outside the guidance given by the judge advocate without running the risk of a successful appeal because it has gone outside the sentencing guidelines.

The noble Lord referred to the need for training in sentencing. I agree, but that input and experience comes from the judge advocate advising the other officers on the panel. You cannot say that the officers and warrant officers on the panel do not have training, because they have been trained for many years in military matters. I do not really understand why the panel would want to deviate very much from what the judge advocate has suggested—that was certainly not my experience. These are interesting amendments, but not ones we should accept.

Lord West of Spithead (Lab): My Lords, I am still on the active list. I have been for 50 years now, and will remain on it until I die, unlike the noble Earl. I have been president of a court martial and on a court martial board, and have been court-martialled myself. I have also read *Hansard* from the previous debate. Although the system is not broke, we do need to look at possible changes, but we need to be very wary about how we move forward. I thought the arguments deployed by the Minister in Committee were very convincing.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, as so often, noble Lords have taken a great interest in the operation of the courts martial, and I welcome the opportunity to discuss the subject today. I am grateful for the careful thought that the noble Lord, Lord Thomas of Gresford, has given to the changes that he believes would improve the system and increase public confidence in it. Before turning to the detail of the amendments, I should emphasise a couple of important general points.

First, we must not lose sight of the fact that the service justice system has some carefully constructed differences from the civilian justice system for a particular and important reason, which is the maintenance of operational effectiveness. I will elaborate on that a little later.

Secondly, although he did not emphasise this today, I note that the noble Lord himself has stated in this House that he has confidence in the service justice system. If I read his concerns correctly, his main one is about public perception. He explained in Grand Committee that his proposals were intended to give the public more confidence in the findings the court martial makes. My noble friend Lord Attlee made an important point on this, because it would also appear that members of the Armed Forces have confidence in the system: some 67% of those who responded to the Armed Forces Continuous Attitude Survey for 2015 think that the service discipline system is fair. This is comparable with—indeed a little better than—the level of confidence in the fairness of the civilian criminal justice system, for which the most recent Crime Survey for England and Wales recorded a figure of 64%.

Amendments 1 and 2 seek to change three important aspects of the court martial system: the system of majority verdicts; the confidentiality of the votes of the lay members of the court martial on guilt or innocence; and the role of the lay members in deciding sentence. Amendment 1 would change the law governing decisions of the court martial on findings of guilt or innocence.

As I explained in Grand Committee, the system of simple majority verdicts in the court martial is long established—the noble Lord, Lord Thomas, took us through the history. The service discipline Acts of the 1950s, which preceded the Armed Forces Act 2006, also provided for simple majority verdicts. The system allows conviction or, notably, acquittal by simple majority of the lay members of the court martial. Before the lay members consider their verdict in a case, the judge advocate directs them, if at all possible, to reach a unanimous verdict, but they are not obliged to return a unanimous verdict. The judge advocate's direction provides a considerable safeguard against the lay members moving too easily to a majority decision. However, if they cannot reach a unanimous verdict, a simple majority is enough to convict or to acquit. An equality of votes results in acquittal.

The noble Lord, Lord Thomas, reminded us that I said in Grand Committee that the great advantage of reaching a decision by majority is that it avoids a hung jury. I also pointed out that there is no need for a retrial in the event of a lack of unanimity or a qualified majority. I was grateful for the insights into the Scottish system given to us by the noble and learned Lord,

Lord Hope. Where there is a hung jury in the Crown Court, the accused is in limbo until they are retried or the case against them is dropped, and there could be a period of several months between trials.

The benefits of the court martial system are not simply those I have indicated—nor incidentally, are they about cost, which I think the noble Lord, Lord Thomas, implied. It has been accepted by the European Court of Human Rights that there are good reasons why, in a system of military justice, it is necessary to avoid a hung jury. The period of limbo between trials could have a negative impact on the unit concerned: there has historically been a clear military imperative to deal with transgressions swiftly to restore discipline. Further, if an accused is tried twice and then acquitted, all of their unit are likely to know that they were acquitted only second time around. The concern has always been, and remains, that this and the period of limbo between trials could ultimately affect operational effectiveness.

I understand that there are those who have questioned the fairness of simple majorities. But I remind the House that the Government have been successful in establishing, both in the European Court of Human Rights and in the civilian courts, that the court martial system is in principle safe, independent and impartial. The current system for majority verdicts has been considered twice in the last five years by the Court Martial Appeal Court—including the case of Sergeant Blackman, incidentally—and was on both occasions held to be fair and safe.

The Court Martial Appeal Court, which is made up of the same judges who sit on the civilian Court of Appeal, has held that there is no ground for deciding that a verdict by simple majority of the lay members of a court martial is inherently unfair or unsafe. The court noted, among other points, that the overwhelming majority of criminal trials in England and Wales are decided in magistrates' courts and the process of simple majority verdicts is long established in those courts.

I note that the noble Lord's amendment would appear to concede that simple majority verdicts are not unfair or unsafe in principle, because it would continue to allow a court martial panel with three lay members to return a simple majority verdict of two to one. I accept that the most serious cases may not be tried by a court martial panel of three lay members, but it is important to note that the Court Martial Appeal Court took the view in the Twaite case that there is no reason to conclude that a simple majority finding is safe for minor offences but not safe for serious offences.

The second aspect of the court martial system which Amendment 1 would change is the confidentiality of lay members' deliberations. Subsection (3) of the proposed new clause would require the president of the lay members to state in open court the number of panel members dissenting where the majority finding is that the defendant is guilty. Under the existing rules, where there is a majority verdict in the court martial, whether for guilt or acquittal, neither the absence of unanimity nor the voting figures are recorded or announced. This avoids the problem of a dissenting minority calling into question the verdict of the majority in any particular case.

In the Crown Court, although it will be known that a defendant has been convicted by a majority verdict, and how many jurors dissented, the number of those dissenting can only ever be very small. Were there to be the same transparency in respect of verdicts of the court martial, the dissenting minority would always be more significant, proportionally, than the dissenting minority in a Crown Court verdict. The concern is that this could lead to the verdict of the majority being called into question.

The second concern about exposing the deliberations of the lay members of the court martial is that one of the important safeguards of their independence is the confidentiality of their deliberations. This safeguard is in place to produce a fair trial process. For that reason, the Armed Forces Act 2006 makes it an offence to disclose information about the confidential deliberations of members of the court martial. I explained those in some detail in Committee. In the Government's view, the confidentiality of lay members' deliberations should not be compromised unless there is a compelling case to do so. We are not convinced that there is a compelling case for requiring voting figures to be disclosed.

I hope that noble Lords will appreciate that there are good reasons for maintaining the current system. However, the Government are always keen to consider carefully whether improvements could be made to it. With that in mind, I can reassure the noble Lord that the Government are prepared to review the current arrangements for majority verdicts, with a careful look at the implications of doing anything differently and taking into account the views of key stakeholders, including the single services, the Service Prosecuting Authority and the Judge Advocate-General.

We will need to consider a number of options; indeed, the noble Lord himself has identified two. The suggestions he made in Committee differ from those made in this debate. Should it be considered necessary to amend legislation, we would seek to find an early opportunity to do so. I will report back to the House on the outcome of the review, which is likely to be in the new year.

I turn to Amendment 2 and the very significant change it would make to the role of lay members of the court martial in sentencing. I should explain that there is an important difference between the role of a lay member in the court martial and that of a juror in the Crown Court. In the Crown Court, the jury's role is limited to findings of fact, and sentencing is a matter solely for the judge. In the court martial, the lay members determine innocence or guilt and, together with the judge advocate, vote on the most appropriate sentence. In the case of an equality of votes on sentence, the judge advocate has a casting vote.

Lay members vote on sentence in the court martial because the military context, and service experience, are highly relevant to sentencing. Judge advocates are civilian judges. They are the experts on sentencing law and practice and accordingly give directions to the lay members about sentencing law. The role of the lay members in voting on sentence reflects the fact that the court martial is part of an overall system of justice and discipline for the Armed Forces. The lay members of the court are serving members of the Armed Forces with command responsibility. They have a very important

[Earl Howe]
role to play in sentencing because they are the experts when it comes to applying the special statutory sentencing principles that apply to service courts. Those principles are closely based on the civilian sentencing principles but, in addition, include "the maintenance of discipline", the reduction of "service offences", by which I mean service discipline offences such as looting and absence without leave, and criminal offences.

As I previously explained in Grand Committee, these principles reflect special aspects of the service justice system. For example, military context may be relevant to sentencing: an assault against a person of superior or inferior rank may make an offence much more serious; and what might otherwise be a relatively minor case of theft may in fact have a very significant effect on morale and discipline—as with "mess deck theft" in the Royal Navy.

It is for these reasons that lay members need to have direct involvement in sentencing. Because the maintenance of discipline is fundamental to the Armed Forces, it is vital that those considering what punishment to award should have a comprehensive understanding of the effect on discipline and good order of various kinds of offending. That is why the panel is comprised of service personnel with experience of command and the exercise of service discipline at a sufficiently high level to assess the actions of those who appear before it in the court martial, in the appropriate command and disciplinary context.

The Government therefore continue to believe that the views, advice and experience of the judge advocate and the panel blend very well together so that the most appropriate sentence can be delivered; and, further, that the role of the lay members of the court should not be limited to mere consultation with the judge advocate—they should continue to vote on the sentence.

7.15 pm

I should add that there is no evidence at all that sentencing in the court martial is wayward. The number of appeals against sentences of the court martial is very low indeed. In 2014 there were six appeals, which represented less than 1.5% of court martial cases. By contrast, Ministry of Justice statistics indicate that an appeal is brought in around 18% of civilian cases heard at the Crown Court.

In conclusion, the Government's view is that these amendments, for the reasons I have explained, would seriously erode fundamental aspects of the court martial system. However, as I have mentioned, we are committed to reviewing the system of majority verdicts, and I will report back to the House on that matter. On that basis, I hope the noble Lord will agree to withdraw his amendment.

Lord Empey (UUP): Before the Minister sits down, he has indicated that the Government are going to conduct a review, but there is a conflict between what the noble Earl, Lord Attlee, and the noble Lord, Lord Thomas of Gresford, are saying with regard to the public confidence issue. I personally have never been confronted with that issue. As a serving officer, the noble Earl, Lord Attlee, is in the same position. It might be helpful if the Government carried out some inquiries into the level of confidence. I am unaware of any problem. Clearly, as the noble Lord indicated in proposing this amendment, there is a lack of confidence, but I do not know the basis of that or where it is to be found.

Earl Howe: The noble Lord makes a very important point. This is certainly one of the factors that will need to be looked at in detail. If there is justification for changing the system, we will need to look at all the reasons that have been advanced for such changes. I agree with the noble Lord that we need to get to the bottom of whether there is a lack of public confidence in the way the system currently works. I can undertake that that will be part of the scrutiny we will conduct.

Lord Thomas of Gresford: My Lords, on that point, I gave a whole series of instances in Committee, which I have not repeated this evening. Let me give just two. I was involved in the Baha Mousa case, and as a result of the acquittals the Government set up an inquiry that lasted three years and took a lot of evidence, at great cost, in order to find out what went wrong.

I happen to have a room overlooking Old Palace Yard, and I hear every demonstration that takes place outside. During the Sergeant Blackman case, there were demonstrations in Old Palace Yard by serving as well as retired military people. I have never come across such a public demonstration against the result of a trial, even in very controversial cases. In Committee, I cited the case during the miners' strike involving the murder of a taxi driver with a concrete block, in which I prosecuted. There was no public demonstration after that; but there seems to be a public demonstration after every controversial military decision. That includes newspapers beyond the *Daily Mail*, which of course carried out—and is carrying out—a campaign in the Blackman case.

The argument that the system is for the maintenance of discipline, and that we should have courts martial for that purpose, was the argument used in 1926 in the debate, to which I referred, to try to retain capital punishment for cowardice. The same arguments were advanced—that if you do not have the death penalty hanging over you, you will never go over the top or face military confrontation.

The noble and learned Lord, Lord Hope, referred to the Scottish system and the fact that there are no retrials. Personally, I think it is an argument for another day to weigh whether a not proven verdict is more satisfactory than having a retrial. To my mind, a not proven verdict leaves individual defendants in limbo.

Having made those comments, I welcome the fact that the Government are prepared to carry out a review of the current arrangements, and I shall await its results with considerable interest and anxiety. In my view, something has to be done. I have personal experience of courts martial and what happens as a result of them.

On sentencing, I would not be arguing the point if we were concerned only with service discipline, such as absent without leave charges, desertion or even mutiny. The trouble is that Section 42 of the 2006 Act brings into the purview of courts martial murder, manslaughter and rape—the most serious cases imaginable. To my mind, it is wrong that there should be a divergence

from the rest of society in the way that a small but important group are tried and treated, particularly given that there are groups in the rest of society that require precisely the same discipline as the Armed Forces. However, I do not propose to pursue these matters to a vote, and I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Amendment 2 not moved.

Clause 10: Review of sentence following offer of assistance

Amendment 3

Moved by ***Earl Howe***

3: Clause 10, page 11, line 16, at end insert "(but this is subject to subsection (10A)).

(10A) Regulations under subsection (10)—

(a) may not make provision corresponding to provision which may be included in regulations made by the Lord Chancellor under section 31A, 33, 33A, 46A or 47 of the Court Martial Appeals Act 1968;

(b) may confer power to make regulations corresponding to the power in section 31A, 33, 33A, 46A or 47 of the Court Martial Appeals Act 1968 only if they provide that a statutory instrument containing such regulations (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament."

Earl Howe: My Lords, I shall also speak to Amendment 4 in my name. These amendments deal with a matter raised by the Delegated Powers and Regulatory Reform Committee of your Lordships' House in its 21st report. That matter concerns the regulation-making powers in new Sections 304D(10) and 304E(9), which are inserted into the Armed Forces Act 2006 by Clauses 10 and 11 of the Bill. These powers allow regulations to be made in relation to appeals against reviews of sentence.

It would perhaps be helpful to remind the House that Clauses 10 and 11 of the Bill are part of the statutory framework that we are creating for offenders assisting investigations and prosecutions. New Sections 304D and 304E provide that a person who has been sentenced by the court martial may have their sentence reviewed to take account of the assistance that they have given or offered to give to an investigator or prosecutor, or a failure by that person to give the assistance that they offered to give to an investigator or prosecutor, and in return for which they received a sentence that was discounted. A person whose sentence is reviewed under new Sections 304D or 304E may appeal against the reviewing court's decision on sentence. The Director of Service Prosecutions may also appeal against a decision. New Sections 304D(10) and 304E(9) allow regulations to be made in relation to the conduct of proceedings on such appeals. Both provide as follows:

"In relation to any proceedings under this section, the Secretary of State may make regulations containing provision corresponding to any provision in Parts 2 to 4 of the Court Martial Appeals Act 1968, with or without modifications".

Such regulations are subject to the negative procedure.

The Delegated Powers and Regulatory Reform Committee noted in its report that most provisions of the Courts-Martial (Appeals) Act 1968 are provisions governing proceedings before a court, and that it is reasonably common for such provisions to be set out in subordinate legislation, subject to the negative procedure. However, the committee noted that the 1968 Act includes provisions about the recovery of costs and expenses in appeal proceedings, the effect of which may be modified by the Lord Chancellor by regulations, subject to the affirmative procedure. For example, under Section 31A of the 1968 Act an appeal court is prevented from directing the Secretary of State to pay legal costs to a successful appellant except where affirmative procedure regulations made by the Lord Chancellor provide otherwise. The committee is concerned that it would be possible for regulations under new Sections 304D(10) and 304E(9), which are subject to the negative procedure, to make provision corresponding to the costs provisions of the 1968 Act but with modifications that, if made to the 1968 Act by the regulations under that Act, would be subject to the affirmative procedure. The committee takes the view,

"that as a matter of principle the powers conferred by sections 304D and 304E should be limited so that they do not allow the making of modifications which under the 1968 Act would require the affirmative procedure".

I therefore propose to amend Clauses 10 and 11 to limit the regulation-making powers in new Sections 304D(10) and 304E(9) so that they may not be used to make provision corresponding to a provision that may be included in regulations made by the Lord Chancellor under Sections 31A, 33, 33A, 46A or 47 of the 1968 Act, and that they may be used to confirm regulation-making powers corresponding to the powers in Sections 31A, 33, 33A, 46A and 47 of the 1968 Act, only if the powers are, like the powers in the 1968 Act, subject to the affirmative procedure.

It may be helpful if I give one example of the effect of the proposed amendments. As mentioned previously, under Section 31A of the 1968 Act, an appeal court is prevented from directing the Secretary of State to pay legal costs to a successful appellant, except where affirmative procedure regulations made by the Lord Chancellor provide otherwise. The effect of the proposed amendment is that regulations under new Section 304D(10) could not make provision allowing an appeal court to direct the Secretary of State to pay legal costs to a successful appellant, but could confer a power on the Lord Chancellor to make regulations providing that an appeal court may direct the Secretary of State to pay legal costs to a successful appellant, but only if the Lord Chancellor's regulations are subject to the affirmative procedure.

This is somewhat complicated but I hope noble Lords will accept that the amendments address the committee's concerns regarding the parliamentary procedure to which regulations under new Sections 304D(10) and 304E(9) of the Armed Forces Act 2006 are subject. I therefore hope noble Lords will support the amendments. I beg to move.

Lord Tunnicliffe: My Lords, discharging our responsibility as the Opposition, I have carefully read the Minister's letter of 11 April and studied the 21st report

[Lord Tunnicliffe]
of the Delegated Powers and Regulatory Reform Committee and Amendments 3 and 4, and I am satisfied that they meet the committee's concern. They have our support.

Amendment 3 agreed.

Clause 11: Review of sentence following failure to assist

Amendment 4

Moved by ***Earl Howe***

4: Clause 11, page 12, line 23, at end insert "(but this is subject to subsection (9A)).

(9A) Regulations under subsection (9)—

(a) may not make provision corresponding to provision which may be included in regulations made by the Lord Chancellor under section 31A, 33, 33A, 46A or 47 of the Court Martial Appeals Act 1968;

(b) may confer power to make regulations corresponding to the power in section 31A, 33, 33A, 46A or 47 of the Court Martial Appeals Act 1968 only if they provide that a statutory instrument containing such regulations (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament."

Amendment 4 agreed.

Amendment 5

Moved by ***Lord Touhig***

5: After Clause 14, insert the following new Clause—

"Removal of Commanding Officer's discretion to investigate allegations of sexual assault

In Schedule 2 to the Armed Forces Act 2006 ("Schedule 2 offences"), in paragraph 12(at), omit "except one under section 3, 66, 67 or 71"."

Lord Touhig (Lab): My Lords, this amendment would remove a commanding officer's discretion to investigate allegations of sexual assault. Here, as is so often the case, there is a temptation to repeat many things that were said in Committee. I intend to resist that, but I recall that the amendment caused some concern among noble and gallant Lords and I want to assuage their fears about this if I possibly can.

In Committee, the noble Viscount, Lord Slim, who is not in his place, gave us the benefit of how he sought to resolve these matters as a commanding officer. It was very important that he did so because we were able to better understand how a commanding officer can act in such circumstances. I felt then that his fears that the integrity of the chain of command was put at risk by this amendment were ill founded, and I still am of that opinion. What is at risk is the reputation of the Armed Forces if we continue to place a duty of deciding whether or not to investigate a complaint of sexual assault on the shoulders of officers who, in the overwhelming number of such cases, will have no experience of dealing with such matters. Far from diminishing the role of the chain of command, this amendment will give it full support by involving highly trained investigative officers who are knowledgeable about dealing with complaints of this nature.

Having had the opportunity of speaking to the Minister since Committee, I am hopeful that his reply will show us a way forward. My own view is that if the Government took a long, hard look at this issue and held a review before coming back at a later stage with some conclusions, this would be the way to reconcile the right and proper concerns expressed by colleagues, such as the noble Viscount, Lord Slim, and those of us on these Benches who want to see change.

7.30 pm

Turning now to Amendment 6, I am sure all noble Lords will agree that we had a very good and well informed debate on this matter in Grand Committee and I have no wish to repeat what was said then. In that debate the Minister set out the existing arrangements for the collection and publication of crime statistics. In particular, he was referring to the Service Police Crime Bureau records for all three services and these covered allegations of rape and sexual assault that are made to the service police. The Minister said:

"That information is released regularly in response to Parliamentary Questions and freedom of information requests. In the case of the latter, the information is uploaded to the MoD's online publication scheme where it can be freely accessed".—[*Official Report*, 1/3/2016; col. GC 73.]

As I spent 27 years in newspapers and publishing before entering the House of Commons, the journalist in me needed to check if it was easy to actually find that information and I asked one of my colleagues in the Opposition Whips' Office, Hannah Lazell, to search for the statistics. She did and I received the following email:

"To find the statistics I googled a number of terms and looked on the Ministry of Defence website, including in the publications and news sections. However, I could only find these statistics when I eventually linked them to the Service Police—so I typed 'Military Court Service sexual assault' into Google and found the following link".

I will not read out the link but it was there. She went on:

"This has been published as a result of a Freedom of Information request and includes all offences prosecuted in the military court. It's hard to find sexual offences within it—you have to search for sexual offences such as sexual assault—then scroll through them one by one. So while the information is on the web, it's hard to find and is in a format that doesn't make it easy to find different types of offences. The government could certainly make it easier to find on the internet and present it in a format that makes it easier to find all types of offences".

And here it is. It is 148 pages long and there are 1,224 offences listed. It does take some work to find the things that we were seeking to explore. It took many hours to search through and for each one you have to find details of the sexual allegation of assault and rape. The plain fact is that it is difficult to find this information.

My noble friend Lord Tunnicliffe and I were very pleased, however, to have had the opportunity to discuss this matter further with the Minister following Committee. We were very encouraged by what he had to say, and more so when we received a letter setting out the Government's new thinking on this matter.

I could say a lot more but I would be testing the patience of noble Lords if I did so, knowing, as I do, that the Government have taken this matter very seriously indeed and have sought to address the concerns expressed by noble Lords in Committee. I look forward to the Minister's reply and I feel sure it will be as full and as comprehensive as the detail he set out in his letter to me which I have already referred to. I beg to move.

Baroness Jolly (LD): My Lords, in Committee I was happy to support the noble Lords on what is now Amendment 5 and the arguments that I used then still stand.

Looking at Amendment 6, I was trying to find a new angle last Wednesday and I happened to look at the newsreel. Three articles came up. One was about Private Cheryl James, the next one was about the Anne-Marie Ellement case, and there was an article about the British Army moving on from previous problems and being named in the top 50 employers of women. There seemed to be a disjoint there.

Last summer the Chief of the General Staff, General Sir Nick Carter, said that the Army has an overly sexualised culture in which inappropriate behaviour is deemed acceptable. It is not acceptable; young people and parents of young people find it unacceptable, as do the public. The culture needs to change and it is much easier for the Army or any of the services to look at culture change if it is measured. The measuring of behaviour can indicate trends—where there is success, where there is failure, and where work needs to be done. The Minister in the other place, Mark Lancaster, said in Committee there that he was minded to publish statistics. I asked the Minister where we were with that and I wonder whether there has yet been any decision on how and when these statistics will be published.

Lord West of Spithead: My Lords, I support both these amendments. I have huge admiration for the noble Viscount, Lord Slim, and I looked again very carefully at what was being proposed. I have to say, I feel that there is no damage to the chain of command and absolutely no damage to the status of the commanding officer, because these are very special circumstances. I think his concerns in this specific instance are not necessarily valid and I therefore feel that this is the right way to go and it will not have any impact on chain of command or the CO's position.

Lord Berkeley of Knighton (CB): My Lords, I have been listening with great interest to this debate and been persuaded by what has been said on all sides of the Chamber, but one thing occurred to me when we were debating Amendment 2. The Minister said he was not really aware of a lack of confidence in the system but I have to say that the noble Lord, Lord Thomas, is right. It is not just in the *Daily Mail*. Whenever you read about Deepcut or any of these scandals, the people whose families are affected do not have total confidence in the system. They think there are cover-ups. Only on the radio on the way here, I heard the families of people who were at Hillsborough saying they were let down and a chief constable has been sacked because there was a cover-up. It really is not good enough to say that the public have trust and the Minister is not aware of mistrust. I can assure noble Lords that there is mistrust among the general public, who feel that organisations that inspect themselves when there is a problem are deeply suspicious. I am not saying that the military does not often do things very well—or the police or any other organisation—but the general public are concerned about this issue.

Earl Attlee: My Lords, the noble Lord, Lord Berkeley, just mentioned Deepcut. I urge anyone who has the slightest worry about Deepcut to read the Blake report, which explains what happened.

I agree with the general thrust of these amendments, particularly the sensible approach from the noble Lord, Lord Touhig. In Committee, the Minister was sympathetic to our concerns but he has rather too much faith in the commanding officer. Yes, commanding officers are extremely experienced and they are specially trained to be commanding officers. There is a course for commanding officers-designate. My experience is that with every level you go up in terms of promotion, you get more information about what your responsibilities are and what the difficulties are.

Nevertheless, the power of the commanding officer can be delegated to more junior officers, so quite often—in terms of discipline, for instance—minor offences can be dealt with by a major or a lieutenant-commander. These cases are exceptionally difficult for the commanding officer to investigate. Clearly he will not be able to investigate them personally. He may even be out of the country when the allegation arises. The commanding officer or the acting or delegated commanding officer will have to appoint someone else in the unit to carry out the investigation, and that person will not be any better trained. Furthermore, the fact that someone else in the unit may have to be appointed to carry out the investigation may deter someone from making an allegation in the first place.

Amendment 5 covers only sexual assault; it does not cover inappropriate contact, by which I mean touching. However, this can also be a problem and it can be a precursor to more serious problems. As I said in Committee, my belief is that the service police should keep records of allegations of sexual assault and inappropriate contact. They would then know whether a person had made this type of complaint before and could ask whether they could be a serial complainant, and they would also have records of someone who had had a similar allegation made against them before and they might even know the MO, so they would understand whether the allegation was likely to be true or malicious. If the service police keep records, investigations can be facilitated, and it is better to achieve this through a policy change rather than through the amendment, which, as I said, has the defect of not covering inappropriate contact.

The noble Baroness, Lady Jolly, referred to the culture in the Armed Forces as a reason for publishing the statistics. She will be aware that the Armed Forces carry out continuous attitude surveys that measure changes. She made the important point, from her own background and experience, about measuring changes. In Committee, the Minister explained what information is already released and the noble Lord, Lord Touhig, told us how difficult it is to access it. However, my

[Earl Attlee]
concern is that the media—particularly the print media—will use these statistics to produce an easy story. It is easy to quote a horrendous number of incidents without comparing them with the number of such incidents in civil society.

In conclusion, I feel very strongly about the need for record-keeping by service police to facilitate investigations. These are very difficult matters for officers and warrant officers in a unit to investigate. Frankly, I do not think they relish it; they would rather hand it over to the service police, who have the relevant experience.

I hope the Minister can say something helpful to us, but I am also happy to join noble Lords later in keeping up the pressure on my noble friend the Minister, because I know that he enjoys getting pressure from me.

Lord Thomas of Gresford: Schedule 2 to the Armed Forces Act 2006 lists the offences that a commanding officer is required to report to the service police for investigation. There is a long list of offences, including, in paragraph 12(at), any offence under Part 1 of the Sexual Offences Act 2003,

"except one under section 3, 66, 67 or 71".

Section 3 is a very important part of the Sexual Offences Act 2003. It relates to sexual assault, which of course can vary from a very serious sexual assault to the sort of touching that the noble Earl, Lord Attlee, referred to a moment ago. That provision means that the commanding officer is not required to pass on for investigation to the service police a complaint of sexual assault. I imagine that he most certainly would pass on an allegation of serious sexual assault, but there is a great loophole there because commanding officers differ. Some may have one view on what a sexual assault is and another may have a completely different view, in effect telling the complainant to go away and not be silly. So there is a problem there. At the moment it is an unexploded bomb within the system.

7.45 pm

The important point is that over the last 10 years since 2006 we have become more and more aware that sexual assault exists widely but that women and men report it and make a complaint with difficulty. If they summon up the courage to go to the commanding officer and make a complaint, it really should be passed on for investigation and not be dealt with by the commanding officer. Sections 66, 67 and 71, which are referred to in this amendment, relate to far less serious matters, but sexual assault can be very serious and must not be taken lightly. Therefore, I support the amendment.

As for the publication of statistics, as I mentioned in Committee, I was involved in the inquiry into sexual assaults in Washington, for which there were statistics. In the region of 32,000 sexual assaults were thought to have taken place in the United States forces, of which 5,000 were reported and some 400 or 500 followed through to a court martial. It is not enough to have to look through more than 1,000 pages simply to find out what cases went to court. More important is what complaints are made, how wide the problem is and how we can deal with it. It should not be left simply to a commanding officer without the training, and without necessarily the sensitivity required when a complaint is made, to decide what to do about a complaint.

Earl Howe: My Lords, I fully understand the concerns that lie behind these amendments but I hope that my response will explain why we do not think it necessary or appropriate to press them.

The first amendment in the group, Amendment 5, concerns four offences: sexual assault, exposure, voyeurism and sexual activity in a public lavatory. The amendment would require a commanding officer to refer to the service police for investigation every allegation which would suggest to a reasonable person that one of these offences may have been committed by someone under his or her command. It would therefore remove from commanding officers the ability which they currently have in very limited circumstances to ensure that an allegation or circumstances are appropriately investigated without involving the service police.

It is the first of the offences covered by the amendment—sexual assault—and how allegations of that offence are investigated and handled within the Armed Forces which has been the main focus of attention in this debate. For the avoidance of doubt, I make it clear that the Armed Forces Act 2006 provides that a commanding officer does not have any role in investigating allegations of almost all the sexual offences on the statute book, including rape and assault by penetration. Allegations or circumstances which indicate to a reasonable person that any of these offences may have been committed by someone under their command must always be reported by a commanding officer to the service police. That is an absolute rule.

I also make it clear that commanding officers are already under a statutory duty to ensure that all allegations which indicate that a service offence may have been committed, including the offences covered by this amendment, are properly investigated. This means that, where a commanding officer becomes aware of an allegation of any of the offences covered by this amendment, he or she must consider whether it would be appropriate to report it to the service police. If it would be appropriate to report it, it must be reported.

The statute, however, should not be our only source of reference. The manual of service law makes it very clear to commanding officers that if there has been an allegation of one of these offences, they must take legal advice about whether it would be appropriate to call in the police. Access to legal advice is available 24 hours a day and seven days a week. The manual also makes it clear that there is a presumption that allegations of such offences will normally be reported to the service police. This duty on commanding officers to ensure that allegations are investigated appropriately means that it will rarely be appropriate—I stress rarely—for the commanding officer not to report an allegation of sexual assault to the service police.

The reason why the Armed Forces Act 2006 did not go further and require commanding officers to report to the service police every single allegation of sexual assault, or the other offences covered by this amendment, is that those offences cover such a wide range of

conduct. For example, the offence of "sexual assault" makes any sexual touching without consent a criminal offence. "Sexual" can include conduct that may not in some circumstances be sexual but which, in the particular circumstances of the case, a reasonable person would consider sexual; for example, an arm around the shoulder may fall within the offence. The provision in the 2006 Act recognises that, given the width of these offences, there may be cases involving the most minor infringements that may be better handled other than by automatic police investigation. The 2006 Act recognises that this may also be the case for offences other than those covered by this amendment. For example, an investigation other than by the service police will in many cases be appropriate for disciplinary offences under the 2006 Act.

I hope that noble Lords will therefore understand that it is because of the very wide range of conduct that these offences cover that it may be appropriate, in limited circumstances—I underline that phrase—for commanding officers to investigate allegations. Those circumstances are, in practice, further limited by the fact that the service police can and do act on their own initiative—for example, where they are approached by a victim or a witness, where they come across an offence while patrolling, or where the civilian police have been involved and pass the case to the service police.

Other proposals in the Bill, in Clauses 3 to 5, will mean that in future, where the service police investigate an allegation of, for example, sexual assault, they will have to refer the case straight to the Director of Service Prosecutions for a decision on whether to bring charges and, if so, what those charges should be. That is a change from the current position, under which charges are instead referred back to the commanding officer. However, I recognise that, for some, our existing policies and procedures do not go far enough. They argue that we should use the opportunity presented by this Bill to amend Schedule 2 to the Armed Forces Act 2006 so that all allegations of sexual assault, and the other offences covered by this amendment, must be referred to the service police. In fact, the 2006 Act provides a mechanism for amending Schedule 2. Section 113 of the Act provides that the Secretary of State may amend Schedule 2 by secondary legislation, subject to the affirmative procedure, so primary legislation is not needed to make the change proposed in the amendment.

Against that background, I inform the House that the service justice board, chaired by the Minister for Defence Personnel and Veterans, has decided that the time is right for a fresh look at this issue, taking on board the arguments for the existing position and the views expressed in both Houses and by external organisations such as Liberty. The necessary work has been set in hand. My noble friend Lord Attlee made some very valid observations, and I assure him that the points that he raised under this heading will be addressed in the review. Any changes to Schedule 2 that may be needed can be made through secondary legislation, subject to the affirmative procedure. The review is likely to take until the end of the year, and I will report the outcome to the House in due course.

The second amendment in this group, Amendment 6, would create a legal obligation to publish data about allegations of sexual assault and rape. It would impose an obligation which is not currently imposed on other civilian authorities—although they publish such information on a regular basis. As noble Lords may be aware, in Committee of the whole House in the other place, the Minister spoke on this subject and made it quite clear that he wanted improvements in the data that we publish and that he was considering how best to publish the data as an official statistic. That is very definitely the Government's intention. Given that commitment, I reassure noble Lords that the work to achieve this is well in hand. I have recently written to the noble Lord, Lord Touhig, on this subject, and it may be helpful if I share the information in that letter with the rest of the House.

In my letter, I explained that the Government aim to publish, by the Summer Recess, statistics about sexual offences that have been dealt with by the service justice system during the 2015 calendar year. The statistics will cover those cases where the service police have been the lead investigating agency and where the service justice system retained jurisdiction of the case throughout. To meet the standard for formal publication of these statistics, we clearly must put in place the necessary policies and procedures to ensure that the data are robust and consistent as we move forward. That work is in hand and encompasses three main components of the service justice system: the service police, dealing with the investigation of the crime; the service prosecuting authority, dealing with the cases referred; and the military court service, which lists the cases and reports on outcomes.

With regard to investigations, the crime statistics and analysis cell within the Service Police Crime Bureau will provide information on all sexual offences investigated by the service police. This will be broken down by service and will further detail the offence type, the gender of the victim or suspect, the location by country and the outcome of the investigation, such as whether the suspect was referred to the service prosecuting authority. To ensure greater consistency with Home Office police forces and assurance of data, the service police will have a crime registrar. The responsibilities of that post will include the development, implementation and monitoring of crime-recording policies, procedures and programmes and their application, to ensure high standards of data integrity and accuracy.

On prosecutions, the service prosecuting authority will provide data relating to the numbers of referrals that it has received for all sexual offences, which will again be broken down by service and offence type. The service prosecuting authority will also provide information on the numbers of those then charged with the offence referred, whether the person was charged with an alternative offence, or whether the case was discontinued.

Finally, the military court service will be responsible for providing information on the numbers of cases heard at court martial which involve sexual offences. This will again be broken down by service and will include both pleas and findings.

We intend to publish all these data on an annual basis. They will be supported by explanatory information to provide the reader with an understanding of the

[Earl Howe]
SJS and some context for the information. As mentioned earlier, we aim to produce the first set of these statistics by the Summer Recess, and they will be posted on the GOV.UK website in a format that is easy to read and print.

In the light of this and my assurance to return to the House on the matter raised in Amendment 5, I hope that the noble Lord, Lord Touhig, will feel comfortable about withdrawing his amendment.

Lord Touhig: My Lords, we have had a short but very good debate, with some very well-founded comments. The comments made by the noble Lord, Lord Berkeley, about confidence were very important. In my view, the best way to get confidence is transparency. The noble Earl, Lord Attlee, raised wider issues about the complaints covered by the amendments. He is right, and the Minister has indicated that the review that will be carried out will cover the kind of things that he is concerned about. We certainly welcome the Minister's response to this debate. It has showed, from Committee to Report, that the Government have listened, taken on board the views of colleagues all around the House, and are prepared to act. They should have our full support, and I beg leave to withdraw the amendment.

Amendment 5 withdrawn.

Amendment 6 not moved.

8 pm

Amendment 7

Moved by ***Lord Judd***

7: After Clause 14, insert the following new Clause—

"Enlistment of minors

(1) The Armed Forces Act 2006 is amended as follows.

(2) After section 343B (interpretation of Part) insert—

"Part 16B

REPORT ON THE ENLISTMENT OF MINORS

343C Report on the enlistment of minors

(1) The Secretary of State must in each calendar year—

(a) prepare a report on military service by minors; and

(b) lay a copy of the report before each House of Parliament.

(2) The report must evaluate the effects on the individual, and on the armed forces, of the enlistment of persons under the age of 18.

(3) In preparing the report the Secretary of State must have regard in particular to—

(a) the principle that the best interests of minors must be paramount in all policy relating to them;

(b) participation by service people under the age of 18 in accredited education relative to the statutory standards of participation that apply to civilians of the same age under the Education and Skills Act 2008; and

(c) any implications for the armed forces, including financial implications.""

Lord Judd (Lab): My Lords, at the outset I declare an interest: I had a short service commission in the RAF and later in life—I always feel nervous about remembering this, with my noble friend sitting right in front of me—I had the joy, privilege and excitement of being Minister for the Royal Navy when we had such service Ministers. I thank my fellow sponsors, who have stayed throughout all the debates to be here, which I appreciate. I also thank most warmly all those who have helped me to prepare my input for these deliberations and, of course, not least, Child Soldiers International. I do not always agree with it on all its objectives but, my goodness, it does some first-class work, as I think everyone who has come across it would agree. I also thank my own Front Bench for the co-operation, advice and discussions we have had together.

The Minister has been most courteous throughout, which I will refer to in a moment. I also want to put firmly on record my appreciation of the committed—and on occasion inspired—work done by those within the armed services who have had responsibility for putting into effect the arrangements which are in place in the three services. What I have to say is in no way a criticism of them but simply a matter of how we can get things better and right.

The Minister has, quite rightly, from time to time emphasised the importance of substantiated evidence. This very day, I came into possession of a letter sent by a very distinguished former serving officer in the Royal Navy, Commodore Paul Branscombe, who was the deputy controller of the well-established Armed Forces welfare service, SSAFA. He has given evidence both to the Defence Committee and the Armed Forces Select Committee in the other place. He writes:

"I served in the Armed Forces for 33 years and have worked in Armed Forces welfare organisations for 15 more years. During this time I have become convinced that 16 is simply too young to be recruited. At this age recruits are not emotionally, psychologically or physically mature enough to withstand the demands placed upon them. Furthermore, the developing nature of the adolescent mind in regard to risk-taking behaviour makes it questionable whether their consent in this is fully informed in a genuinely meaningful rather than purely technical manner. This mental immaturity also makes them highly vulnerable to malign influences and culture. Many of the welfare issues I have encountered amongst Armed Forces personnel during and after service have been related to enlisting too young, not just in terms of the immediate impact on individuals but also in the transmitted effect upon families, which can continue long after service ceases".

That is an important comment to share as we discuss this matter.

My own position on the issue of 16 or not is ambivalent. I can see arguments in favour, but there are huge challenges, which we must all take very seriously indeed. Those who discard the validity of 16 must also face up to the fact that we are talking more and more about engaging the young in full responsibility for citizenship with the vote at 16—this is widely advocated—and that has implications for what we are debating. I also realise that it is very easy for middle-class people like me to be concerned about an issue, but when you look at the social conditions from which many recruits come—the real social conditions and the real culture within which they grow up—it is necessary to ask what alternatives we are proposing that give some opportunity for preparing for stability and responsibility in life. That is an important issue.

In addition, if we come down, even on points, as in my own case, in favour of the present system, we have very heavy duties of care. We were pioneers of the UN

convention on children—not just participants and signatories but pioneers in framing and drafting that convention. We need to live by what we were advocating, and that needs to operate in all spheres. My noble friend Lord Tunnicliffe put it very well in Committee when he quoted from Article 1 of the convention:

"'For the purposes of the present Convention, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier … In all actions concerning children … whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'".—[*Official Report*, 3/3/16; col. GC 162.]

Therefore, they are in the services—there can be no doubt about that, and we have been discussing many of the things that will affect them there. However, we cannot, especially in Parliament, escape our responsibility of care for them as children. That just will not go away, and nor should it.

These amendments are not about eliminating recruiting at 16, although, as I have said, I have great respect and time for those who believe that we should take this course. These amendments are about taking our responsibilities of care seriously. Here, I hope I will be forgiven if I quote what I said in Committee. I was very struck by what happened back in September 2011 when the Minister speaking for the Government, the noble Lord, Lord De Mauley, said that,

"the noble Lord, Lord Judd, seeks to include service personnel under the age of 18 as being within the group covered by the Armed Forces covenant report, which is a laudable objective. However, the guidance accompanying the Armed Forces covenant, which we published on 16 May, is quite explicit. It states that: 'Special account must be taken of the needs of those under 18 years of age'. I can assure noble Lords that we will not forget this aspect of our responsibilities for service personnel. The Armed Forces covenant report is to be a report about the effects of service on servicepeople, so as regards Amendment 6, minors under the age of 18 are already within the definition of servicepeople in the clause. I hope that the noble Lord will accept that".—[*Official Report*, 6/9/11; col. 39.]

I accepted it, and I looked forward to seeing what the response would be. I was therefore somewhat surprised, as I indicated to the Grand Committee, that in the covenant report last year there was not a mention of this particular group of young people in the armed services. I just do not believe that that is fulfilling the spirit of what the Government—I am sure in good faith—said on that occasion. I hope that the Minister will be able to respond more reasonably and positively today.

Since the Committee, the Minister has written me a long letter. It would take far too long at this stage to go through it all, but I think it raises, in many ways, more questions than it answers. I hope, therefore, that he will put a copy in the Library, together with his other correspondence to me, so that those who are concerned about this issue can see it—it is quite important.

I will conclude my arguments tonight—time is running out—by saying that I do not doubt the Minister's good intentions. However, duty of care means duty of care. We spend many hours in this House discussing this issue. It affects, for example, the police and society as a whole, and we cannot simply shove the very real responsibility in the armed services to one side. My amendments seek that Parliament should be kept fully informed by reports, and I cannot for the life of me see why the Government are not in favour of this. The amount of information that the Minister has given me in correspondence spells out that they accept that there are a lot of issues that need to be addressed. I rather thought when I put the letter down, "Thank you; that is a very good case for an annual report". We could build a very interesting annual report on this which could then be debated and disputed, as it would be in some respects in the form of the letter the Minister sent to me. Therefore, I urge the Minister to think very carefully about why this would not be helpful, and so that we are not only doing what we should be doing but are transparently doing it for all to see. Then, when corrections and improvements are necessary, we can all set about constructively achieving them. I beg to move.

Baroness Howe of Idlicote (CB): My Lords, I should perhaps declare an interest, as I have quite recently acquired two grandchildren who seem to be aiming their way into the armed services.

I am very happy indeed to support Amendment 7 from the noble Lord, Lord Judd. The UK has long been a champion of children's rights internationally. To retain its integrity and credibility, it really is essential that the UK maintain the highest possible standards in this area. The minimum age for enlistment in the UK armed services, at 16, is the lowest legal limit in the world. The UK shares this policy with fewer than 20 other countries. No other state in Europe or on the UN Security Council does this; in fact, no other major military power sets its age for recruitment so low. Globally, we are seeing a positive trend towards adult-only armed forces, and two-thirds of states now set the age of 18 in law as the minimum for voluntary enlistment. It is commendable, certainly, that the Government actively encourage this trend internationally, but rather regrettable that they set a lower standard for themselves.

8.15 pm

The Minister will no doubt want to remind the House that the Convention on the Rights of the Child does not prohibit enlistment under the age of 18. However, the Committee on the Rights of the Child, which oversees the convention, has called on the UK to raise its enlistment age to 18, and so has our own Joint Committee on Human Rights. The Defence Committee has also queried the policy. A rise in the enlistment age to 18 enjoys the support of many NGOs that work with children and young people. Early last year, the Children's Commissioners for all four of the UK jurisdictions called for the policy to be changed. In a few weeks' time, the UN Committee on the Rights of the Child will conduct its periodic review of the UK's record on children's rights and will be looking to see progress on its recommendations since the last review in 2008. In that review it noted serious concerns about the enlistment process and the targeting of children from socially deprived backgrounds for recruitment. These points are as relevant today as they were then.

The Minister has said that the Armed Forces place great importance on education and aim for all soldiers to attain at least level 1 literacy and numeracy standards

[Baroness Howe of Idlicote]
within three years of joining. However, these standards are lower than the minimum standards applied in civilian education. There is also no evidence that these targets are being met as the MoD does not keep routine records of how many attain these qualifications in service. The amendment seeks to address this omission by requiring the Government to report annually on whether recruits are meeting the standards they set in relation to both the Armed Forces and civilian education. Reporting on educational attainment among the youngest recruits would provide the MoD with categorical evidence of its claims for the benefits of early enlistment, or identify what needs to change.

For as long as recruitment of minors continues, it is essential, surely, to ensure that their well-being and long-term educational and employment prospects are prioritised. This cannot happen when basic data are lacking. Failing to collect and analyse objective data on standards and attainment among the youngest recruits risks causing them serious long-term disadvantage, and cannot be justified. If the UK cares about the welfare of young people and of Armed Forces personnel, it must double the efforts to ensure the well-being of young soldiers. The amendment from the noble Lord, Lord Judd, would help to achieve just this.

Baroness Lister of Burtersett (Lab): My Lords, I apologise for speaking at this late stage of the proceedings on the Bill but I have been fairly busy on other Bills. However, I want to support my noble friend Lord Judd, who has been pressing this issue consistently and has done much to keep it on the agenda of this Bill.

Whatever one's views about the principle of the enlistment of under 18 year-olds, the amendments raise two important issues. The first we have just heard about from the noble Baroness, Lady Howe. This clearly is a children's rights issue, a fact which was also underlined in Committee. Despite the considered response of the Minister in his letter of 20 April to my noble friend, it is debatable whether the current policy is always in the best interests of the child.

As already noted, the UN Committee on the Rights of the Child has called on the UK to raise its enlistment age to 18, as have the UK Children's Commissioners. The Joint Committee on Human Rights questioned current policy in a report a few years ago and, in its most recent report on the UK's compliance with the UN Convention on the Rights of the Child—I was a member of the committee when it published its most recent report—expressed hope that its successor committee would scrutinise the issue in the light of the UN committee's concluding observations, to be delivered this year.

As my noble friend said, these amendments are not aimed at changing the age of enlistment. However, the concerns of the human rights and children's rights lobbies underline their importance in helping to protect the rights and best interests of children who are enlisted.

My second point concerns children's life chances. In his letter, the noble Earl states that there is no reliable evidence that those who serve in the Armed Forces while under the age of 18 suffer any significant disadvantage compared with their peers in the civilian population. I have not done any research into this matter but certainly, the evidence provided by Child Soldiers International questions that statement. It suggests that in too many cases there is a detriment rather than a benefit from early enlistment.

Given the concerns raised and the Government's confidence that all is well, what is to be lost by accepting my noble friend's amendment? All it does is require a regular report so that the position of children in the Army can be kept under review. If it shows that the situation is as the Government say it is, then good, all is well. However, if it confirms the concerns raised by my noble friend and by organisations outside, I am sure the Government would want to take appropriate action, not least as part of their overall life chances strategy, the importance of which the Prime Minister emphasised in his life chances speech earlier this year.

On Amendment 8, the Government surely want to ensure that under-18 recruits have the necessary literacy skills to, at the very least, read and understand their enlistment papers. It is not too much to ask, and I hope the noble Earl can give the House some assurance on this matter.

Baroness Jolly: I support the amendments. As the noble Baroness has just said, what is there not to like?

Children joining the services at 16 and 17 come in all shapes and sizes: from those embarking on technical or engineering careers to those joining the infantry and, possibly, the Royal Marines. Their wish is to be physically rather than mentally active, and they are required. The first group, at the start of an apprenticeship, will continue their education and will require a high standard of literacy and numeracy. The second group will not require such high standards and will not be comfortable with reading formal documents. There needs to be awareness that currently, these recruits do not study the same GCSEs as the technical recruits, but another curriculum. There is an issue here, because young men and women who enlist under the age of 18 can leave the Army at any stage up to 18, but if they have dipped out of the standard curriculum and are not studying a GCSE curriculum, their life chances will be affected. We need to be aware of that.

If the Minister cannot answer this question perhaps he will write to me. When was the readability of the documents the amendment refers to last examined? If the required reading age is greater than 10, as is being suggested—bearing in mind that the average *Sun* reader has a reading age of between eight and 10, so it is nothing unusual—perhaps these documents should be revised.

Earl Attlee: I support the recruitment of people under the age of 18 into the Armed Forces. It provides a fabulous opportunity for them.

I have no problem with Amendment 7 but I do not expect my noble friend to accept it. It would be a seriously good news report. I would certainly like to write the section on evaluating the effects on young service people. I would be able to write lovely case studies about youngsters coming from disadvantaged circumstances with poor employment prospects. These

people will obviously be young, fit, able to read and write, intelligent and have potential. They can join the Armed Forces and have a fabulous career, whereas for their contemporaries in certain areas of the country the prospects are not very good.

The education and training they will receive will, generally speaking, be far better than they get elsewhere. They may leave the Armed Forces fairly soon but, by that point, if they are not in a highly skilled trade, they will probably have a vocational driving licence. As to the financial effects, it is a win-win situation. These youngsters will have an income their contemporaries will not have, so that is a win for them. They will be on the pathway to a decent career. When they become 18, they will be fully trained members of the Armed Forces and deployable.

To be charitable, Amendment 8 is unnecessary. It suggests that a young person recruited into the Armed Forces is practically illiterate. The reality, as my noble friend will tell us, is that a guardian's consent is needed. More importantly, a young person who is illiterate to the extent that they cannot read and understand the recruitment papers would not be able to pass the service entrance tests. Their potential would be so poor that they would be of no use to the Armed Forces and would not be able to get in on that route. Therefore Amendment 8, to be charitable, is unnecessary.

Lord West of Spithead: My Lords, I have a certain sympathy for the amendment of my noble friend Lord Judd but I feel that allowing people to enter the services at 16 is a good thing. I tried to join when I was 14, which was slightly too young in my mother's and the Navy's opinion, but I joined at 17. As my noble friend said, a number of the people who join the services at that age come from disadvantaged backgrounds, and what the military does to those people is quite remarkable. If we were able to show that, everyone would see it, but there is no need to do so. It is right that we still take people into the services at 16. They gain a great deal and it is a useful and good thing for our society, in the same way as the cadet forces add a great deal to our society.

Lord Tunnicliffe: My Lords, I shall speak to Amendments 7 and 8. Whether we like it or not, this is a fundamental debate about whether young people of 16 should be recruited into the Armed Forces. We have to respect that this is a serious debate and that both sides believe with conviction that their position is right. I respect the work of Child Soldiers International and I recognise the persuasive nature of the arguments it makes. It refers to issues of morality, welfare, economic and even diplomatic issues.

But there is the other side of the debate, which is that for many young people the great start they are given in life by being recruited at 16 provides them with opportunities that no other direction would give. They have the best start to adulthood. We believe that on balance, the argument for the opportunities provided is stronger than the argument that there should be no recruitment until the age of 18. We also believe that there should be the maximum practical protection for these young people.

8.30 pm

We debated this issue in Committee on 3 March and at col. 161 I asked the Minister a number of questions, most of which I had reasonable replies to, but I want to nail the issue of the UN Convention on the Rights of the Child. I think that I was given an assurance that the Government accept it, but the Minister gave a much fuller reply in his letter of 20 April to my noble friend Lord Judd, and if the House will forgive me I will read some of it into the record.

> "We are very careful to ensure that we comply with the relevant children's legislation, and of course, the Ministry of Defence contributes to the Government's periodic reports and provides evidence about the recruitment of under-18s to the UN Convention on the Rights of the Child, particularly in relation to the Optional Protocol on Children in Armed Conflict".

There is a little more on this, but I shall go on to the next paragraph:

> "I wish to reassure you that we take our duty of care for under-18s joining the Armed Forces extremely seriously; we recognise their care and welfare requires particular attention. Our safeguards are therefore robust, effective, and independently verified. For example: Ofsted inspect the training environment and use the 'Common Inspection Framework' (the national framework for inspection of post-16 education and training) to comment on the standard of initial training in the Armed Forces; and the MOD has an established Safeguarding Children Board (chaired by a person independent of the MOD) whose remit includes ensuring appropriate Safeguarding processes are in place for under-18s".

I found the letter as a whole perhaps a little more reassuring than did my noble friend—until I came to the penultimate paragraph, where the noble Earl rejects reporting specifically on under 18 year-olds in the annual covenant report. He concludes the paragraph by saying:

> "To report on under 18s as a specific group risks diluting the Government's whole-hearted commitment to address disadvantage for every member of the Armed Forces".

That is a sad response.

I would have quoted from the Committee debate we had on 6 September 2011 on the previous quinquennial Bill. The noble Lord, Lord De Mauley, gave at col. 29 the assurances that my noble friend Lord Judd has read out, and I felt that to be a specific assurance that there would be an annual report, probably using the vehicle of the covenant, on young people aged under 18.

I hope the Minister will reconsider his response in that letter with regard to reporting. We support the general spirit of Amendments 7 and 8 and we ask him to accept their spirit and direction. Since we basically support the recruitment of 16 year-olds, we believe that it would be inappropriate to divide the House on the issue. Nevertheless, we plead with the Minister to meet us half way by accepting the value of including a report on under-18s in the annual covenant report or some other appropriate document.

Earl Howe: My Lords, I welcome the continued interest of the noble Lord, Lord Judd, in the recruitment of under-18s into the Armed Forces and I hope that I can now provide a considerable measure of reassurance to him and other noble Lords who have spoken. Let me start by addressing Amendment 7.

As I said in Grand Committee, we are very clear in our belief that junior entry offers a range of benefits not only to the Armed Forces and society but to the

[Earl Howe]
individual, providing a highly valuable vocational training opportunity for those wishing to follow a career in the Armed Forces. The provision of education and training for 16 year-old school leavers provides a route into the Armed Forces that complies with government education policy. I strongly maintain that it also provides a significant foundation for emotional, physical and educational development throughout an individual's career.

The majority of under-18s recruited into the services are recruited into the Army. Without in the least belittling the concerns raised by the noble Lord, Lord Judd, and other noble Lords, to which I shall turn in a moment, the Army needs to attract school and college leavers at the earliest opportunity and in sufficient volume. They fulfil around 15% of the Army's inflow requirement. Junior entry provides a suitable training route for these younger recruits, most of whom attend junior entry courses at the Army Foundation College, Harrogate. The training offered is viewed as attractive to both potential recruits and their parents, delivering vocational education, leadership and initiative training as well as the core military syllabus.

A number of noble Lords stressed the importance of promoting the life chances of young recruits. That is exactly why we would not wish to deny young people the chance to start training for a career in the Armed Forces when they are of school-leaving age. To do so might deprive them of the opportunity they need to get away from difficult social circumstances and acquire new skills and social discipline before it is too late to adapt.

On the subject of life chances, noble Lords may be aware of the recent media story about Danny Cousland. Danny applied to join the Army at 16 and attended the Army Foundation College at Harrogate. At 19 he served in Afghanistan and was later recommended for officer training. Earlier this month, on completion of his training at Sandhurst, he was awarded the Sword of Honour at the Sovereign's Parade as the top-performing cadet. It is important to note that on the eve of his passing-out ceremony, this fine young officer said that had it not been for joining the Army he would be dead or in prison.

Of course we recognise that not all those recruited under the age of 18 find that they are suited to life in the Armed Forces. This is why the Armed Forces regulations enable a person under the age of 18 who is serving in the Armed Forces to leave as of right.

Amendment 7 implies a concern that under-18s are disadvantaged in terms of education in comparison to their civilian peers. I really cannot agree with that. The junior entry route fully complies with the Education and Skills Act 2008, and it offers young people another avenue to meet the requirement to continue in education, start an apprenticeship or traineeship, or work while in part-time education or training.

The Army places great importance on education, as does each of the services. It is committed to enabling all its personnel to improve their literacy and numeracy skills, and to ensuring that they have the literacy and numeracy skills needed to undertake training, be operationally effective and be well placed to take advantage of professional and career opportunities. All soldiers are required to reach minimum literacy and numeracy standards for promotion: national level 1 standard for promotion to the rank of corporal, and level 2 for sergeant and above, and for selection for an LE officer commission. The Army's target is for all soldiers to have attained at least level 1—GCSE grade D-G equivalent—literacy and numeracy standards, ideally within three years of joining the service. Attainment of these standards is measured through holding the appropriate national functional skills—English and maths—qualifications or their recognised equivalents.

To repeat what I said in my letter to the noble Lord, Lord Judd, we are very careful to ensure that we comply with children's legislation, and, of course, the Ministry of Defence contributes to the Government's periodic reports, with evidence about the recruitment of under-18s, to the UN Convention on the Rights of the Child. The noble Lord raised concerns about our duty of care for under-18s, and, again, I would like to put my written comments on the record. We take our duty of care for under-18s joining the Armed Forces extremely seriously: we recognise that their care and welfare require particular attention. Our safeguards are therefore robust, effective and independently verified. For example, Ofsted inspects the training environment and uses the common inspection framework—the national framework for inspection of post-16 education and training—to comment on the standard of initial training in the Armed Forces.

The first amendment in this group, Amendment 7, would require the Secretary of State for Defence to report annually on military service by under-18s. Such reports would have to evaluate the effects on the individual, and on the Armed Forces, of the enlistment of under-18s. Let me say something about the Armed Forces covenant. Its principles state that those who serve in the Armed Forces, whether regular or reserve, those who have served in the past, and their families, should face no disadvantage compared with other citizens in the provision of public and commercial services. This is the basis on which the Defence Secretary provides an annual report to Parliament.

The difficulty I have with the noble Lord's proposal is that there is no reliable evidence that those who serve in the Armed Forces while under the age of 18 suffer any specific disadvantage compared with other service people, or indeed to their peers in the civilian population. The amendment would oblige us to treat those who joined under the age of 18 as a separate category, possibly throughout their service. I continue to maintain the position that that is not an appropriate distinction to build into legislation. I am sorry to disappoint the noble Lord on that count.

The second amendment in the group, Amendment 8, deals with the enlistment process. It would introduce a formal literacy test as part of the criteria for enlisting those under the age of 18. I am pleased to be able to assure noble Lords that such changes to the Armed Forces Act 2006 are unnecessary. There are two reasons for this. The first is that great care is taken to explain the terms of enlistment and to ensure that the precise nature of the commitment is fully understood by potential recruits. This is in the best interests both of individuals seeking to join and of the service in which they have chosen to serve.

I would like to make it clear that in the case of those aged under 18, the process includes ensuring that the parents or guardian of each potential recruit also understand the nature of the commitment. Throughout the recruitment process, parents or guardians are given comprehensive written and oral guidance on the terms and conditions of service as well as the rights of discharge. It is only after this process has been followed that written consent from a parent or guardian for their child to enter service will be requested.

Selection for the services does not rely just on the completion of forms. Individuals undergo a series of interviews and practical tests, including in numeracy and literacy. All Army applicants without level 2 literacy and numeracy qualifications or their equivalents undergo an assessment of their reading, writing, speaking and listening, and mathematical skills as part of the recruiting and selection arrangements. Those candidates assessed as being below the Army's minimum recruit entry standard may be deferred and directed to local further education colleges or similar organisations to improve their skills.

The second reason why we do not need to change the 2006 Act is that legislation is already in place to safeguard the enlistment of persons into the Armed Forces, and it makes special provision with respect to the enlistment of under-18s. Under Regulation 7 of the Armed Forces (Enlistment) Regulations 2009, a recruiting officer is unable to enlist any individual, including those under 18, unless that officer is satisfied that the individual understands the terms on which they are to serve and is fit to be enlisted. If an enlisted person thinks that their enlistment was invalid, the regulations allow them to apply to the Defence Council for a determination that their enlistment was invalid. Where the enlisted person was under 18 at the time of enlistment, such an application may be made by a parent or other appropriate person. On that basis, I hope that the noble Lord will agree to withdraw his amendment.

8.45 pm

Lord Judd: My Lords, of course I thank the Minister for his very full reply. I listened to his admonishments about the things that he believes I have got wrong. I am afraid that I do not accept those admonishments and suggest that a report would give him the opportunity to set out in more detail for all to see the evidence behind what he keeps emphasising is the commitment to education. In saying that, I will again put on record how much I admire the dedication and work of many of those doing what is required of them. But even at this stage of the debate, and within all the constraints of practice, I wish to comment on the important points which the Minister has made before I close.

Functional skills provided by the Army are not the equivalent of GCSE grades D to G, as the Wolf *Review of Vocational Education* made clear. GCSE courses are longer and much more involved than functional skills courses, despite their notionally comparable educational level. They are an interim qualification only, designed to lead to GCSEs. In a House of Commons debate on 25 November 2013, it emerged that no more than 20 soldiers across the entire Army of all ages had gained a GCSE in English or maths in each of the past five years. I emphasise: 20 soldiers of all ages.

These are just some of the facts which do not altogether substantiate the fulsome position that the Minister likes to take. I hope that he will forgive my drawing this to his attention. A report would give him an opportunity to refute in detail, with evidence, the criticisms and to establish his case.

There is much I could say about complying with all relevant children's legislation. However, I will just point out that the Armed Forces are exempt from most relevant legislation. As an employer, the forces, for example, are not required to ensure that all staff who work in direct contact with children have criminal record checks, despite living alongside recruits in training camps. No sixth form, public school or state school would be allowed to do that.

The noble Earl, Lord Attlee, was a little concerned by what I said about the recruitment process. I wish that the reality of the experience bore out what he claimed. There is no obligation on recruiters to meet parents or guardians at any stage in the process. Minors can be enlisted without their parent or guardian having attended any meeting with Army staff or any selection event. A signed consent form is required at the very end of the process but the Armed Forces have no way of verifying that the signatures are genuine. Neither parent nor guardian—

Earl Attlee: My Lords, I am not intimately familiar with the recruiting process for minors but my recollection is that the Minister covered precisely the points that the noble Lord is raising.

Lord Judd: My Lords, my point is that the Minister supported his particular concern by stressing that it was impossible to think that anyone coming into the Army was so illiterate that they could not read the material. The facts and figures produced by the Army itself do not altogether substantiate this. That is why, again, it is so important that we have this report regularly, which would enable us to see how fully—and, we hope, how well or how much better—this provision is being made. I really cannot see why the armed services would resist this.

I just say, in response to my noble friend Lord West, that I joined the cadet force at 14 and thoroughly enjoyed it. In fact, I remember getting credits on some of my courses for doing things relatively well because I was enjoying them. But my point is not about all that. The point is about the vulnerability of some of the children who are coming in and our need to take double care that we are looking fully at what they are letting themselves in for—because they are letting themselves in for things. For example, the majority of these young recruits coming into these schemes do not have the ability to provide the technical services that are becoming an important characteristic of the modern Army. They therefore, inevitably, predominantly end up in infantry regiments, which, as we saw in Afghanistan, have seven times the death rate of the rest of the Army. These youngsters are taking big decisions with huge implications. I do not want to discourage them—I take much pride and excitement in reading about VCs

[LORD JUDD]
to youngsters in the 1914-18 war and I take great pride in hearing about the other examples that the Minister keeps, rightly, citing, such as the youngster who ended up with the sword of honour. On all this I agree, but there are lots who do not.

Of the youngsters on these courses, 36% drop out. What do we do to follow up on that? The British Legion has done research that demonstrates that the unemployment rates and the difficulties faced by these youngsters are greater than those of their peers in the same age group. In discharging our responsibilities we must face these facts and, to be able to take these stats seriously, we need to have systematic reports and information available. I just cannot see why the Armed Forces are not prepared to do this. I hope that the Minister, whom I have come to respect over the years, will listen to the plea by my noble friend Lord Tunnicliffe. In the hope that he will, I withdraw the amendment.

Amendment 7 withdrawn.

Amendment 8 not moved.

Amendment 9

Moved by ***Lord Touhig***

9: After Clause 14, insert the following new Clause—

"Special provision for sufferers of mental health conditions

(1) Part 3 of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 is amended as follows.

(2) After article 28 insert—

"28A Special provision for sufferers of mental health conditions

(1) In the event of a diagnosis of a mental health condition that has been caused by serving in the armed forces, an immediate lump sum payment shall be made, as defined under article 17 (amount of lump sum and supplementary award).

(2) Upon commencement of treatment of a mental health condition that has been caused by serving in the armed forces, retrospective payment of the determined compensation shall be made, dated back to the date on which the diagnosis was made.""

Lord Touhig: My Lords, Amendments 9 and 10, covering the special provisions for sufferers of mental health conditions and the Armed Forces covenant report on mental health parity of esteem gained a degree of support in Committee and, for that reason, the noble Baroness, Lady Jolly, and I believed it was right to come back with these matters on Report. I shall confine most of my remarks to Amendment 9 as I know that the noble Baroness will cover Amendment 10.

I am especially grateful to the BMA for the advice and case studies that it has provided to me in support of this matter. Amendment 9 would ensure that, in the event of a diagnosis of a mental health condition that had been caused by service in the Armed Forces, an immediate lump sum payment would be made to the individual affected. Amendment 10, tabled by the noble Baroness, Lady Jolly, with our full support, would create a specific obligation on the Government to have particular regard to parity of esteem between mental and physical health in the Armed Forces covenant. Again, we have had some very useful discussions with the Minister since Committee, and he wrote to me on 15 April setting out the Government's thinking, for which I am most grateful. The letter refers to the Armed Forces compensation scheme and the tariff system, specifically the table of injury types. I share the BMA's view that mental health should be further up the tariff table, in the sense of more compensation being awarded for mental health illnesses. Perhaps the Minister could respond to this point in his reply.

In his letter he also refers to late-onset illnesses but does not set out to what extent the Government believe that this is a problem. We might understand this better if the Government produced statistics demonstrating how long it takes for veterans to receive compensation after a mental health diagnosis. In my discussions with the BMA, it has persuaded me that the Armed Forces compensation scheme does not reflect that mental health is not diagnosed immediately. Again, it would help if the Government considered looking at the commencement point of mental health illness, not simply the point of diagnosis, and awarding compensation on that basis.

I understand that there is to be a further review of the Armed Forces compensation scheme. Indeed, judging by the Minister's letter it has already started. The Minister has indicated that the review will consider the scheme's coverage, in particular those seriously injured, including mental health cases. That is a step in the right direction and has once again demonstrated that we have found common ground on how to take this matter forward. I await the Minister's response. I would feel more supportive if, in that response, he read out the key points from his letter and put them on the record. I beg to move.

Baroness Jolly: My Lords, these two amendments had a slightly chequered path to the Marshalled List. The noble Lord, Lord Touhig, and I sat down after Committee and wondered whether we could somehow incorporate the two ideas into one. We took our resulting amendments to the Table Office, which said that it would not do. They were then split out again. Once marshalled, the two amendments were tabled in Lord Touhig's name with my support, whereas in fact the first was in his name and the second in mine with his support. The Table Office has apologised, but I felt I should set the record straight.

The Minister has just given the House a very eloquent account of the role of the Armed Forces covenant, and in Committee he brought out the fact that there was no need to worry about parity of esteem for mental health because it all linked in with the Armed Forces covenant, which took into consideration things such as the NHS mandate, and therefore there was no concern.

I had decided that I would do a bit of work to see what the statistics showed. There is a wealth of statistics on the MoD website. I commend the MoD for increasing awareness of, and taking action on, mental health over the last few years. However, when looking at parity of esteem I needed to compare mental health with physical health, and there were no similar statistics on physical health to enable me to weigh one against the other. The Minister said in Committee that parity would not be required because parity was implied in the covenant,

as in the NHS mandate, as I have just said. Clearly, however, this is not evidenced and I would like the Minister to reflect on that when we come back for Third Reading. Will the Minister also explain how physical and mental health services are commissioned, in particular where services are not delivered by service personnel, and why this might be deemed acceptable?

I certainly do not intend to push this inclusion in the amendment but fine words butter no parsnips and the evidence is not there. Parity of esteem is not transparent and for the men and women with mental health conditions, it is not good enough—I do not mean the services that they receive but the fact that they cannot be clear whether they are being treated within the same sort of timeframes or scales as for physical health. I would certainly welcome a rethink before Third Reading.

9 pm

Earl Attlee: My Lords, I do not have any strong views on the merits of Amendments 9 and 10. However, I am extremely concerned about how long we have been engaged in very difficult operations in Afghanistan and Iraq. We were engaged in operations there for year after year; thankfully, that level of engagement has ceased. Many service people were doing multiple six-month operational tours in their career and we simply do not know what the long-term effect of that will be.

If mental illness arises in a veteran, it will be extremely difficult to be certain as to what caused it. Amendment 9 refers to it being "caused by" military service, but I am sure that in many cases the clinicians will not know what caused it, even though they will be sure that the patient is mentally ill. My great fear is that, because of the amount of operational tours that we have undertaken—with people undertaking multiple tours, as I said—we could have a much worse problem in future years than we thought we were going to have. So, looking longer term, we need to be careful about carrying out military operations that last a very long time.

Earl Howe: My Lords, both these amendments seek to address provision for the care and support of members of the Armed Forces who suffer from mental health conditions caused by service. The health of our Armed Forces community is hugely important to us all and I welcome the opportunity to set out the Government's position again.

Turning first to Amendment 9, as I said in Committee, the Armed Forces compensation scheme—AFCS—already makes awards for injuries and disorders predominantly caused by service, including mental health conditions. The scheme is tariff-based and aims to make full and final awards as early as possible, so that individuals can have financial security and focus on getting on with life and living. Claims can be made while in service or when the individual has left. In cases where a disorder is not in steady state, prognosis is uncertain or treatment is ongoing or not yet begun, legislation allows an interim award to be paid at the most likely level. This award is then reviewed and usually finalised within 24 months of notification. Where, exceptionally, matters remain uncertain at review, the interim award may continue for a maximum of 48 months. If the disorder has improved and a lower tariff now applies, no recovery of benefit takes place, while if a higher tariff award now applies, the difference between the interim award and the final award is paid.

The AFCS tariff has nine tables of categories of injury relevant to military service—and they include mental health disorders. While the scheme has time limits for claiming, there is also a provision for delayed-onset conditions, including mental health diagnoses. The Ministry of Defence recognises that, owing to stigma and perceived impact on career, people may delay seeking help. The practical effect of this is that if a person who has left the Armed Forces some time ago is diagnosed with a mental health problem as a result of his or her service and makes a claim under the AFCS, a compensation award will be paid as soon as the claim is accepted. As a result of the recommendations made by the noble and gallant Lord, Lord Boyce, in his review of the AFCS, the Ministry of Defence increased the maximum lump sum award for mental illness from £48,875 to £140,000. This was to better reflect the impact of the most serious mental health conditions.

Broadly, the same mental health disorders are found in military personnel and veterans as in the general community—an exception being a lower rate of the most severe and enduring conditions such as schizophrenia.

Evidence-based effective interventions are now available for the common disorders, including PTSD. The treatments apply to both civilian and military contexts, with a high expectation of improved function, including return to work—especially if people are seen early.

In addition to the AFCS lump sum, the most serious conditions with likely limitations on civilian employability receive a tax-free guaranteed income payment—GIP. While in service, regardless of medical employability grading or being on sick leave, personnel retain their military salary. The GIP is paid for life and comes into effect on discharge from the services or from the date on which the claim is accepted. A lump sum of £140,000 attracts a GIP based on 75% of military salary, with enhancements for service length, age, rank and lost promotions.

Also as a result of the recommendations of the noble and gallant Lord, Lord Boyce, we established the Independent Medical Expert Group—the IMEG. The group—a non-departmental public body—includes senior consultants and academics and UK authorities on specialities relevant to military life, including mental health. It advises Ministers on the scientific and medical aspects of the scheme.

The noble and gallant Lord, Lord Boyce, also identified the need for further investigation into mental health. The IMEG therefore conducted a review that involved literature search and discussions with civilian and military experts and veterans' organisations. The findings were published in its second report on 17 May 2013. The conclusions and recommendations on diagnosis, causation, assessment of disorder severity and the use of interim awards were accepted by Ministers and subsequently incorporated into the scheme.

[Earl Howe]

The House will be interested to know that this year sees a further planned review of the AFCS, which began recently. The review is currently in the stakeholder engagement phase and has been approaching charities, claimants and other government departments. This quinquennial review will consider the scheme's coverage and levels of awards, in particular for those most seriously injured, including those with mental health conditions. It is expected to report at the end of 2016.

The second amendment in this group would create a specific obligation on the Government to have particular regard, in their annual report on the covenant, to parity of esteem between mental and physical healthcare. The Government are absolutely committed to meeting the healthcare needs of the Armed Forces community. The Secretary of State has a statutory requirement to include in his annual Armed Forces covenant report to Parliament the effects of membership, or former membership, of the Armed Forces on service people in the field of healthcare under the covenant.

The healthcare we provide to our service personnel, both at home and deployed on operations, is truly world class. Last year, the principles of the covenant were enshrined in the NHS constitution for England. This gives a commitment to ensure that, as well as those serving in the Armed Forces, reservists, their families and veterans are not disadvantaged in accessing NHS health services in the area in which they reside.

Since 1953, priority access to NHS specialist services in Great Britain has been provided for service-attributable disorders, with no-fault compensation awards. In 2009, this was extended to include treatment for any disorder where a clinician recognises a causal link to service. Priority is decided by the clinician in charge, subject only to clinical need.

I should also mention further work on mental health. For mental health disorders, stigma and perceived discrimination in employment can act as barriers to access and engagement with care. This is not unique to the Armed Forces but common among men. In 2004, led by the Health and Social Care Advisory Service, the MoD, UK health departments, NHS and Combat Stress explored features of an effective veterans' mental health service, piloting various service models in locations across the UK.

The evidence showed that while some veterans were not comfortable with clinicians who had no military experience, others were equally anxious to see only civilian health professionals. What seem to work best are multifaceted services, including healthcare, social support, benefits advice et cetera, delivered in an environment of cultural sensitivity and empathy. The pilots also confirmed that best-practice interventions work, with high rates of improved function and a return to a full life with contribution to family, community and work.

As a reflection of these findings, and of Dr Andrew Murrison's *Fighting Fit* report, since 2010, a network of veterans' mental health services has been established in England and Wales with special arrangements for veterans also established in Scotland. The Armed Forces covenant gives a commitment that veterans should be able to access mental health professionals who have an understanding of Armed Forces culture, and NHS England is currently completing an audit of veterans' mental health services.

In service, there has also been increased focus on good mental health and well-being, with emphasis on prevention and protection through a chain of command lead. Mental health awareness is part of a through-life training strategy starting at basic training, with self-awareness and with annual refresher courses. There are then specific courses for those with leadership responsibilities. The courses cover: raising stress management; reduction of stigma; building resilience; early detection of problems in self and others; and specific pre-deployment, deployed and decompression measures. Trauma incident management teams and mental health nurses are now considered essential parts of a deployment package, and mental health first aid training to service personnel is being delivered by SSAFA in collaboration with Combat Stress, Mental Health First Aid England and the Royal British Legion.

I should add that there is no evidence of an epidemic of mental problems in military personnel—rather, levels of the common mental health problems in regulars and reservists are broadly similar to those of the matched general population, while levels of PTSD in some groups, and in relation to combat, are slightly but not markedly increased. Where service personnel become ill, help is available in primary care with, as required, referral and outpatient support from the 16 departments of community mental health across the UK. When, rarely, in-patient care is necessary, it is provided in eight dedicated psychiatric units, again located around the country.

I therefore assure noble Lords that the Government are committed to meeting the health needs of the service community. We will continue to report on the provision of healthcare in the *Armed Forces Covenant Annual Report*, and our work to address mental health needs will be an integral part of that report.

The principles of the covenant are to ensure that the Armed Forces community is treated fairly in comparison to the civilian population. Parity of esteem is there to ensure that all health services treat mental health with the same importance as physical health, and it applies to everyone accessing NHS services, not just the Armed Forces community. For this reason, I remain firm in the belief that it does not need to be legislated for under the covenant.

I shall write to the noble Baroness, Lady Jolly, on any of her specific questions that I have not addressed. However, given our clear commitment to support those who suffer from mental health conditions, and the tangible steps that we are taking, I hope that the noble Lord will agree to withdraw the amendment.

Lord Touhig: My Lords, this has been a short but very useful debate and I thank the Minister for his response. It is positive and is taking us down the right track to try and resolve these matters. He mentioned that the review of the Armed Forces compensation scheme is now at the stakeholder engagement stage, and I am sure he would welcome it if I passed on to the organisations that have been briefing me that they might have an input into this aspect.

The noble Baroness, Lady Jolly, was quite right to point out that Amendment 10 was in fact proposed in her name, with me as a supporter, although that is not how it appears on the Marshalled List. I note that the Minister has invited us to his department on 4 May to discuss the Armed Forces covenant. That might be the opportunity to raise the issue that the noble Baroness, Lady Jolly, brought up. It might also be an opportunity for my noble friend Lord Judd, who is no longer in his place, to come along and pursue these matters further. I do not wish to detain the House any longer. I am grateful for the Minister's response and I beg leave to withdraw the amendment.

Amendment 9 withdrawn.

Amendment 10 not moved.

9.15 pm

Amendment 11

Moved by ***Lord Thomas of Gresford***

11: After Clause 14, insert the following new Clause—

"Extra-territorial jurisdiction for sexual offences

In section 42 of the Armed Forces Act 2006 (criminal conduct), after subsection (1) insert—

"(1A) If a person subject to service law, or a civilian subject to service discipline—

(a) does an act in a country outside England and Wales, and

(b) the act, if done in England and Wales would constitute a sexual offence under any of sections 1 to 12, 14 to 19 and 30 to 37 of the Sexual Offences Act 2003,

that person or civilian is guilty in England and Wales of that sexual offence.""

Lord Thomas of Gresford: My Lords, the courts of this country have long had extra-territorial jurisdiction to try in this country offences of murder, manslaughter, piracy, treason and certain other, more obscure offences. However, they do not have extra-territorial jurisdiction for sexual offences. Amendment 11 would give the courts of this country jurisdiction to try somebody in the ordinary civil courts, if that person is subject to service law or is a civilian subject to service discipline, who commits an act in a country outside England and Wales that would be a sexual offence. Various sections from the Sexual Offences Act 2003, which I have quoted, relate to serious sexual offences. That would mean that a sexual offence committed abroad would be subject to the protocols in this country that now exist between the Director of Public Prosecutions and the Director of Service Prosecutions and could be tried in the ordinary civil court, as opposed to the courts martial. Courts martial are now established courts, with centres at Bulford, Catterick and Colchester. A person who commits a sexual offence who is subject to service law abroad now could be brought to this country and tried for the sexual offence by way of court martial but could not be tried in the ordinary courts. That is the purpose of Amendment 11: to extend extra-territorial jurisdiction to cover sexual offences.

As for election for trial in the UK, my amendment suggests that such a person, who is subject to service law and has committed an extra-territorial offence that could be tried by a court martial at Bulford, Catterick or Colchester, could elect to be tried in the ordinary courts if he or she so wished. Of course, he or she would have to take advice on what was more appropriate, but it would mean that he or she would have the opportunity to be tried not by officers but by 12 ordinary jurors in this country. I beg to move.

Lord Hodgson of Astley Abbotts (Con): Will the noble Lord, Lord Thomas, clarify one thing? I am a member of the Secondary Legislation Scrutiny Committee and this past week we have been looking at the agreement with the Government of Kenya for the provision of two training areas. There are various changes taking place within that, and one is that all Armed Forces personnel going there will have to obtain visas in future. How, then, does what the noble Lord proposes tie in with the provisions of Kenyan law for people who are in that country? Does our military discipline law come ahead of Kenyan domestic law, and how does that tie in with what he is proposing in terms of its extension and its further extra-territorial application?

Lord Thomas of Gresford: When British service personnel operate abroad and are stationed abroad, there is an agreement made with the Government of that particular country. A protocol is brought about whereby decisions can be made according to the machinery agreed in that protocol about whether a person committing an offence in, for example, Kenya, should be tried by the local courts or by court martial. Obviously, that would apply to all cases of offences that are committed in Kenya which would be contrary to its law. In all probability, as has happened in Germany, very much would depend on whether the local population was involved. For example, under a protocol with the Kenyan Government, the rape of a Kenyan woman would almost certainly be tried in a Kenyan court. On the other hand, if it involved personnel who were on duty there together, it would almost certainly be dealt with under the protocol by the service disciplinary system. I am proposing that if it amounts to a serious sexual offence, or an extra-territorial offence such as I have described, it could be heard in this country.

Lord Tunnicliffe: Amendments 11 and 12 were Amendments 15 and 16 in Committee. I have reread the debate and do not note anything, other than Kenya, that has been added to them tonight. They go to the essence of the scope of military law. We were not persuaded to support them in Committee and we will not do so now.

Earl Attlee: My Lords, I am relaxed about these amendments but I expect that my noble friend the Minister will have something to say about them. Just to tease the noble Lord, Lord Thomas of Gresford, slightly—

Noble Lords: We are not in Committee.

Earl Attlee: The Minister has not spoken yet. To tease the noble Lord slightly, with the benefit of hindsight, would he advise the junior marines who

[Earl Attlee]
were defendants in the Blackman case to take their case to the Old Bailey? I do not think they would have got on very well.

Earl Howe: My Lords, I welcome the opportunity to restate the Government's position on the further changes to the service justice system that the noble Lord, Lord Thomas, proposes. His intention with Amendment 11 is to extend the jurisdiction of civilian criminal courts in England and Wales by giving them jurisdiction to try members of the Armed Forces and civilians subject to service discipline for overseas acts that, were they committed here, would constitute sexual offences under the Sexual Offences Act 2003.

I apologise to the noble Lord, Lord Thomas, because I confess I am not clear what advantage the amendments would confer on the system as a whole. Noble Lords may be aware that service courts are already able to exercise jurisdiction in respect of acts committed overseas. Section 42 of the Armed Forces Act 2006 provides that a member of the Armed Forces is guilty of an offence under service law if they commit an act outside the UK that would constitute an offence under the law of England and Wales were it done here. If it is necessary to have a further conversation with the noble Lord after Report to clarify any misunderstanding that I have, I will be happy to do that.

Amendment 12 would give members of the Armed Forces accused of committing certain crimes overseas the right to elect to be tried by a civilian criminal court in the UK instead of a court martial. The crimes in question are those that the civilian criminal courts may try even if the event in question took place overseas. Those offences include murder, and would also include sexual offences if Amendment 11 were accepted as well. I note that Amendment 12 does not appear to propose that a member of the Armed Forces should have a right to elect civilian criminal trial in a case concerning conduct in the UK, where both the civilian courts and a court martial would have jurisdiction to try the case. I confess it is not immediately apparent to me why such cases should be treated differently.

Taken together, the effect of Amendments 11 and 12 would appear to be that while a service person who committed a sexual offence overseas could choose to be tried at a Crown Court rather than a court martial, a service person who committed the same offence in the UK would have no such choice. It is not clear why the amendment makes provision for electing civilian court trial only for conduct outside the UK, not in the UK.

The noble Lord may again not be too surprised to hear that we do not support these amendments. I said in Grand Committee in response to two very similar amendments tabled by the noble Lord that making the changes proposed would appear to imply that there may be reason to doubt the ability of the court martial to deal with sexual offences. I would make the same point about Amendments 11 and 12. Yet, as I said in Grand Committee, the service justice system has been scrutinised by the UK courts and by Strasbourg and it is now well recognised that the court martial system in the UK ensures a trial that is fair and compatible with the European Convention on Human Rights, both for investigations and prosecutions in respect of acts in the UK and for investigations and prosecutions in respect of overseas acts where the civilian police may not have jurisdiction. The Government believe that the service justice system, including the service police, the Service Prosecuting Authority and service courts, is capable of dealing with the most serious of offences and should be able to continue to do so.

The amendments would significantly undermine existing arrangements designed to ensure that cases are dealt with in the most appropriate court jurisdiction. In the case of offences which both the civilian criminal courts and service courts have jurisdiction to try, it is recognised that it is necessary to consider in each case whether the offence is more appropriately tried in the civilian criminal courts or in a service court. This applies not only to those offences committed overseas in respect of which the civilian criminal courts have jurisdiction, but also to offences committed in the United Kingdom which both the civilian criminal courts and service courts have jurisdiction to try. However, a decision on appropriate jurisdiction is rightly a matter for service and civilian prosecutors rather than the accused person.

There is a protocol between service and civilian prosecutors which recognises that some cases are more appropriately dealt with in the service system and others are more appropriately dealt with in the civilian system, particularly those with civilian victims. The principles of this protocol have the approval of the Attorney-General for England and Wales, and the Ministry of Justice. The protocol recognises that any criminal offence can be dealt with by the service authorities. The main factor in decisions on whether an offence is more appropriately dealt with in the civilian criminal justice system or the service justice system is whether the offence has any civilian context, especially a civilian victim. The protocol therefore provides for cases with a civilian context to be dealt with by the civilian criminal justice system. Where a case has a service context, it is important that the service justice system, which is specifically constructed to deal with that unique service dimension, is able to deal with the case.

Creating a right to elect of the kind contained in this amendment would override the existing protocol and could seriously undermine the service justice system. Many offences which involve conduct outside the UK will have a service context such that both service and civilian prosecutors would consider that they would be more appropriately dealt with in the service system. However, the proposed right of election could mean that a person accused of such an offence could make an election that led to their case being dealt with instead by the civilian criminal courts. We do not think this would be right. This is significant because the court martial is part of an overall system of justice and discipline, and the existing statutory provisions in the Armed Forces Act 2006 governing sentencing in the court martial reflect this. They are closely based on the civilian sentencing principles but include in addition, as I mentioned earlier, the "maintenance of discipline" and the "reduction of service offences", which reflect

special aspects related to the service justice system. In my response to Amendment 2, I touched on a number of these special aspects.

Allowing a case with a purely service context to be dealt with in the civilian system on the election of an accused therefore risks undermining the system of justice and discipline in the Armed Forces which the Armed Forces Act 2006 was carefully constructed to underpin. Where the prosecutor's protocol indicated that a case should be dealt with in the civilian system—for example, a case in which the victim is a civilian—would the accused service person be able to override that and instead elect trial by court martial? We do not think that would be right. Furthermore, a right to choose which court should hear the case would open up the possibility of any co-accused making different elections, resulting in split trials in different systems with obvious implications for the efficient administration of justice.

There is another aspect to this, which the noble and learned Lord, Lord Hope, identified in Grand Committee and which it may be helpful for me to repeat here. The amendments are concerned with conduct overseas which is likely to be criminal under the local law as well as under service law. However, the authorities in states visited by our Armed Forces are commonly prepared to allow service courts to exercise jurisdiction rather than assert their right to try a case before their own civilian courts. A good example is Germany, where there is a very active and much-respected criminal justice system, but under the arrangements we have in place the German authorities are prepared to allow our service courts to exercise jurisdiction over cases with a service context.

9.30 pm

There is a risk that jurisdictions around the world which are prepared to do that may be concerned about allowing our civilian courts to exercise jurisdiction. We would need to be absolutely sure that those jurisdictions were prepared to allow this when they could perfectly well assert their right to try a case before their own civilian courts.

In conclusion, I strongly contend that the service justice system is capable of dealing effectively with the most serious of offences and should be able to continue to do so. It is therefore not appropriate to limit the jurisdiction of the court martial; nor is it necessary or appropriate to make changes which may have that effect—changes which would appear to imply reason to doubt the ability of the court martial to deal with sexual offences. Although I know that the noble Lord will find my reply disappointing, I hope he will agree to withdraw his amendment in the light of what I have said.

Lord Thomas of Gresford: My Lords, I am very grateful to the Minister for his detailed and considered reply, and indeed for the very helpful conversations I had with the Bill team earlier this week. I am persuaded by the Minister's argument and therefore beg leave to withdraw the amendment.

Amendment 11 withdrawn.

Amendment 12 not moved.

Amendment 13

Moved by ***Baroness Smith of Newnham***

13: After Clause 14, insert the following new Clause—

"Reporting obligation on overseas deployments (civilian casualties)

(1) The Commander responsible for review of reports on civilian non-combatant casualties submitted to the Ministry of Defence in connection with UK deployments overseas shall report to the Minister for the Armed Forces, at least once every quarter or at any more frequent intervals as the Secretary of State may specify, on—

(a) the number of reports on civilian non-combatant casualties submitted by independent bodies during the period since his or her last report;

(b) the number of reports on civilian non-combatant casualties submitted by the civilian casualties tracking unit in that period;

(c) the number of reviews on civilian non-combatant casualties carried out in that period;

(d) the sum and allocation of funding for any awards made as a result of the civilian casualty review procedure in that period.

(2) A report under subsection (1) shall include—

(a) a copy of the relevant civilian casualty review procedure;

(b) the relevant part of the standard operating procedures in place to enable review of reports of civilian non-combatant casualties.

(3) In this section "UK deployment" includes but is not limited to any airstrikes carried out by UK personnel operating manned or unmanned aircraft remotely from the United Kingdom or United States.

(4) On receipt of any report under subsection (1), the Minister for the Armed Forces shall—

(a) lay a copy of the report before Parliament, and

(b) lay a copy of the Government's response to the report before Parliament, making particular reference to the operation of the civilian casualty review procedure, and any relative increase in reports, reviews or awards."

Baroness Smith of Newnham (LD): My Lords, in Grand Committee I welcomed a probing amendment tabled by the noble Lord, Lord Hodgson of Astley Abbotts, which referred to a duty to report on civilian casualties. At that point I raised certain questions. In particular, the noble Lord's amendment sought working definitions of "civilians" and "combatants" every three months. It almost suggested that there would be rolling definitions.

At that time, the Minister undertook to write to me to explain the Government's working definitions of "civilians" and "combatants" in the context of wars in Iraq, Syria and elsewhere. I am not sure whether the letter got lost in the post—there are rather a lot of Smiths in your Lordships' House—but I certainly have not received a letter of that sort. Therefore, I should again like to ask the Government to explain how they define "combatant" and "civilian". It may appear that they are definitions that can be produced from a dictionary, but the point is that some of our partners—particularly the United States—may have a rather looser definition of a combatant than one might expect in ordinary civilian life, and that it might include young men who are adjacent to conflicts but who may be seen as combatants. Therefore, I would

[Baroness Smith of Newnham]
very much welcome an explanation of how Her Majesty's Government understand the term "combatant", particularly as there appears to be a marked discrepancy in the figures. Eleven of the 12 partner countries have said that they have not caused any civilian deaths. The United States has acknowledged 41 deaths, yet Airwars has said that there have been 1,118 civilian casualties in the war against Daesh. Therefore, there is some disparity there and I wonder whether it is due to a difference in the definitions.

I do not intend to test the patience of the House by testing its will or by detaining your Lordships for very long, but one point to bear in mind is that the Armed Forces Minister in the other place, Penny Mordaunt, committed in defence Questions on 29 February to review any reports of civilian casualties, and she is apparently looking for ways in which this can best be done.

The purpose behind Amendment 13 is again to suggest a type of reporting system. But, given the difficulties with definition, we could tighten the wording slightly and suggest that there should be reports on civilian non-combatant casualties, which is belt-and-braces wording. Clearly, this is not something we are expecting to take to a vote, but we believe that it is very important that the people of the United Kingdom and our coalition partners in the fight against Daesh have certainty on what we believe to be civilian casualties, and that the belief that we have not caused any civilian casualties is actually correct, on an ordinary definition of "civilian".

Earl Attlee: My Lords, with these issues, it is always difficult to measure casualties. That is not necessarily an argument against the amendment from the noble Baroness. Just to be really helpful to the Minister, of course, there are lawful combatants and there are unlawful combatants. So that is another issue.

Lord Hodgson of Astley Abbotts: My Lords, as the noble Baroness, Lady Smith, kindly said, I tabled a similar, rather less focused, amendment in Committee on 3 March and we had a useful debate then. I was grateful for my noble friend's response, and we explored a number of the challenging aspects of this difficult matter. Now we have this more focused and more pointed amendment, redrafted in the light of those discussions and of the subsequent information that has been made available. Unsurprisingly, I am therefore inclined to support it.

In his reply to the debate, my noble friend's argument for being unwilling to consider the amendment rested, I think, on two major planks: on the one hand, the inflexibility resulting from enshrining this sort of requirement in primary legislation; and, on the other, operational confidentiality. These two arguments were backed by a statement of general good intent on transparency. My noble friend will appreciate that I absolutely accept his sincerity on these matters, but operational confidentiality could become an elastic concept, capable of being interpreted to cover a pretty wide range of situations. When backed only by a statement of intent without any statutory teeth, this elasticity could be increased still further.

My concern about civilian casualties arises from two points. The first is the long-term fabric of the society. If women and children are traumatised by violence, it may take a generation to rebuild a stable society and it must be in this country's interests to establish and maintain stable societies wherever possible. Secondly, and no less importantly, civilian casualties must be one of the best recruiting sergeants for extremists. If I see my village wrecked and my family and community blown apart, I am unlikely to be sympathetic to the people who have caused my world to be turned upside down.

At the core of my concern are the figures given by the noble Baroness about the discrepancy between what Airwars has said about coalition casualties, excluding the Russian casualties, of which I think there are a great deal more—some 3,000 or more. This leads me to believe that somewhere something must be going wrong. Airwars has got its figures wrong, or the coalition members are looking the other way, or the procedures for identifying and recording civilian casualties are faulty. This country, which has now carried out some 600 air strikes in Iraq and Syria and flown more than 2,000 combat missions against Daesh, should surely have a keen interest in ensuring that the truth is established and publicised. Our international reputation demands no less. This amendment, if accepted, would help in that process.

I conclude by saying that I hope my noble friend will forgive me if I gently chide his department. As a result of the issues raised in that earlier debate in Grand Committee, which I referred to, which are also the raw material of our discussion this evening, I wrote to him raising a series of specific questions. My letter was dated 15 March, and I am afraid that I have yet to receive a reply. Will he be prepared to act as the man from Dyno-Rod? If so, I would be extraordinarily grateful.

Lord Touhig: My Lords, I will be very brief. When we considered an amendment very similar to this in Committee, I said that on this side we certainly welcomed the aspirations that motivated it—the noble Lord, Lord Hodgson of Astley Abbotts, tabled it at that time—but we certainly had doubts that it was the best way of dealing with reporting on civilian casualties. I fear that although this amendment is much more focused, as he mentioned, those doubts remain.

Of course it is right to report on civilian casualties caused by air strikes, but we should also be made aware of all civilian casualties, including those caused by the actions of ground forces. I can only repeat a key point I made in Committee when I stressed that reporting on civilian casualties is not an Armed Forces role alone but needs to involve the Foreign and Commonwealth Office and the Department for International Development. This is a matter for a cross-government approach that seeks an agreement on how to report on civilian casualties caused in a conflict in which our Armed Forces are involved. However, it must be done in a way that that gives everybody confidence, and such an approach must also ensure that we maintain operational security. That is important; I am not sure whether the noble Lord who has just spoken feels it is quite that important, but certainly that point was made, rightly, by the Minister in Committee.

We do not need primary legislation to achieve the aims of this amendment, but if the Government were minded to consult on finding a better way to embrace the aims of the amendment and to consult so that we could find a solution which we could all support on properly reporting on civilian casualties, we would certainly want to co-operate with them on that. However, this amendment is not the solution and we will not support it.

Earl Howe: My Lords, I begin by offering my apologies to the noble Baroness, Lady Smith of Newnham. If I have been guilty of failing to fulfil an undertaking to write to her on the questions she raised in Grand Committee, I will certainly look into that as a matter of urgency. I must also apologise to my noble friend Lord Hodgson for the delay in responding to his letter of last month. I can, however, tell him that a reply was dispatched to him today.

This amendment would create a legislative obligation on the Ministry of Defence regarding civilian casualties following military operations, including sharing the details of any investigations with Parliament. This would be inappropriate for several reasons, not least that each military operation is different, so respective arrangements are likely to vary, depending on which forces are involved. It also risks prejudicing the operational and personnel security of our Armed Forces.

First and foremost, I re-emphasise that the Government take the utmost care to avoid civilian casualties when planning and conducting any form of military operation. Every care is taken to avoid or minimise civilian casualties and our use of extremely accurate, precision-guided munitions supports this aim. By way of an example, the authorisation process for air strikes is extremely robust. All military targeting is governed by strict rules of engagement in accordance with both UK and international humanitarian law.

I will make absolutely clear that we will not use UK military force unless we are satisfied that its use is both necessary and lawful. This tried and tested process brings together policy, legal and targeting experts—and, of course, the men and women of our Armed Forces are highly trained, including in the law of armed conflict. After a strike has been carried out, we conduct a full review to establish what damage has been caused, specifically checking very carefully whether there are likely to have been civilian casualties.

The Government have always taken very seriously any allegations of civilian casualties. We have thorough processes in place to review such reports and will launch investigations where appropriate. We will continue to consider all available evidence to support such reviews, and the Defence Secretary has made a personal commitment that the department will review all claims.

In the event of a credible allegation of a civilian casualty, an independent service police investigation would take place. The department has a process in place to inform Ministers on a case-by-case basis, but this has not been necessary to date, given that we have had no confirmed incidents of civilian casualties in Iraq or Syria caused by UK action. We are also committed to updating Parliament with information regarding any confirmed civilian casualty caused by UK military action in Iraq or Syria.

9.45 pm

I assure the House that the Ministry of Defence is committed to transparency as far as possible. However, I hope that noble Lords will agree that it is also paramount that we maintain personnel and operational security. This includes not revealing details about our targeting processes, which may endanger personnel and our ability to operate. To disclose that information, even in part, would prejudice the capability, effectiveness and security of the UK Armed Forces.

A requirement in primary legislation to publish data on a regular basis may seem to be a way of holding the current and future Governments to account, but it would impose an unnecessary and inflexible burden. For example, we would have had nothing to report thus far on our operations in Iraq and Syria. The care that we take on operations means that civilian casualties are a rare occurrence. It is far more effective and timely for the department to notify Parliament by exception, which allows for proper due diligence to be paid to individual cases, rather than to have it imposed as a regular reporting obligation.

As I have made clear, the MoD has clear processes and procedures to minimise civilian casualties. The principle of openness on this issue is something which we strongly support and which we have demonstrated during our current operations in Iraq and Syria. We have been very open and transparent about the air strikes that we are conducting in Iraq and Syria: reports are posted online two or three times a week. These reports explain where a military operation has taken place and what effect has been achieved in the fight against Daesh. Where information is not disclosed, it is for very good operational reasons. In the light of what I have said on this matter, I hope that the noble Baroness will agree to withdraw her amendment.

Earl Attlee: Before the Minister sits down, he said that we have not caused any civilian casualties in Iraq. I take it that he is referring to current operations and not Operation Telic.

Earl Howe: My noble friend is right. I am referring to Operation Shader.

Baroness Smith of Newnham: My Lords, I am most grateful to the Minister for his very thorough response, and in particular for reiterating the care that is taken with the precision of UK targeting. It is very clear that the Minister and the Secretary of State have committed to informing us of any civilian casualties should they arise. Therefore, I beg leave to withdraw the amendment.

Amendment 13 withdrawn.

Trade Union Bill

Returned from the Commons

The Bill was returned from the Commons with amendments. The Commons amendments were ordered to be printed.

House adjourned at 9.48 pm.

Grand Committee

Wednesday 27 April 2016

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Lord Haskel) (Lab): My Lords, if there is a Division in the House, the Committee will stand adjourned for 10 minutes.

Modern Slavery Act 2015 (Code of Practice) Regulations 2016

Motion to Consider

3.45 pm

Moved by ***Lord Keen of Elie***

That the Grand Committee do consider the Modern Slavery Act 2015 (Code of Practice) Regulations 2016.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I shall speak to the draft Modern Slavery Act 2015 (Code of Practice) Regulations 2016, which were laid before this House on 14 March.

The Modern Slavery Act 2015 includes important maritime enforcement powers for constables and enforcement officers to use when investigating modern slavery offences committed at sea. These provisions will give law enforcement officers at sea similar powers of enforcement to those available to enforcement officers in relation to drug traffickers. In summary, these are: the power to stop, board, divert and detain a vessel; the power to search a vessel and obtain information; and the power to arrest and to seize any relevant evidence.

The Modern Slavery Act enables law enforcement officers to use these powers in relation to certain ships in international waters, as well as UK territorial waters. It will also allow law enforcement officers in hot pursuit of ships to exercise their powers throughout UK territorial waters, so that they have the powers they need to catch the perpetrators of these terrible crimes. These powers are important because victims can be trafficked on vessels or subject to terrible abuse and forced labour while at sea. If law enforcement officers have to wait for vessels to return to UK territorial waters or to a UK port before they can take action, this can expose victims to extended periods of abuse and risk to life.

Before these new powers are brought into force, Schedule 2 to the Act requires that a code of practice is put in place for England and Wales for English and Welsh enforcement officers to follow when arresting a person under these powers. The Government have now prepared this code of practice, which was laid before the House on 14 March 2016 with the Modern Slavery Act 2015 (Code of Practice) Regulations 2016 and debated on 18 April in the House of Commons. These regulations are necessary to ensure that the code of practice will be in operation at the same time that the maritime powers in the Act are commenced.

The code provides guidance as to the information that should be given to a suspect at the time of their arrest. The code makes clear that suspects should be provided with a summary of their rights and warned if it may take more than 24 hours to bring them to a police station. The code will ensure that law enforcement officers take into account the particular needs of suspects and vulnerable suspects during detention periods. This includes ensuring that those detained understand what is being said to them and making arrangements to safeguard their health and welfare.

To ensure that the code will be practical and effective, the Government have consulted the law enforcement agencies that will use this code, representatives of the legal profession, the devolved Administrations, other external organisations and interested government departments. The Scottish Government and the Northern Ireland Executive have also drafted equivalent guidance or codes of practice for their law enforcement officers, and we have worked closely with them to ensure the codes are appropriately aligned.

The maritime powers in the Modern Slavery Act are essential if we are to ensure that our law enforcement officers can properly pursue the perpetrators of these terrible crimes. It is vital that these powers are used properly, particularly the power of arrest. That is why this code of practice and these regulations are so important, and I commend them to the Committee.

Baroness Butler-Sloss (CB): My Lords, I think the code of practice is absolutely excellent and I have no comment on it, other than to praise it. I am absolutely delighted that the Modern Slavery Act includes these powers on ships.

I hope the Minister will forgive me for raising an issue that is not strictly on board ship. I remain, with others, very concerned about smaller ports. I have two questions, but I do not necessarily expect the Minister to be able to answer them today. First, what are the powers and code of practice in relation to ports in England and Wales, particularly the smaller ports that have regular ferry services but are not in the larger group? Secondly, the particular port I have in mind, which those of us concerned with modern slavery are especially worried about, is Holyhead. Holyhead does not appear to have a very good organisation at the moment for checking those who are coming through, who may in fact be being brought in for forced labour or sexual or other exploitation. Perhaps I could be told at some stage what is going to be done, or is already being done, about the smaller ports, with a really close look at what is happening in Holyhead.

Lord Rosser (Lab): I thank the Minister for his explanation of the purpose and effect of this order, which brings into force a code of practice to be followed by constables and enforcement officers when arresting a person under the maritime enforcement powers set out in the Modern Slavery Act 2015. Without the powers in the 2015 Act, law enforcement authorities are not in a position effectively to police modern

[Lord Rosser]
slavery offences that take place in international waters, and do not have the power to stop or divert vessels in UK territorial waters.

Human trafficking and modern slavery do not occur only outside the United Kingdom. The National Crime Agency has reported that last year 3,266 people, of whom 928 were children, were identified as potential victims of trafficking in the United Kingdom, with that first figure being a 40% increase on the number of potential victims in 2014. The United Kingdom is predominantly a destination country for victims of trafficking but it is also a source and transit country. Last year, potential victims of trafficking found here were reported to be from 102 different countries of origin.

Of course, our police and border forces need to have the most effective means available to pursue, disrupt and bring to justice those engaged in human trafficking. The code covers arrest and obtaining information. Is that power restricted to the ship or vessel on which it is suspected that slavery or human trafficking is taking place, or does it cover any wider geographical area or port facilities used, or about to be used, by the ship, or other vessels supplying or servicing the ship?

The Explanatory Memorandum states that the Government are,

"working with the Scottish Government and Northern Irish Executive with a view to commencing the maritime powers in Parts 2 and 3 of Schedule 2 simultaneously across the United Kingdom on 31 May 2016".

I am not sure whether the Minister said that that objective had now been achieved or it is still to be achieved. If it is the latter, what would the consequences be if it was not achieved by 31 May 2016?

The Explanatory Memorandum refers to consultation that has taken place on the draft code of practice and states that, in response to comments made,

"the Code was amended to improve provisions for record keeping by constables and enforcement officers, and enhance the information to be provided to arrested persons on the period of time likely to be spent in transit to a police station or other authorised place of detention".

Were any other suggestions or requests made in the consultation in relation to the code of practice that were not taken on board by the Government? If so, what did they cover?

Finally, were any issues raised by the Independent Anti-slavery Commissioner about the code of practice, and is he satisfied with the wording of the code and its consistency, for example, with other relevant codes of practice?

Lord Keen of Elie: I am obliged to your Lordships. I shall begin by addressing the point raised by the noble and learned Baroness, Lady Butler-Sloss—in particular in the context of her mixed metaphor. Border officials are maintained at ports, particularly ones where there are commercial operations going in and out of the country. The United Kingdom has more than 11,000 miles of coastline and the demands that that raises are considerable. To try and meet those demands, I understand that field agents are also deployed to respond to intelligence about arrivals in smaller ports. There is also a system of self-reporting that operates from some of these ports. However, with regard to the particular issues mentioned in respect of Holyhead, I undertake to write to the noble and learned Baroness to outline what our position is and what the views of the border officials are with regard to operations there, in light of the concerns that have been raised.

I turn now to the points raised by the noble Lord, Lord Rosser. With regard to the question of arrest and information, the powers of arrest are limited, as I understand it, to the vessel in question.

It was proposed that, subject to agreement with Scotland and Northern Ireland, commencement would take place on 31 May. Very recent intelligence suggests that there is still an issue to be bottomed out—if I can put it that way—with the Northern Ireland Executive over which jurisdiction would respond to any complaints regarding the conduct of a police officer who moved from one set of waters into another. In other words, if an English enforcement officer begins in England and Wales and moves into Northern Irish waters, are they then subject to the jurisdiction of Northern Ireland or do they remain subject to the jurisdiction in England? That has still to be resolved. If it cannot be resolved by 31 May then consideration would have to be given as to whether Part 3 of the Act could come into force on that date without the relevant code. That is being borne in mind.

On consultation, I am told that the consultation raised only a series of minor points with regard to the code and they were all taken into consideration.

With regard to issues concerning the independent commissioner and the code, the code was, of course, discussed with his office and he expressed that he was content with the code.

I hope that that deals with the points raised by noble Lords—

Lord Young of Norwood Green (Lab): Can I pursue the question asked by the noble and learned Baroness, Lady Butler-Sloss, on small ports? In the news recently was a ship that was detained with a significant number of weapons on board. That highlights the problem, as it was landing at a very small and isolated area. Again, I do not expect an answer here because—I am not going to use my noble friend's analogy—it is slightly outside the range of this. There is no doubt that traffickers will react and try every stratagem and device that they can. As the Minister pointed out, there are 11,000 miles of coastline, which is a lot to patrol. What strategy do border patrols, coastguards and so on dealing with this problem have? Have they thought about today's technology? Drones come to mind—I do not say that facetiously. If I can slightly trespass on the good will of the Minister, I would be grateful if he could take that point into account as well when he responds.

Lord Keen of Elie: I would be willing to write on this matter in general, but I do not believe it would be appropriate to disclose strategies that are being employed by field agents for the purposes of monitoring the

coastline, as that would merely alert those seeking to avoid them to how we are seeking to identify them. Although I am perfectly willing to write, I suspect that the correspondence will be somewhat anodyne.

Lord Young of Norwood Green: As long as the Minister can say that the matter is in hand, that would be helpful.

Motion agreed.

Immigration (Leave to Enter and Remain) (Amendment) Order 2016

Motion to Consider

4.01 pm

Moved by ***Lord Keen of Elie***

That the Grand Committee do consider the Immigration (Leave to Enter and Remain) (Amendment) Order 2016.

The Advocate-General for Scotland (Lord Keen of Elie): My Lords, I shall begin by observing that this is a highly technical order.

The UK welcomes record numbers of visitors to come and enjoy our historic sites and experience our vibrant culture. In the year to June 2015, 9 million non-EEA visitors came to the United Kingdom, an increase of 0.5 million compared to 2014, with 1.9 million visit visas issued in 2015—an increase of 2% compared to the previous year. The Government are keen that the UK continues to attract business and leisure travellers, who will help our economy grow further. So in April 2015 we simplified the immigration system for people visiting the UK. We streamlined the visitor routes by reducing their number from 15 to four and created more flexibility for visitors to do a wider range of activities.

The order's provisions, which are of a technical nature, have two basic purposes: first, to update provisions in the 2000 order relating to the extent to which entry clearance will have effect as leave to enter and to the categories of person who may be granted leave to enter automatically and who can be granted or refused leave orally; and, secondly, it makes provision about lapsing leave.

The order extends the period for which entry clearance takes effect as leave to enter for certain categories of visitor, who may, exceptionally, be granted a visa for a period that is longer than the usual six months. These are private medical treatment visitors, who may be granted a visa for up to 11 months, and academic visitors, who may be granted a visa for up to 12 months.

With the simplification of the visitor routes of entry, two routes—those for visitors coming to study for a short period and for parents coming to stay with their children at school here—are no longer treated as visitors. This was done to make their purpose clearer. The order makes a change to ensure that short-term students and parents of tier 4 child students are included in the categories of person to whom leave may be given or refused orally.

The order also makes changes to update the categories of person who may, provided they are a registered traveller, be granted leave to enter automatically if they enter by an e-gate. A registered traveller is a low-risk frequent traveller of a specified nationality who can benefit from quicker processing at the border by entering via an e-passport gate. This is available at most UK airports.

Finally, the order makes a change to ensure that leave granted to partners and children of certain British or settled Crown servants and British Council employees does not lapse after two years when they are accompanying their partner or parent on an overseas posting. The change also means that those granted leave under the family provisions of the Immigration Rules can complete their probationary period outside the United Kingdom before applying for indefinite leave.

I commend the order to the Committee.

Lord Rosser (Lab): I note that the Minister gave me a look when he started by saying that the order is of a highly technical nature, which I think was a suggestion that he hoped that I might not have too much to say, and I am able to grant him his wish. Since there appears to be nothing in the order of a controversial nature, there are no questions that I wish to raise or meaningful comments that I can make, so I will leave it at that and sit down.

Lord Keen of Elie: I am most obliged to the noble Lord for his brevity.

Motion agreed.

Limited Liability Partnerships, Partnerships and Groups (Accounts and Audit) Regulations 2016

Motion to Consider

4.06 pm

Moved by ***The Earl of Courtown***

That the Grand Committee do consider the Limited Liability Partnerships, Partnerships and Groups (Accounts and Audit) Regulations 2016.

The Earl of Courtown (Con): My Lords, regulation on financial reporting has an immediate impact on businesses and those who prepare and make use of their accounts. I am sure that noble Lords will agree that legislation should enable trust and transparency for users of accounts without imposing disproportionate burdens on business. These regulations will introduce largely deregulatory changes to financial reporting requirements for limited liability partnerships. They will also introduce a lighter touch regime for the very smallest LLPs and qualifying partnerships that qualify as microentities.

Last year's implementation of the accounting directive gave us an opportunity to reduce burdens imposed by the financial reporting regime for companies—especially for small companies. Having completed transposition

[The Earl of Courtown]
of the accounting directive, we were able to turn our attention to other types of business entity, and we wish to introduce similar changes for LLPs. This was also the wish of stakeholders in the accountancy sector, who raised the issue of LLPs when consulted on the proposed changes for companies. It is not surprising that these stakeholders take an interest in the financial reporting requirements for LLPs. For some accountancy and legal firms and other businesses, the LLP structure has the advantage of a partnership—that is, the relative simplicity of internal governance—with the legal protection of a limited company. High-profile businesses registered as LLPs include PwC Legal and KPMG.

The UK's approach has been that, as far as possible, the financial reporting regimes for LLPs and companies should be aligned to avoid unnecessary complexity. Last year, we consulted on our proposals to align the regimes for companies and LLPs. This approach was unanimously supported at consultation. As part of that consultation, the Government were also encouraged to introduce these regulations without delay, so that eligible LLPs could benefit from the burden reductions at the earliest opportunity. The majority of stakeholders who responded included those with practical experience of accounts—I am grateful for the contribution of the Institute of Chartered Accountants in England and Wales, the Financial Reporting Council and firms such as Ernst & Young and Deloitte, to mention a few.

The regulations before us will amend legislation that applies much of the companies financial reporting regime to LLPs. This includes secondary legislation that applies provisions of the Companies Act 2006 to LLPs and associated regulations relating to the financial reporting framework for companies. The outcomes for business should be straightforward and easily understood, coming, as they do, on the back of changes to the companies regime.

I will now explain some of the detail of these changes. The regulations will raise the thresholds for defining the size of LLPs for the first time since 2008. This will recategorise around 400 medium-sized LLPs as small, and around 40 large LLPs as medium-sized, which will enable them to access regimes more appropriate to their size. The regulations will also introduce a microentities regime for LLPs and qualifying partnerships, to mirror that made available to companies. It will enable about 3,500 of the smallest LLPs to choose to access a much less burdensome accounting regime. Among other things, the microentities regime will provide a greatly simplified balance sheet and profit and loss account. It will also largely exempt many LLPs from the obligation to draw up notes to accounts.

Other deregulatory changes include permitting small LLPs to prepare and publish abridged accounts. These are accounts whose formats omit information currently required by the general formats. However, abridged accounts will be possible only where the decision has been unanimously supported by all members. In January, it was announced that audit exemption thresholds for LLPs will rise in line with the increased thresholds for accounting. This is consistent with the Government's deregulatory agenda and will offer savings of around £2 million per year for LLPs.

I am aware that not all members of the accounting sector welcome the raising of the thresholds. Therefore, the Government will monitor the impacts of this change to ensure that the reduced burdens to business do not lead to any unintended consequences. We will respond if evidence indicates that action is required. There will be a full review of the provisions amended by the regulations by 2021. I should explain that not all LLPs will be able to take advantage of these deregulatory provisions. As is the case for companies, certain LLPs are excluded from the small and medium-sized LLP regimes and will continue to be required to provide full accounts. This includes LLPs that are involved in activities such as providing credit and insurance, where a higher standard of transparency is expected.

In conclusion, the regulations will not substantially change the way that LLP accounts are prepared and used but, importantly, they will achieve consistency and therefore simplicity across the UK's financial reporting regimes for companies and LLPs. The regulations will provide real deregulatory opportunities for LLPs. There are approximately 58,000 LLPs in the United Kingdom. The vast majority of LLPs—some 98%—are small and will be able to benefit most from the changes if they wish. These savings will then be available to business to get on with running, growing and consolidating their businesses.

Effective financial management underpins the success of every business. Consequently, it will always be a priority to maintain the rigour and integrity of the UK's accounting regime. Although the regulations will be largely deregulatory, LLPs will continue to be required to provide key information to inform decision-making, improve performance and promote confidence in a business's future. The regulations will offer additional flexibility for LLPs and qualifying partnerships while ensuring that necessary protections are still afforded to the users of accounts, including the public. The alignment with the requirements for companies means that they will also meet the understandable desire of users and preparers of accounts for consistency in financial frameworks. I commend these regulations to the Committee.

4.15 pm

Lord Stevenson of Balmacara (Lab): I looked around in hope, but unfortunately not many people seem to want to respond to the interesting introduction we have had from the Minister. I do not intend to detain him long, but I want to raise one broadly philosophical point and a number of detailed questions to which I fully expect the best response will be a letter at some later stage. They are probably more detailed than is appropriate for this sitting today.

My philosophical point is really aimed at the statement with which the Minister ended, which, in a sense, was trying to assert that a benefit would flow to the business community by there being a more parallel arrangement for the ways in which the accounts are organised for LLPs and for the limited company sector, from where we are more used to seeing accounts. I want to probe a little at that, because it seems to me that we are coming from two different places. A limited company, in its broadest sense, is basically a mechanism

under which those who carry out business are protected from, on the one hand, their owners—those who bring up the share capital—and, on the other hand, their creditors. In other words, they are detached from the actual process of the business by the fact of having limited liability.

That in a sense means that the full weight of the pressure that can apply in a commercial environment—whether they are trading well or badly, are seeking to expand, trying to borrow money, and everything else—is wholly dependent on that vehicle which is a limited company. It is therefore right that the standards set for that, where we have got to so far in company law, should have a very detailed focus on the way in which the accounts are generated and for the subsequent registration of those with Companies House and the availability of those through other means.

Partnerships are different. People work together in a partnership to provide a better or greater service; it is not set up as a business with the aim or purpose of shielding the individuals involved from the pressure of creditors or investors. Indeed, most partnerships with an LLP in its midst are not in any sense related to shareholders. There is no investment from outside and therefore no reporting requirement for those who have put money into the company, as it were. We can immediately begin to see where I am coming from here. There are different audiences for these different operations, so I am not quite sure why the Government are trying to bring them together. If they are trying to bring them together, what will the values be? I shall come back to that in a minute.

In my understanding, an LLP arrangement for partnerships—this is described in the papers we have received on the instrument—was largely brought about because of concerns about very large partnerships having to find individual partners and the possibility that other members of the partnership, presumably for whom the state has no interest because they are people who have willingly joined up to trade together for some purpose, which is very often but not necessarily always for business services, could expose themselves to a greater risk because of the size of the partnership. It could be so great that they cannot sensibly moderate the risk when other partners are taking decisions of which they have no knowledge. Clever people thought that to park the risk of that in an LLP, joined into the partnership, would be a way of expanding the ability of law, accountancy and similar firms to go forward in a way that would limit the responsibility to an internal pressure, not an external pressure. The difference is again there. We are talking about limited liability partnerships worrying about their own internal people—the people they are supposed to be working with—so that is not the same as a limited company, which might be concerned about an aggressive creditor or a problem with a shareholder who might wish to either acquire the ownership of the capital, liquidate the company or whatever. I just pose the question: I am not quite sure where we are here and why this is necessary.

The public accountabilities are obviously very different. A limited company is registered through the stock exchanges and there is responsibility for transparency and knowledge in that sense. We are also talking about the role of the state in terms of making sure the accounts are required, in what form and how they are to be publicly displayed. It is not that the two things should be different, but there may be reasons why they could be different because of the previous history that I mentioned. Also, as we discussed in Committee not so very long ago—and, indeed, in the House more generally on various Bills that have come forward in the last three or four years—the insolvency regimes are completely different. It is not at all clear why you would want to seek similarity across these two different species of commercial animal, but I wonder why, for a particular set of reasons that the noble Earl adequately explained, we may be moving into a situation that is not necessarily right for where we are.

That is my philosophical point. I do not expect a full and frank disclosure at this point; I am putting a marker down for what I think was started this time last year when we talked on another statutory instrument to do with insolvency, where we drew attention to various points. The noble Earl may have been part of that. This is stage two of that debate, and is not necessarily contributing to this measure.

The points I want to make are largely on the Explanatory Memorandum. As I have begun to do so in recent years—because they have improved—I congratulate the department on a good Explanatory Memorandum and I hope that the good wishes can be passed back to those who have been slaving away on it. They seem to have covered the ground very well. This is a very rare occasion where we have had some serious possible alternatives as to how the regulatory impulse could be put into practice—normally, we get a straw person and the answer that the Government always wanted, whereas this time we have some serious possibilities within which options are done. It may not be quite worth the candle—I am not saying that it will—because a lot of these are relatively small changes when it comes down to the costing that one has to do for this, but nevertheless it was good to see that the work had been done. It was a solid analysis on which we can pin our thinking.

Turning to my detailed questions, on the first page of the Explanatory Memorandum, at paragraph 3.2, I was completely thrown by the reference to the "free issue procedure", which I took to various experts around your Lordships' House and to the clerks, none of whom had the faintest idea what we were talking about. Again, I do not wish for an answer today, but as I understand it—if I am wrong, I hope that the Minister will correct me—charging £10 for something that will apply to only a very limited number of people seemed rather strange. The idea that you would further compound that calumny by not giving it free to those who had been affected adversely by the previous mistakes seemed a little harsh, but I will not press the point. A little more knowledge about the "free issue procedure" might have been given. It would have saved me a day of tramping around the corridors trying to work out what it was—it means "free"; in other words, the department did not publish the regulations free of charge to those who might want them. This might be helpful to read in *Hansard* later.

[Lord Stevenson of Balmacara]

At paragraph 4.3, at the bottom of the second page and going on to the third, the assertion is made—and it may be right—that the bringing together of the two types of accounting arrangements will,

"avoid unnecessary complexity for those preparing and using accounts",

which include,

"groups which include LLPs and companies within their structures".

Given what I have just said about where these organisations come from, I was rather surprised to discover that there were a number of organisations that had both LLPs and ordinary companies in their structure. Could we have the figures on that at some point? We are talking about a relatively small number of companies anyway, so the number of groups that include both LLPs and companies must be very small indeed. It would be interesting to know what that figure is.

The Explanatory Memorandum is quite good on the broader picture, in telling us that there are approximately 58,000 LLPs in the UK, but it is not very good on the detail. Again, could we have a bit more clarity about that at some point? I got a bit confused reading paragraphs 7.4 to 7.7 about how many were being involved. Changes of organisations will happen as a result of the changes of the size groupings, but the Explanatory Memorandum does not explain what those boundaries are. Could that be explained? There are medium-sized and large LLPs, and there are groups that include both companies and LLPs. How many are there, roughly, in each group? It would be helpful to get a rough idea. I understand that the vast majority of them are small, but what does "small" mean in those circumstances?

Since the noble Earl mentioned it, can we also have a definition of "micro" in this sense? Micro seems a little odd for an organisational structure which was supposed to reflect the difficulties of large partnerships operating where individual partners would not necessarily be known by other partners. To have a micropartnership which is specially protected because of the new regulations does not seem right, because surely the whole point about a micropartnership is that partners know each other very well because they are micro. A little more detail on that would be helpful. We are talking about 5% or 6% of the total being involved in these changes. Since this is a deregulatory measure, I am in no sense trying to oppose it, but we should know what we are talking about. Although they are not major changes, they will make an impact on certain people.

My third point is about the consultation. I understand the difficulty, as this is a technical area and these are quite technical points. There may not have been a huge appetite, especially at £10 a pop, to get involved in this. However, it should be on the record that none of the 13 responses that were received to this consultation was from an LLP. The consultation responses were from accountancy representative bodies and other bodies related to them. Will the Minister reflect on that when he has time and let me know whether he feels that all that could be done was done to make sure? Were all 58,000 LLPs written to, although I suspect that would be otiose? A little bit more flesh about why the response was so bad would be helpful.

That leads on to a related point, which is that if that is the sort of response we are getting on this, I hope there were other ways in which information was passed through—including, perhaps, responses to the BIS Twitter account, which I notice gets its first mention in a public space. If the department is going to go back and consult on the way in which these changes are going to operate, it may have to do a bit more work to reach out and be convincing about whether this has eased the burden on business. In no sense am I saying that the accountancy representative bodies are not representative of accountancy bodies, but that seems a rather small group on which to pin rather a large change. I leave that point.

Finally, I turn to a familiar topic. Why is the change—admittedly, not a major one and not affecting many people—not being brought in on one of the common commencement dates? I am sure the Minister will be able to jump up and give an immediate response to this. These regulations are being brought in,

"on the seventh day after the day on which they are made".

We are in April. If they had been brought back three or four weeks ago, they could have been brought in on 6 April like all the others that are supposed to be brought in, or they could wait until October. I know these regulations are important, but I do not think they are that important. I am sure the Minister will understand that I am not going to ask him under what conditions he sought regulatory approval from the appropriate committees for this change to be made, because that would be ridiculous, but I again point out that the whole purpose of common commencement dates, which the Minister's colleagues in the department have often echoed as being important, is that they should be common dates that we all accept to bring in new regulations. We have failed again.

The Earl of Courtown: My Lords, I thank the noble Lord, Lord Stevenson, for his contribution. Having worked for the Minister on previous occasions in the Committee, I remember and understand his concern over common commencement dates. I understand that the professional bodies were exceedingly keen that the regulations came in as soon as possible. If there is anything more on common commencement dates that concerns the noble Lord, I have made a note of it, and if there is any more information, I will write, as on any other points he raised.

The noble Lord raised a number of issues, and I will respond as well as I can to most of them, but some I will write to the noble Lord about. The purpose of the accounts for LLPs and companies remains. Prior to the 2015 regulations amending company frameworks, the two systems were aligned. These regulations reinstate that position. The fundamental differences relevant to each business structure remain. The reports and accounts of both structures are reporting to the business owners.

4.30 pm

The noble Lord asked why we have aligned the LLP regime with that for companies. LLPs' accounts are for their members, who are the investors. Groups may have both companies and LLPs, as he said, so a similar accounting regime is desirable. He also brought

the issue of insolvency to the attention of the Committee. Nothing in the regulations amend the rules dealing with insolvency. He also wanted a definition of microentities. I do not have the exact figure, but the limit is just over £600,000 in turnover, £318,000 capital and nine employees.

The noble Lord also mentioned the free issue procedure. There were questions relating to LLPs and companies, clarity of detail, change in size and the consultation. The noble Lord noted that there were only 13 responses to the consultation, but it was a follow-up to a consultation of more than a year ago on the companies regulations. Although there were not that many responses, taking into account the responses to the other consultation and the fact that there will be a review will, I hope, give him some reassurance.

I have found some information relating to the free issue procedure. The regulations make a very minor correction to the companies regulations, so there was no need to issue the statutory instrument for free, as it mostly does other things. I will write on the question of free issue.

I have a little more information on the consultation. Business and professional bodies were already aware of the Government's intention, which relates to the companies consultation held every year, and the low response rate was not unexpected. As I said, I will write to the noble Lord with any other information I can. I should add that the regulations will provide a reliable and cost-effective approach to financial reporting for LLPs, and I therefore commend them to the Committee.

Motion agreed.

Nuclear Installations (Liability for Damage) Order 2016

Motion to Consider

4.33 pm

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

That the Grand Committee do consider the Nuclear Installations (Liability for Damage) Order 2016

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, we are today considering an instrument which amends the Nuclear Installations Act 1965 in order to implement changes to the Paris convention on nuclear third-party liability and the Brussels supplementary convention. The powers to make this order are contained in Section 76 of the Energy Act 2004.

Before briefly outlining what the draft order seeks to do, I take the opportunity to restate the Government's commitment to make sure that we have a secure, affordable and clean energy system to keep the lights on in the decades ahead.

As noble Lords may be aware, the United Kingdom is a signatory to the Paris convention on nuclear third-party liability and the Brussels supplementary convention. These conventions establish a largely western European framework for compensating victims of a nuclear incident. The regime has been in place since the 1960s and is one of the cornerstones of international nuclear liability law. This special international regime is necessary since ordinary common law is not well suited to deal with the particular problems in this field. The regime provides compensation to the public for damage resulting from a nuclear accident and makes sure that the growth of the nuclear industry is not hindered by bearing an intolerable burden of liability. The reciprocal nature of the regime scheme also provides for consistency internationally. Amendments to the conventions were agreed by the Paris and Brussels signatory countries in 2004, including by the United Kingdom. They will come into force once the amendments have been ratified by the signatories to the conventions. The United Kingdom is committed to ratifying the amending protocols and to do so we need to implement the changes in United Kingdom legislation.

This order will upgrade the existing nuclear third-party liability regime and ensure that, in the event of a nuclear incident, an increased amount of compensation will be available to a larger number of claimants in respect of a broader range of damage than is currently the case. The proposed changes will apply to existing operators of nuclear licensed sites and to operators of any new licensed sites in the future. The liability regime will be extended to facilities used for the disposal of low-level nuclear radioactive waste.

Operators must put in place insurance or other financial security to cover their potential liability. It will be for operators to bear the costs of this on their balance sheets. At societal level the policy is estimated to have zero net impact as the current resource cost of government holding the contingent liability is considered equivalent to the future insurance costs for the industry.

The provisions of the order will come into force at different times. Some provisions will come into force shortly after the order is made so as to allow secondary legislation to be made to complete implementation of the regime changes. However, the main provisions will not come into force until the revised regime comes into force in respect of the United Kingdom. Joint ratification of the Paris protocol is required with the other EU signatories to the conventions, and this has a current target date of 1 January 2017.

On the specifics of the order, it provides for the inclusion of new categories of damage, in addition to the existing categories of personal injury and property damage: costs of measures of reinstatement of the impaired environment, loss of income deriving from a direct economic interest in any use or enjoyment of the impaired environment and costs of preventive measures where there is a grave and imminent threat of nuclear damage and consequential compensation.

The amendments to the conventions increase significantly the amount of funds available for compensation in the event of a nuclear incident. Under the current regime approximately €300 million in total is available for compensation, and this will rise to €1,500 million. Operators will be required to bear much greater financial responsibility for a nuclear incident. Operators of power stations and similar sites will have an immediate increase in liability from the current €140 million to €700 million and this will then

[Lord Bourne of Aberystwyth]
rise by a further €100 million annually up to €1,200 million. We are continuing to use the flexibility in the conventions to set lower liabilities for lower-risk situations where, in the event of an incident, there is unlikely to be significant damage. The lower liability levels for low-risk and intermediate sites and low-risk transport will be brought into effect by additional regulations to be made in advance of the commencement of the order. All liability levels will be topped up from public funds to a total of €1,500 million per incident, if needed, to meet compensation claims as required by the amended Brussels convention. Contributions from all Brussels convention countries will be used to top up the funds from €1,200 million to €1,500 million.

Contracting parties are permitted to impose a higher liability limit or unlimited liability. The UK has adopted an approach similar to most other contracting parties in capping liability to make sure that operators are able to put in place insurance or other financial security specifically to cover their third-party liabilities.

The geographical scope of the conventions is extended so that it is wider than countries that are party to the conventions, including non-nuclear countries and countries that have equivalent and reciprocal liability arrangements.

The order increases the period in which claims for personal injury can be brought against operators to 30 years from the date of an incident. The limitation period for other claims remains 10 years.

The provisions on allocation of jurisdiction between Paris convention countries now take into account the establishment of exclusive economic zones under international law and other types of maritime zone. The provisions also specify that only one court in the convention country where the incident has occurred should deal with claims arising from it. This avoids conflicting judgments as to liability, as well as ensuring that the responsible operator's liability limit is not exceeded. This provides clear benefit to the United Kingdom if it is affected by a nuclear incident in another country.

The instrument brings into the liability regime operators of disposal sites for nuclear radioactive waste. We are working with Paris convention countries to agree an exclusion for operators of disposal installations that take only low-level and very low-level nuclear radioactive waste since the risks such waste present are not what the Paris convention was designed to address. If excluded from the regime, general tort law will continue to apply to these sites.

The revised Paris convention now requires every Paris convention country to ensure that its law allows another country to bring representative actions on behalf of its people. This does not create any new right to compensation; rather, it provides an alternative avenue for claiming compensation and allows for co-ordination of large volumes of claims. The order creates rights for other countries to bring representative actions in the UK. The UK Government will have the equivalent power to bring representative actions in other Paris convention countries.

One of the key features of the Paris regime is the requirement for operators to maintain insurance or other financial security to cover their liabilities under the convention. Operators currently meet this requirement by purchasing insurance from the market. Under the new regime, the market is willing to provide cover to the full extent of the operators' new liabilities, apart from the extension of the limitation period from 10 to 30 years for personal injury claims. If operators are unable to obtain cover for a liability, Governments are required to provide it, so we will, on a commercial basis and for a charge, consider arrangements to fill this gap in cover until the market is prepared to cover it. If such arrangements are made, I will ensure that a report is made to Parliament on them every two years.

The United Kingdom will review the operation of the revised regime in line with the timings set by the contracting parties to consider any revisions to the Paris convention. The form and timing of the review is a matter for the contracting parties—including, of course, the United Kingdom—to agree.

I finish by emphasising the importance of this update to a long-standing regime. Nuclear power in the UK has a strong safety record and the likelihood of a nuclear incident occurring is extremely small. The production and use of nuclear power, however, involves the use of hazardous radioactive materials and an incident could have far-reaching adverse consequences for human health and, indeed, the environment.

Guarding against those risks is therefore of the highest priority for the Government. The United Kingdom has in place robust safety, security and environmental protection regimes that comply with frameworks laid down at EU and international level. The liability regime is aimed at ensuring adequate and fair compensation for victims, while ensuring that the operators, who are in the best position to ensure the safety of their installations, take responsibility for any failure in safety. Further, recognising that the effects of a nuclear incident do not stop at national boundaries, the conventions aim to provide a high degree of uniformity in certain basic rules across their signatory countries.

The Earl of Kinnoull (CB): My Lords, I had not intended to speak on the order, but given that I have spent 25 years in the international insurance markets at senior level in Hiscox—I therefore declare my interest—and given that I was involved in and responsible for this area of insurance for some time, I have some knowledge. I shall make two points and ask one question of the Minister.

My first point is that greater use of commercial insurance in these risks will undoubtedly drive better risk management simply because we are very much less rich as insurers than the Government, so we are very careful with our risk management to try to ensure that things go well. Therefore, I thoroughly welcome the arrival of the order and the greater reliance on third-party insurance.

4.45 pm

Secondly, just per incuriam, much of the nuclear insurance around the world is conducted through the London international insurance markets, so, assuming that this will take place in lots of countries, the requirement for additional insurance will benefit those markets, which is helpful.

My question is in respect of Article 37. I have spent 30 years in the City looking at what I call currency conversion clauses, and Article 37 is precisely that. It refers to the,

"London closing exchange rate for the euro and sterling for that day".

I do not believe that that is sufficiently precise at a couple of levels. First, I have never heard of that exchange rate. Google has not heard of it. There are many different and very successful commercial ways of defining exchange rates like that. Secondly, it does not say whether it is a bid, an offer or even a mid-market exchange rate. I think that that article could do with a fresh look, or perhaps I have missed something and I should be grateful to be corrected by the Minister.

Lord Grantchester (Lab): My Lords, before I begin my remarks on the order before the Committee today, I should like to start by congratulating the Minister on his visit to New York last week to sign the Paris agreement on climate change on behalf of the United Kingdom. I trust that it was a wonderful experience as well as an honour to sign on our behalf, and I am sure that he will not mind me reminding him of this from time to time during our debates in future. Regarding the signing, perhaps I may ask him whether there are further legal requirements to make the Paris agreement operational. Is there a need for formal parliamentary ratification or, indeed, for possible amendments to the Climate Change Act down the line?

However, returning to more normal events, I thank the Minister for his introductory explanation today. The order is a lengthy document, and he has given the Committee an excellent summary. The instrument amends the Nuclear Installations Act 1965 in order to update and extend changes following the Paris agreement, as he has mentioned, and the Brussels supplementary convention, to both of which the UK is a signatory. The order covers the aspects of insurance liabilities for nuclear operating companies and how they are changing. As the Minister said, the powers to make the order come from the Energy Act 2004.

In the other place, questions focused on the decision to phase in higher levels of cover, from €700 million to €1,200 million, over five years, and whether that should be speeded up. The questions also covered the higher and lower aspects of the transport risks of materials and the pricing costs around the Hinkley Point deal. These were very helpful, and I understand the responses made by the Minister there, especially on the problems with pricing mechanisms where there is little or no track record of claims dealing with low-probability outcomes. The fact that any outcome could have high impact adds to the complexity.

At this point, I should declare my interests as a dairy farmer in Cheshire as I reflect that my reading of the order was made poignant by remembering the effects on farmers in north Wales at the time of the Chernobyl accident in the Soviet Union, when rain from the east deposited radioactive sediment on grass consumed by livestock in that area. At the time, there were thoughts that the land might be contaminated for several decades. Therefore, in noting the new category of,

"Loss of income deriving from a direct economic interest in any use or enjoyment of the environment",

for which the example of "fishermen and cockle-pickers" is cited, I assume that this would also apply to farmers who have grazing on common land. Are there any definitions around "insignificant" in paragraph 7.14 of the Explanatory Memorandum, which states that,

"the impairment must not be 'insignificant'"?

Any comments that the Minister could make on that would be helpful.

Following on from that, I also note the new category "Costs of preventive measures", in paragraphs 7.15 and 7.16 of the Explanatory Memorandum, to mitigate the damage that might result from an incident. Here I could envisage a situation where the contamination of a large area could lead to food retailers refusing to take supplies of agricultural produce as a precaution, even though certain products could be said to be uncontaminated. Can the Minister say whether this situation would be compensatable?

The Explanatory Memorandum also explains the concept of an "occurrence" and cites the Magnohard case. Paragraph 7.31 explains that the order makes specific provision to address the point and that,

"the court took an expansive view of the meaning of 'occurrence' … The Order … does not adopt as broad an approach".

Is the Minister able to explain why and what is the effect of this? The memorandum is silent on this point.

Lastly, I have a simpler question. The order requires that nuclear operators assume full responsibility for any breach, that insurance cover is to rise to new levels and that liability is extended to 30 years for claims for personal injury. The Explanatory Memorandum states:

"The Government will, subject to any EU or UK legal requirements such as state aid … fill any gap in cover".

It is understood that such a gap may exist regarding extension to 30 years for claims for personal injury. Given that personal conditions and physical reactions can take several years to develop and can be severe and costly, will the Minister confirm that the Government will be providing the shortfall of cover in these circumstances? This will be a matter of prime public interest.

The UK has one of the strongest nuclear regulatory regimes in the world. Even as new reactor designs are developed, we can be confident that regulatory regimes will continue to maintain and improve all aspects of safety at nuclear installations. I am happy to approve the order before the Committee today.

Lord Bourne of Aberystwyth: My Lords, I am very grateful to noble Lords who have contributed to this debate and thank them for their general support. I reiterate that the United Kingdom has a very strong record both on nuclear safety and on protection in the event of a nuclear accident. I shall try to deal with the various points that have been raised by noble Lords.

First, I thank the noble Earl, Lord Kinnoull, for his comments and general support. I am most grateful for that. I reiterate that we have very strong performance in the London insurance markets—and, indeed, internationally, as this is not limited to just the United Kingdom—and he is right that the competitive element,

[Lord Bourne of Aberystwyth]
not just in the UK but internationally, will help to ensure that standards are even better than before. On the noble Earl's precise question on Article 37, I confess that I am not nearly as expert as him in these areas of the London closing exchange rate. I shall endeavour to find out and provide him with a more precise answer than the one I am now giving, but I would anticipate that either it is custom and practice that there is a particular exchange rate closure on a particular day or that there is a definition elsewhere that is cross-referred in the order. We are definitely checking that and the team will provide me with an answer. I shall write to the noble Earl and copy in the noble Lord, Lord Grantchester.

I thank the noble Lord, Lord Grantchester, very much for his typically kind and generous comments about signing the Paris agreement. It was indeed a great privilege to be there signing the agreement for the United Kingdom. I am conscious of the amount of hard work that has been done by many people, not just within the United Kingdom, but clearly within the United Kingdom cross-party—and, indeed, beyond party—that made all that possible, building on the success at Paris. The most challenging part of the whole ceremony was avoiding Zimbabwe—sitting straight behind us in the shape of Robert Mugabe. That apart, it was a very enjoyable and significant occasion.

The noble Lord asked whether the signing had a particular impact and when the agreement will come into place. It will come into place when 55 states have ratified, out of the 185 that concluded the agreement in Paris. I should say that 175 countries signed on day one, but they have to go through their internal ratification procedures, so it is 55 states representing 55% of emissions worldwide. As he and other noble Lords will know, the European Union made a joint statement on the position with regard to meeting the targets. Therefore, because the United Kingdom is part of the European Union, our position on ratification is that we will not ratify—and therefore the European Union will not ratify, because it depends on unanimity—until we have agreement on the effort share among the 28 member states. Work on that has begun.

The noble Lord referred to the coverage of the order. As he rightly said, it also covers Hinkley and is designed to cover potential new sites, as I think I said initially. He mentioned Chernobyl. Of course, there have been two major international nuclear incidents, of which Chernobyl was one; Fukushima was the other. The impact of Chernobyl, as he rightly said, was felt in north Wales—as I know—Cumbria and parts of Scotland. The increased protection that we have here will not help in that regard because Ukraine is not a party to this convention. We would be thrown back on to international law because Ukraine is not a party to the other major treaty either, the Vienna treaty, which has a less generous compensation regime.

The noble Lord asked why we are saying that it has to be something "significant" and therefore ruling out incidents that are "insignificant". This is a fairly common legal practice—a de minimis situation to stop something that is so minor—to prevent vexatious litigation. I think that is the thinking behind it. He also asked whether this would allow claims by the likes of grocery shops, butchers and so on if there were a nuclear incident like Chernobyl in a member state of the convention. I think there would be an issue—I am treading very carefully because the noble Lord, Lord Faulks, is sitting close by—about the remoteness of damage and how far down the chain you can go in such a situation, but I will write to the noble Lord.

Lord Grantchester: I may be able to help the noble Lord, in so far as I think that third-party traders may not be affected. I meant the produce from that area may be affected, even though it could not be said to be contaminated, because of a general ban on products from that area getting into the food supply chain.

Lord Bourne of Aberystwyth: I thank the noble Lord for that clarification. I think there are two issues in relation to that. One is indeed the remoteness: it would be a question of how far down the chain you could go in terms of liability. I did refer the noble Lord and other noble Lords to the fact that this new protection allows for the costs of preventive measures where there is a grave and imminent threat of nuclear damage and consequential compensation. I think that might cover it. The noble Lord raised a specific issue about Magnohard. I will write to him on that to give him a definitive answer.

I am grateful for noble Lords' help and their broad acceptance and approval of the order. This is a more generous system. It is widely welcomed. It provides added protection and characterises our approach to nuclear energy.

Lord Grantchester: Has the Minister had confirmation from the officials behind him that the Government will be picking up any gaps regarding personal injury claims being extended to 30 years?

Lord Bourne of Aberystwyth: I thank the noble Lord. I had written that down in my notes but I missed it. Yes, we will. I covered that in my introduction, I think. I said that we will fill that gap until the commercial market is able to take over. We will be making a commercial charge to cover that, but we will certainly fill that gap.

I commend the order to the Committee.

Motion agreed.

Crown Court (Recording) Order 2016

Motion to Consider

5 pm

Moved by ***Lord Faulks***

That the Grand Committee do consider the Crown Court (Recording) Order 2016.

The Minister of State, Ministry of Justice (Lord Faulks) (Con): My Lords, the draft order removes the prohibition on recording court proceedings to the extent necessary to enable a judge's sentencing remarks in the Crown Court to be recorded on a not-for-broadcast

basis for the purposes of a test. Before setting out details of the order, I will briefly explain some background to the policy.

As noble Lords may be aware, the recording and broadcast of proceedings in courts, other than the Supreme Court and the Court of Appeal, is prohibited by Section 41 of the Criminal Justice Act 1925 and Section 9 of the Contempt of Court Act 1981. Section 32 of the Crime and Courts Act 2013, which received Royal Assent in April 2013, enables the Lord Chancellor, with the agreement of the Lord Chief Justice, to make an order specifying circumstances in which the prohibitions on recording and broadcasting may be lifted. The Crown Court (Recording) Order 2016 is the second order to be made under that power.

Why are the Government doing this? There is evidence to suggest that the more informed people are about the justice system, the more confidence they will have in it. Of course, few people have direct experience of court proceedings, and public understanding of the way the justice system works is inevitably limited. In principle at least, our courts are open to all members of the public who wish to attend, but in practice very few people have the time or opportunity to attend and see what happens in person. We believe that we should make our courts more accessible and make it easier for the public to understand court proceedings. Increasingly, people rely on television and the internet for access to news and current affairs. It is right to respond to changes in technology and society, and therefore to allow cameras into our courts.

While it is important for justice to be seen to be done, this cannot be at the expense of the proper administration of justice, the integrity of the trial process or the reputation of the courts. The courts deal with very serious matters that can affect the liberty, livelihood and reputation of all parties involved. The proposed test period at the Crown Court venues agreed with the Lord Chief Justice provides the opportunity to examine how we can film in our courts in a way that protects the individuals involved and preserves the dignity of the courts and the trial processes.

I am conscious that there will be concerns about the welfare of victims and witnesses, and the potential for court broadcasting to have a detrimental effect on their experiences in court. In the event that a victim or witness is present in court during the recording of a judge's sentencing remarks, there are a number of safeguards in place designed to minimise any potential impact that the recording might have. The order does not permit the filming of victims or witnesses, or indeed any other court user, including staff, members of the public, defendants and advocates. It will be a matter for the judge to decide whether or not filming of a particular case should be allowed and they will take into account the interests of victims and witnesses when considering this. In addition, existing reporting restrictions will continue to apply, and Section 32(3) of the Crime and Courts Act 2013 provides that the court may stop or suspend filming in the interests of justice, or to prevent prejudice to any person. Any breach of the terms of the order may amount to a contempt of court.

None of the cases recorded during the test will be available for broadcast to the public. Recorded material will be used only by the judiciary, Her Majesty's Courts & Tribunals Service and the Ministry of Justice for the purposes of the test, including assessing whether or not it has been successful.

The Government are committed to increasing transparency and providing the public with information on the operation of public services, and the justice system is no exception. To many people, the law remains mysterious. Public understanding of how the courts work, and sentencing in particular, is critical to maintaining confidence in the system and ensuring that justice is seen to be done. We believe that the order before your Lordships today is an appropriate step forward in testing how we allow for greater visibility of what goes on in our courts without undermining the quality and reputation of our justice system.

At the end of the test period the lessons learned will be considered by the Lord Chancellor and the Lord Chief Justice to help inform their decision on whether or not broadcasting of judges' sentencing remarks in the Crown Court should be permitted in future. If they agree, we will return to the House with a third order to allow broadcasting of recorded material to commence. I commend the draft order to noble Lords and I beg to move.

Lord Falconer of Thoroton (Lab): I am grateful to the Minister for introducing this very interesting and important order, which my party and I support. I will ask a number of questions about the order itself and the policy underlying it, but before I do so, I will set out our position in relation to this. In principle, more broadcasting and recording of courts is a good thing because it increases public understanding of the court system and allows transparency in one of the important institutions of state.

I accept what is implicit in what the noble Lord, Lord Faulks, said, which is that any movement towards broadcasting of courts has to be done carefully. It has to protect witnesses, jurors, claimants, defendants and members of the public—children in particular—from any problems that may arise from the recording of court proceedings. In particular, one is conscious that being a witness in a criminal or civil trial is an anxiety-inducingin any event and one does not want to make people more anxious by having it filmed or recorded. But in principle we consider that there should be much more openness and broadcasting of what goes on in court.

First, the Act allows the lifting of the prohibition on recording what goes on in court, which is prevented by the Criminal Justice Act 1925. If the ban on recording is lifted, is it assumed that live broadcasting can take place or is it envisaged that all that can occur is a subsequent broadcast? I ask because the prohibiting word is "recording". I respectfully suggest that the right course is that there should be the possibility of near-live broadcasting, subject to a very minimal delay, of what goes on in court but subject to the issues that I have identified.

Secondly, as the Minister said, two orders have been made under the Act: the Court of Appeal order and the sentencing remarks order. Is there a plan that will lead to maximum openness, assuming the process works, subject to the sorts of protections I have identified? That is, you do not want to film jurors, witnesses and

[Lord Falconer of Thoroton]
victims. Is there a plan? It feels a bit random. We have had a Court of Appeal order in 2013 or 2014 and now a sentencing remarks order. Can the Minister please tell us what the overall plan is?

Thirdly, I understand that the Court of Appeal order has been considered, by which I mean that some review of it has taken place. Can the Minister tell us what the outcome of that review was? For example, what did the judicial participants in the Court of Appeal process think about it? Secondly, to what extent was it thought that there were changes in behaviour in court? I think I am right, although I may be corrected, that in the Court of Appeal the judges and advocates are now filmed as a matter of course. Do the Court of Appeal or the advocates—I hope that the advocates were consulted as well—think that their behaviour has changed as a result? Does it mean that things take more or less time?

I was very grateful for the very clear explanation of this order by the noble Lord, Lord Faulks. I read it in exactly the way that he read it, which is that it allows for the filming only of the judge himself and nobody else in court is filmed. It is for the judge himself, under Section 32, to decide whether or not a particular set of sentencing remarks will be broadcast. I do not see any time limit in the order but I assume that a timescale is envisaged. I am not asking for a time limit, but can the Minister say what time limit is envisaged?

The Minister indicated that the only people who would be assessing this would be judges and people in the Ministry of Justice. I recognise and accept that none of this is for broadcast, but I strongly urge the Minister that the group of people assessing the process should be much wider, obviously subject to appropriate confidentiality and to not allowing the not-for-broadcast test to be broadcast. We need much more, in all honesty, than simply the judges and the excellent Ministry of Justice officials; there needs to be a much wider group, subject to confidentiality, to look at it.

Finally, I have just come from the Hillsborough inquest. It is the most appalling shame that the conclusions of that inquest were not recorded, for either live or near-to-live broadcast. What are the proposals in relation to inquests? It would have been so good if what the jury concluded could have been readily available—for example, on the 1 pm, 6 pm and 10 pm news. You would not need to film the jury, you would have needed only to film the coroner setting out what the remarks were.

I am very supportive of this order but I am terribly anxious that things are going much too slowly. Although I completely agree about the need for care and thought about this, this is the second order after two and a half years with no apparent plan. Perhaps something a bit more focused is required, but we support this order.

Lord Faulks: My Lords, I am very grateful for the noble and learned Lord's constructive comments and questions about this order and I am grateful, of course, for the Opposition's support of it.

The overall purpose is, as I indicated, to ensure that the public have a clearer idea of what goes on in courts. The noble and learned Lord is right to say that progress is slow, but there are, I respectfully suggest, reasons to go slowly. Great care, as he acknowledges, has to be shown in how we develop it; care has to be shown for all those people potentially affected, including witnesses, as he said. Children are being excluded from this experiment, or test, altogether; clearly, we would be most concerned that children, in so far as they are allowed into court at all, would potentially be affected by expanding the scope of this order.

Of course, the Court of Appeal has been progressing with its own broadcasting and those who are disposed to find such things interesting can see a live feed of the Supreme Court. There is only a limited take-up, but I do not think there is any suggestion that it has adversely affected the way that the judges or advocates behave. Likewise, the judiciary considers the Court of Appeal experiment to have been successful and it has not noted any change of behaviour. I suspect that what happens is that people forget after a bit that the cameras are there.

5.15 pm

As to the timing generally, the intention is to begin this test in June this year and to continue for three months, or for such time as there are enough cases to provide a useful amount of data on which to decide the way forward. I understand what the noble and learned Lord says about the degree of consultation. One would imagine that, although the formal consultees are restricted, they would take informal soundings beyond their own interest to see whether or not they thought it had been effective. I am sure that they would do that, whether specifically invited to or not.

The noble and learned Lord made the point that there would be much benefit in having some of the remarks yesterday in the Hillsborough inquiry broadcast. I am sure that he is right, and we may well proceed in that direction in due course, but it has taken a long time to get as far as we have got.

There are those who are very concerned about even the limited progress that this order involves, saying that there is a danger of judges deciding to tailor their remarks to what may be acceptable in terms of what they will see broadcast in due course. As I understand it, subject to confirmation, it is not intended that this should be live, although I take the noble and learned Lord's point about the desirability of it being near-live. I am correct: it is not intended that it should be live. It should be a recording as the word is used.

Of course, this is unlikely to be the last word on this issue. One hopes, once this order has taken effect and the test has been considered, that we may be able to go further forward. It is genuinely to be hoped that the sentencing remarks will provide some real help to in public understanding of the way in which people are sentenced, because, inevitably, reports tend to fasten on the result or certain extracts from the sentencing, whereas the whole of the sentencing remarks may give better context and a better explanation of the judge's reasoning, as well as whether the reasoning is something that he or she is compelled to conclude by reason of statutory provision, or whether he or she is exercising discretion, as the case may be. I hope that it will fulfil the overall objective that the Government intend by this.

I think that I have dealt with all the noble and learned Lord's queries. Following this debate, I hope the Committee will agree that this is a proportionate and sensible approach to enable the safeguards to be developed and to ensure that we can present any future footage fairly and accurately.

Motion agreed.

Education (Repeal of Arrangements for Vocational Qualifications Awarded or Authenticated in Northern Ireland) Order 2016

Motion to Consider

5.19 pm

Moved by ***Baroness Chisholm of Owlpen***

That the Grand Committee do consider the Education (Repeal of Arrangements for Vocational Qualifications Awarded or Authenticated in Northern Ireland) Order 2016.

Baroness Chisholm of Owlpen (Con): My Lords, this order, which was laid before both Houses on 11 March this year, repeals the provision that makes Ofqual, which is the English examinations regulator, the regulator of vocational qualifications for Northern Ireland. Instead, the Northern Ireland Council for the Curriculum, Examinations and Assessment—known as CCEA Regulation—which already regulates GCSEs, A-levels and other non-vocational qualifications, will become responsible for regulating all types of qualifications awarded in Northern Ireland.

This order brings qualification regulation in Northern Ireland in line with that in Scotland and Wales, where specific regulatory bodies oversee all qualifications awarded in their respective countries. When Ofqual was established in 2009, it assumed the regulatory functions of the Qualifications and Curriculum Authority —QCA—which regulated vocational qualifications in Northern Ireland. The Northern Ireland Department for Employment and Learning proposed that Ofqual took on the QCA's responsibilities in Northern Ireland. This proposal was included in the legislation that established Ofqual.

In recognition of the fact that the Northern Ireland Administration committed to keep the arrangements for regulating qualifications under review, the Act made provision for Ofqual's responsibilities in Northern Ireland to be removed by order. The Northern Ireland Administration now wish to make use of this provision. The Northern Ireland Department for Employment and Learning reviewed these regulatory arrangements last year and concluded that it would be more appropriate for a single body to be responsible for the regulation of all qualifications in Northern Ireland, including vocational qualifications.

The Minister for Education in Northern Ireland, John O'Dowd, endorsed the proposal in December 2015. Subsequently, the Northern Ireland Minister for Employment and Learning, Dr Stephen Farry, wrote to the Secretary of State for Education in January 2016 requesting the assistance of the Department for Education to amend the 2009 Act to remove the responsibility for regulating vocational qualifications in Northern Ireland from Ofqual to allow CCEA Regulation to perform that duty under Article 75 of the Education Order (Northern Ireland) 1998.

The UK Government and the UK Parliament should not take a view on policy decisions made by the Northern Ireland Administration. Therefore, in responding to this request, we have sought only to ensure that the decision made in Belfast is implemented properly, fairly and efficiently and that it does not adversely affect people taking these qualifications in England or Ofqual's ability to regulate the qualifications for which it is responsible. The proposals in front of the Grand Committee today, and the practical arrangements that sit alongside them, achieve this. The Department for Education in London has worked with its Northern Ireland counterparts, Ofqual and CCEA Regulation, to implement these changes, and I am grateful to these organisations for their co-operation. The Northern Ireland Office has been informed of the proposed changes.

Since the beginning of the year, CCEA Regulation and Ofqual have communicated with all the awarding organisations that will be affected by this change. The two regulators will continue to work together and with their counterparts in other parts of the UK to minimise burdens on the awarding organisations that they regulate jointly. Ofqual intends to sign a memorandum of understanding with CCEA Regulation as it takes on its new responsibilities, as it has recently done with the new qualifications regulator in Wales, as many similar qualifications are used in all three jurisdictions. As a result of this legislative change, Ofqual's small office in Belfast will close. The Northern Ireland Department for Employment and Learning will provide funding for any associated costs and the change will be cost neutral for Ofqual.

These changes and this order are just one example of devolution in action. Each part of the UK should be able to make the arrangements for regulating qualifications that support its objectives and priorities and to change those arrangements where appropriate. That is what the Northern Ireland Administration are doing, and that is what this order enables for vocational qualifications. I commend it to the Committee.

Lord Empey (UUP): My Lords, the order before us may appear to be uncontentious—indeed, it is—but I declare an interest as the Minister for Employment and Learning who asked Ofqual to continue its regulatory role because the then Executive were planning to create an education and skills authority on which, like on many other things over there, they spent millions, took years and eventually had to scrap. My anxiety about this is simply about a factor that is occurring within the United Kingdom. People are marketing the European Union as a place where you can come and go with free movement. We are trying throughout a range of disciplines to get commonality of qualifications so that we recognise each other's qualifications. At the rate we are going in this country, we will very soon have to start recognising qualifications from within the United Kingdom. My fear about this is that it is change for the sake of change. Can anybody explain what practical benefit there is? How different can a

[Lord Empey]
qualification in engineering, construction or whatever subject be? We are going to end up with four separate series of qualifications within the United Kingdom. Standards will probably be different, the technicalities will be different and how they will be taught will be different. Until this point, the CCA had no capacity in this area, so we are having to create new capacity where capacity already exists.

There is a big issue with devolution and the United Kingdom Government. We have got into the habit of devolving and forgetting. It is a mistake not to take a view or to argue that this is devolution in action, as it is. I do not dispute that it is within the competence of the Administration, but we cannot simply forget these things and ignore them. They have to be monitored. Let us not forget that devolution is exactly what it says. We have given a power of ours to Wales and to Belfast, but it is fundamentally our responsibility. I do not accept the principle that you simply devolve and forget. I am not opposing the proposals per se, but there is a risk that a Northern Ireland qualification authority is being created for no good reason.

The Minister referred to the Northern Ireland Education Minister. As a result of his activities, because he refused to sign on to or use some of the English examination board papers, the CCA does not have as broad a range. Consequently, pupils are not able to access some examinations. I do not think that is progress. There is a risk that over time we will create different regimes. The labour force should be free to move around the United Kingdom and get qualifications. If there is something unique, different and local, I am for it. I believe in devolution, but I do not believe in change purposely for the sake of change or in setting up a new bureaucracy purely for the sake of setting it up in order to say that it is ours and not somebody else's.

I am not making a big deal out of this relatively minor change, but it is symptomatic of what can go wrong in the long term. If we get young people, in particular, taking certain qualifications in different parts of the United Kingdom, will they be recognised throughout the United Kingdom? That is the issue that worries me. Who is going to determine whether they are recognised? Ultimately it is up to employers, and do employers understand the difference between the different variable factors? Those are the questions that need to be asked when we are looking at these things. You cannot close your mind simply because it is within the legislative remit of the Assembly and say, "It's up to them; they can do whatever they like".

It is the outcomes that need to concern us. What are the prospects for young people getting those qualifications? Are they recognised professionally by employers and employers' organisations? Will they give those people the same opportunities to get jobs? Do employers understand what the differences might be? These are the areas we should be paying attention to.

5.30 pm

Lord Watson of Invergowrie (Lab): My Lords, I thank the Minister for setting out clearly the background to these regulations and the rationale underpinning the proposal to repeal the existing arrangements.

The words that I prepared have been knocked slightly off balance by the comments of the noble Lord, Lord Empey, because I was about to say that the draft meets the expressed will of the Northern Ireland Administration. The noble Lord, Lord Empey, has cast some doubt over whether that is the case and perhaps whether it should be the case, but our understanding is—indeed, the Minister said—that the Northern Ireland Administration, as provided for in the Apprenticeships, Skills, Children and Learning Act 2009, will place qualifications regulation on the same level as that which currently applies in my homeland of Scotland, as well as in Wales.

The issues to which the noble Lord, Lord Empey, referred are certainly not without relevance, but there is one matter on which I would take issue with him. I was going to talk about this being the purest form of devolution—which rhymes with revolution, which is a slightly different concept—which I notice is the term that the noble Lord, Lord Empey, uses. It is important that devolution is understood in the appropriate way. It is a term that has been used rather loosely and even inaccurately in some contexts recently; for example, in some recent education legislation. However, this is the purest form of devolution. Perhaps, as a Scot, I would say this, but the movement of power away from the centre has been a very important feature of the way in which the United Kingdom has operated over the past 20 years. Within that context, it is important that the legislatures in Belfast, Cardiff and Edinburgh have the power to do what they are able to do to the extent of that power. It seems to me, and I am certainly a novice when it comes to issues relating to Northern Ireland, that the Northern Ireland Administration have said, "We have the ability to take on board this power, and that is what we want to do".

With regard to vocational qualifications, I give credence to the comments of the noble Lord, Lord Empey. The authentication of qualifications is absolutely essential. At a time when apprenticeships and vocational education are a very hot topic in ensuring that we have the skills that our economy will need in the years ahead, it is important that young people—who we must encourage to a greater extent to take on those apprenticeships and follow vocational routes—are confident that when they complete that training or study, they can take their piece of paper and immediately know that it has been validated and that employers will recognise it. That is a very important point. If there was a suggestion that this would weaken the options open to young people in Northern Ireland, I would be concerned. Until a few moments ago, I had not heard that suggestion but I think it is probably for everybody's benefit that the Minister addresses that not unimportant point, at least to some extent.

We are pleased to support this order as it stands because we recognise that it is what the Northern Ireland Administration have requested. Before I sit down, there are one or two other points of clarification that perhaps the Minister might be able to provide. When this order was discussed in another place my colleague, Nic Dakin MP, asked the Minister for Schools about the support that will be given to staff affected by the closure of Ofqual's office in Belfast. The Minister

merely replied, and the noble Baroness repeated it today, that the Minister had asked Ofqual,

"to do everything to ensure the best preparation for those staff and to help them in any way possible".—[*Official Report*, Commons, Delegated Legislation Committee, 20/4/16; col. 6.]

He then mentioned that the cost of the closure would be met by the Northern Ireland Executive's Department for Employment and Learning, which suggests—at least to me— that the staff may be made redundant. It could well be that such an arrangement will suit some—I understand that there are only three of them—but my background as a trade union official leads me to ask the Minister whether she is aware of consideration being given to alternative employment for the staff.

That is relevant to another point made by the noble Lord, Lord Empey, when he talked about new capacity being created within the Council for the Curriculum, Examinations and Assessment in Northern Ireland. As he said, capacity already exists. That is a parallel argument to my point. The Ofqual staff have that capacity, and my suggestion to the Minister is that, given the skills which the Ofqual staff have built up, they might usefully be transferred to the CCCA, obviating the need for redundancy, if that is what the individuals concerned want, of course. Whereas the cost of employing somebody for the foreseeable future is greater than the cost of a redundancy payment, it can very much be seen as a beneficial cost. Perhaps the Minister may consider that. It is unrealistic to expect her to give a detailed reply to that point today, but perhaps she will write to me when she has had the opportunity to give the matter some consideration.

Baroness Chisholm of Owlpen: My Lords, I thank the contributors to this important debate. I will deal with the points in the order in which they were raised. Should I not have answered all the questions at the end, I will make sure that I write to noble Lords.

The noble Lord, Lord Empey, raised an interesting point about why the change should be made now. That is a question for the Northern Ireland Administration to answer, so it would not be appropriate for me to speak for them. In enacting this legislation, we want to ensure that a decision made in Northern Ireland is implemented as efficiently as possible and in a way that does not affect people taking qualifications in England. Indeed, the qualifications will be recognised in the UK, but of course, it is the responsibility of others.

5.37 pm

Sitting suspended for a Division in the House.

5.49 pm

Baroness Chisholm of Owlpen: My Lords, I was answering some questions asked by the noble Lord, Lord Empey. I cannot remember whether I had got to the fact that the qualifications will be recognised across the UK. That is already happening in Wales, so there is no worry about that, but, as I think I mentioned, recognition is the responsibility of employers and the institutions.

We are taking every care to make sure that Ofqual and Northern Ireland's CCEA will have a working relationship and will work together to ensure a smooth transition. In particular, Ofqual and CCEA Regulation will continue to share an IT platform and register for the qualifications and awarding organisations that they each regulate, so plenty of talking will be going on.

The noble Lord, Lord Watson, mentioned the staff in the office, who are very important. Ofqual is managing the consequences of the change for its three members of staff in Belfast and is doing everything to ensure that the best preparation is laid down and to help them in every way possible. Any financial consequences of the closure of the office will be borne by the Department for Employment and Learning in Northern Ireland. This includes any possible redundancies or problems with pensions. The noble Lord makes the very good point that there are well-qualified staff there already. I cannot answer his question at the moment, but we should certainly think about it, because what he said makes perfect sense.

I think that I have answered the questions put. Anything that I have missed will be picked up, and I will write to noble Lords. The order will support the Northern Ireland Administration in implementing their education policies, and I commend it to the Committee.

Motion agreed.

Rural Economy

Question for Short Debate

5.51 pm

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

To ask Her Majesty's Government what is their assessment of the state of the rural economy.

Baroness McIntosh of Pickering (Con): My Lords, I am delighted to have secured this debate on the rural economy and look forward to hearing contributions from your Lordships, the Minister's assessment of the state of the rural economy and what measures might be taken to improve it.

I grew up in Teesdale, one of the wildest and most beautiful parts of the country, and one with among the lowest farming incomes in the country. As a GP's daughter, I saw every aspect of rural life. I declare an interest as owner and director of a consultancy company which provides strategic advice on food, farming and the environment, and that one of the clients is the board of the Dispensing Doctors' Association, which I advise on rural policy matters. I also sit on the Rural Affairs Committee of the Church Of England Synod. It was an honour to represent, initially, the Vale of York and then Thirsk, Malton and Filey for 18 years in another place, culminating in my being elected to chair the Environment, Food and Rural Affairs Committee for five years.

We have to eat, and those living and working in the countryside ensure that we have food on our tables. Today's debate is a celebration of the countryside,

[Baroness McIntosh of Pickering]
those who live and work there and how departments such as Defra and DECC interact with them in England. More than 20% of the population live in rural areas, contributing a fifth of England's total economic activity. The agrifood sector is worth £103 billion—6.8% of the gross value added of the national economy. The role of the EU impacts greatly on the rural economy and possibly nowhere else is gold-plating more evident. One example I was involved in as an MEP some 20 to 30 years ago, the abattoirs directive, forced the closure of some small abattoirs in England. At the time of the BSE and foot and mouth crisis this meant that livestock had to be transported further to slaughter, raising issues of animal welfare, as well as animal health.

The rural economy in England is frequently overlooked in government policy initiatives. We hear a lot about city regions, devolution and the northern powerhouse, yet the countryside is crying out for policies specifically aimed at the rural economy, such as more affordable housing, lower rural crime, better rural transport, with more frequent rural bus services, faster broadband—or even just a stable broadband connection—and better mobile phone coverage. Improved access to banks and post offices is also needed.

The key things I would like to explore this afternoon are the importance of farming to the countryside and the rural economy; the importance of food security and the role farmers play; and how Britain is currently only 62% self-sufficient in food production. The Government are rightly seeking to add value through exports and, wherever possible, substitute imports, such as Shepherds Purse Cheeses, from near Thirsk, which competes with Roquefort cheese from France. The Government should enthusiastically support public procurement of British products and we should all be proud to buy and eat British food. Opening up new markets, such as China, to products such as pigs' trotters and other pigs' parts that we may not eat in this country, as well as dairy foods, would add multimillion pounds of exports to companies in North Yorkshire and across England.

The impact of late farm payments under the new CAP is great on farming and the wider countryside and rural economy. Given the delayed payments from 2015 and the problems that the Rural Payments Agency has experienced with the new system, the recent announcement of partial payments is particularly welcome. We must not lose sight of the fact that 88,000 applications are due, mostly by paper, since rural areas are simply not yet digitally enabled, or that some farmers have still not been paid from 2015. Farmers are seeking an extension to the deadline for the 2016 application of 17 May, on which I hope the Government and the Minister will look favourably. There is a particular problem for tenant farmers through basic farm payments. Upland farming makes a unique contribution to rural areas in producing livestock, tending the countryside and often providing accommodation for visitors. Basic farm payments should go to the active farmers, in this case the graziers on common land tending sheep, rather than the landowner who earns money elsewhere through shooting rights. We must recognise problems with registration and mapping of common land, with the particular issue in North Yorkshire of a review being undertaken this year, whereby rights not registered this year may be lost, not to be revived. Looking ahead, I welcome and recognise the need for reforms promised by the EU Commissioner, Phil Hogan, in 2017 of a CAP that is simply too complicated.

The six-day rule impacts on farmers. It is a standstill rule imposed after the 2001 foot and mouth disease outbreak. Restricting the movement of livestock, it disrupts trade and affects price. It has been in place since 2003. When will it be lifted? The role of auction marts in rural areas should be recognised, setting prices and having an economic and social role by allowing vital interaction among farmers who often live in isolation. The Groceries Code Adjudicator is doing valuable work but needs greater powers and the ability to investigate of her own initiative malpractice within the supply chain. Of particular concern are low prices in the dairy sector, where currently the adjudicator cannot intervene because this is an indirect supply chain.

Severe flooding of land threatens food security, as well as causing huge economic loss when houses flood. Some £5 billion is the estimated cost nationally of the December 2015 floods. Spending on flood defences is being hampered by not having a total expenditure budget through the merging of maintenance and capital spend into one operational budget. Maintenance spending should match the six-year spend the Government have announced on capital spending. Regular and effective maintenance, where appropriate, by way of dredging, desilting and clearing water channels of weeds reduces the risk of flooding. A whole catchment area approach, retaining water upstream, prevents flooding downstream, as we saw so successfully in the Pickering slow the flow project, demonstrating the effectiveness of more natural flood defences. The Government should encourage the use of greening money under the CAP to reward framers for retaining flood waters temporarily on farm land by reimbursing them for the loss of income in return for the public good they do. Abstraction policy reform will pose challenges for competing users: farmers, industry, rural businesses and other users, such as anglers.

The impact of rural crime on farming and the rural community is huge. There is theft on a grand scale of quadbikes and livestock, poaching and lamping. The cost of rural crime is estimated to be £800 million, which is equivalent to £200 for every household in the countryside. Fly-tipping costs farmers and rural firms up to £150 million a year in removing waste. A more visible police presence and speedier response times are called for.

We must see a greater supply of housing and affordable homes in rural areas. The planning issue, which is very vexatious, must be addressed while respecting the rights of those already living there.

The impact of Brexit on the rural economy, the potential loss of access to the single market, the subsequent imposition of tariffs, depending on what negotiations are in place, and the potential loss of support are causing great concern among farmers. The impact of the CAP on the rural economy has been considerable. The new greening provisions and the impact of graziers on common land must be addressed.

The cost of delivering public services is much higher in rural areas and the per capita funding for patients and pupils is often substantially lower.

6.02 pm

Sitting suspended for a Division in the House.

6.14 pm

Baroness McIntosh of Pickering: In conclusion, I hope the Minister will realise that we need to spend more to deliver public services in rural areas to ensure that we have GPs who can act as community hubs; that we keep all the community hospitals we have; that farming, tourism and other rural businesses continue to have their roles to play; and that those living in rural areas will not be left behind and will have the same per capita spend on health, education and broadband services as those living in urban communities.

6.15 pm

Baroness Miller of Chilthorne Domer (LD): My Lords, I congratulate the noble Baroness, Lady McIntosh of Pickering, on securing the debate and her powerful introduction. I am really grateful for the timing of this debate because I want to speak about the rural economy and the massive part played by EU funds over the past few decades.

It is impossible to think about the rural economy without the part played by EU funds and I fear deeply for the economy of the UK if it votes for Brexit. Do noble Lords really believe that rural areas, with just under 20% of the population, will receive an equivalent sum from the Treasury in the case of Brexit? Some £2 billion in single farm payments, £500 million for environmental measures, and development funds such as LEADER have all been crucial to underpinning and developing the rural economy, whether through infrastructure or particular projects. The Treasury has never been keen to match the European funding even when such funding has been contingent on domestic input. That applies to successive Governments.

Rural businesses and villages, people living in rural areas and farmers themselves—who I think are very seized of the issue—need to understand that the Treasury will never come up with the sort of support that has made rural economies vibrant and healthy over the past few decades. Why not? As I said, it is because only 20% of the population lives in rural areas. It is also because it is hard, long-term work to invest effectively in sparsely populated areas. You get more quick bangs for your buck in urban areas and that is something the Treasury is very keen on.

When the CLA says that,

"the vital financial support provided to farming businesses and the wider rural economy must continue",

I say to the CLA, "Dream on!". The Treasury is never going to give the same level of support to lagging rural areas. The CLA really must get off the fence and campaign to remain, like the NFU, which I think has been very brave and clear-sighted and has clearly acted with its head. It is right because there will be a quadruple whammy for farmers: no more CAP; fewer willing seasonal workers; less support for infrastructure helping them to access markets; and much more uncertain export opportunities. Just take tariff export quotas. I ask the Minister: how would the UK negotiate if these had to be shared out? That is not a detail I have ever heard mentioned by the Farming Minister, George Eustice, who, ironically, is so keen on Brexit. I fear for food prices: I think they may rise.

In conclusion, there is so much infrastructure we need to worry about. It is all about how rural areas are going to keep their vibrant economies in the face of a massive lack of funding.

6.18 pm

Baroness Byford (Con): My Lords, I congratulate my noble friend on securing the debate and her forthright overview of the current situation. I remind the Committee of our family's farming interests, which are on the register.

Successful agriculture, horticulture, forestry and fishing industries are crucial to the health of the nation in terms of locally produced food, the employment opportunities they offer and a countryside that is open to all. Farming is a foundation stone of the UK's food industry. It is the fourth-largest exporting sector, worth some £97 billion, and in 2013 it provided more than 3.5 million jobs. The UK is the third-largest wheat and dairy producer in the EU, the fourth-largest beef producer and the largest producer of sheep-meat. Some 142,000 businesses are registered as farm businesses.

But all is not well. World commodity prices are low and some farmers are struggling to survive. Their plight is made all the more acute by the failure of the 2015 basic payment scheme and of the consequent queries for 2016. I hope that the Minister will clarify the current position and explain the reasons for the delays. We have received our full payment, and while others are waiting, part payments are at least some form of welcome relief.

We also need to ensure that disease in crops and livestock is kept to a minimum. Last year, the NFU and others, through their *Healthy Harvest Report*, campaigned for sound, risk-based regulation of plant protection products. The withdrawal of products, especially when there is no satisfactory alternative, risks crop yield losses. UK hop growers may number only some 60, but they are facing just such a scenario. Their crop is worth over £9 million. Hops are sold to brewers and traditional UK beers cannot be produced without hops. The brewing industry is worth in excess of £18 billion. I understand that hop growers do not have effective means to control pests in the way that they need.

Lastly, I continue to encourage more small businesses into rural areas. I welcome the new food and farming degree apprenticeships, the advances in technology, the sharing of expertise and the direct promotion of products. So much has been achieved, but there is much more to be done. There are opportunities to be taken, but in some areas even a minimum provision of broadband is needed and urgently required.

6.21 pm

The Lord Bishop of St Albans: My Lords, my thanks go to the noble Baroness, Lady McIntosh, for securing the debate. I will focus on three areas that I believe are crucial to creating a strong, dynamic rural economy.

[The Lord Bishop of St Albans]

First, I underline the importance of affordable housing in creating sustainable rural communities at a time when rural house prices continue to be pushed well beyond the reach of many local residents. A failure to provide for local people and local families to live and work in rural areas leaves the rural economy seriously inhibited. An affordable housing supply, available to local workers on low and middle incomes, is an essential feature of the rural economy, providing homes, and, in many cases, workplaces for those who would work in rural areas. I wonder, therefore, whether the Minister could outline how his department intends to work with DCLG to unlock the affordable homes that are so desperately needed, particularly given plans to exclude smaller developments, which form the bulk of rural development, from starter home and affordable housing requirements.

The second area is one already alluded to by other noble Lords: broadband and mobile connectivity. According to the CLA, nearly 50% of rural premises cannot receive broadband higher than 10 megabytes per second, while only 31% of people living in rural areas can expect to get "all networks" coverage indoors. The Government's commitment to a universal service obligation on broadband is welcome. Progress is being made, but I hope that similar promises will eventually be made on mobile coverage.

If the aim on broadband is to be achieved, however, investment in innovation is essential. I highlight the excellent example of WiSpire in the diocese of Norwich, which uses church spires in rural villages to transmit and receive broadband. We need lots of creativity about what we can do, yet the problem is that WiSpire is finding it very difficult to access funding and investment. That could make a significant difference. With that in mind, will the Minister tell us whether Her Majesty's Government have plans to make matched funding and investment for broadband projects more widely available?

Finally, I want to talk about fostering a spirit of innovation. Across rural communities are many thousands of microbusinesses, often operating out of kitchens and on small premises, that form a vital cornerstone of the rural economy and provide opportunities of diversification to more established industries, such as agriculture.

As technology changes and sectors like the "sharing economy" develop—the rise of Airbnb is a good example—we need to ensure that rural communities are well equipped to take advantage of the opportunities on offer. Housing and connectivity are part of this, but it also requires that would-be entrepreneurs have access to the right advice, training and support. I draw Peers' attention to the Germinate Enterprise course, which has been released by my colleagues in the Arthur Rank Centre and will be run though churches and community organisations. Can the Minister tell us what steps Her Majesty's Government are taking to encourage entrepreneurs and business start-ups in rural areas?

6.25 pm

Baroness Redfern (Con): My Lords, I speak in this short debate to add my continued support of economic growth in our rural areas, which at the moment contribute a fifth of England's total economic activity, for future job opportunities and improved prosperity.

Promoting a strong rural economy will be enhanced with local neighbourhood plans in place which will encourage and support all types of businesses and enterprise, promoting the development and diversification of agricultural and other land-based small businesses where, on average, 29% of all businesses employ only up to nine employees.

Starter homes for first-time buyers are so important where they can connect the places where young people work with where they want to live. Local services and community facilities in villages, such as small local shops, meeting places, sports venues, cultural buildings, public houses and places of worship are invaluable and must be developed and supported. Where would we be without our village schools, often described as the pulse of a community?

However, there are many challenges facing rural life and one has to look back only a few short months to the flooding that not only affected market towns and villages but had a severe impact on agriculture and the confidence of businesses going forward. An area of importance is connectivity. Superfast broadband plays a significant role in supporting businesses. As leader of North Lincolnshire Council, I am pleased that we will have rolled out broadband by May this year to an impressive 95% coverage. I allude to the speech of the right reverend Prelate the Bishop of St Albans. We use lots of water towers and church spires as well to get that coverage across. It is a lifeline, too, for many people to have access to internet in their homes, helping to combat loneliness, which in turn can be a real health problem as many retired people live in our rural areas.

In supporting the rural health agenda, we have introduced and developed five well-being hubs, such as the one in Epworth where I live. It provides many choices of activities from Cook4life, fitness and singing for the brain to maths, with lunch clubs and GPs so that people can meet and gain support and information—not only to reduce that feeling of isolation but to meet new people and build new friendships.

Connectivity is highly important when it comes to education, and again, we in North Lincolnshire recognise that for many students where they live is a barrier to further education, so we provide free post-16 school transport, giving all our students real choices to further their education and where they wish to study.

Sustainable rural tourism and leisure benefit not only businesses but communities and visitors alike, so we must expand our visitor facilities in appropriate locations, making sure that they are all-inclusive for all to access.

As we embark on our devolution deal, harnessing all of Lincolnshire's districts, where many have large rural areas, the much-needed extra funding which comes with that deal will kick-start our ambitious infrastructure projects which, I feel sure, aid and accelerate growth and investment. Collectively, we can attract more businesses while helping established businesses expand, bringing those much-needed new jobs to our rural economy.

Finally, there will always be challenges and we have to manage the risks, but local authorities offer significant support in making sure that wealth is created in our rural areas. I thank my noble friend Lady McIntosh for securing this debate, but I must say that I am not very keen on pigs' trotters.

6.30 pm

Lord Grantchester (Lab): I thank the noble Baroness, Lady McIntosh, for her excellent introduction to this debate. I declare my interest as a dairy farmer in Cheshire.

Slightly hesitatingly, I have decided to speak today specifically to raise with the Minister his department's announcement on the average farm gate price of milk for February 2016. The announcement led to an outcry from producers and industry organisations because Defra announced an increase in the milk price for February of an astonishing 10.8%—up by 2.4p to an average 25.57p per litre—when UK farm gate prices have been falling steadily since 2013. They are down 33% to a little above 23p, a price generally recognised to be below the cost of production.

I think I am on very safe ground to say that there has been no such increase. Reporting of this increase came about largely because the department appears to have bundled Arla's annual 13th payment into the February milk price, despite the bonus accruing on milk produced for the whole of 2015 and regardless of the fact that less than half the money has actually been paid into farmers' bank accounts as the rest went on paying AMCo farmers' membership fee to join Arla.

When the industry is facing a crisis arguably much worse than the crisis in 2009, this announcement has given a highly contentious signal from the Government that there is an end to the crisis in the dairy supply chain and retailers. Will the Minister ask his department to reflect on what it is calling the 13th payment and how it is reflected in its reporting of average pricing? Will his department publish its methodology and open it to consultation?

I might question how his department arrives at a credible figure. There is a very complex jigsaw of pricing at the farm gate at present. Many dairy farmers have had their production supply capped so that any increase above the cap is paid at a B price several pence below the A price paid for the set quantity. Is the Minister confident that his department is able to analyse the complexities in the national milk supply and account for these effects in the average farm gate price? At a time when there is a general consensus that the agricultural sector in the rural economy is facing severe difficulties with many knock-on effects to allied trades, it is surprising that the department does not appear to reflect the true nature of the circumstances of one of its stakeholders—indeed, they could almost be called customers, if farmers could be described as such. The Minister's clarification would be welcomed throughout the industry.

When the rural economy has such wide-ranging issues to address, I recognise that it is somewhat indulgent to bring up such a narrow matter.

6.32 pm

Baroness Smith of Newnham (LD): My Lords, as a lifelong city dweller, I have no declarations of interest today, other than a non-declarable interest as a proud citizen of the United Kingdom who enjoys the beauty of our rural areas when travelling in England, Scotland and Wales, although I regret that I travel very rarely in Northern Ireland. When I represented Newnham, some residents seemed to believe that they lived in the country thanks to the proximity to the iconic Grantchester Meadows—not the Grantchester in Cheshire, but Grantchester Meadows.

My reason for speaking today is to highlight one of the issues touched on by the noble Baroness, Lady McIntosh, at the end of her introductory speech, namely the importance to the rural economy of British membership of the European Union, and to ask the Minister whether the Government have any idea—not necessarily plans—how common agricultural policy receipts would be replaced in the case of a vote to leave and what impact such a vote would have on agricultural exports and tourism.

Looking first at agriculture, as my noble friend Lady Miller said, under the common agricultural policy the United Kingdom received direct payments of £2.95 billion in 2014. Would the Government commit to replace such funding in the event of a vote to leave the European Union? If so, how, given that those who wish to leave seem to want to spend the money on the NHS? If not, what would the impact be on our rural communities?

Turning to trade, exports of food, drink and animal feed were some £18.9 billion in 2014. Our principal export markets were the Irish Republic at 18%, France at 11%, the US at 10% and the Netherlands at 7.1%. Leaving aside the United States, around 36% goes to European Union states. What assessment have the Government made of the impact on the agricultural sector in the event of a vote to leave resulting in UK exporters being on the wrong side of EU tariffs on agricultural products?

Finally, turning to tourism, at Questions on 18 April, the noble Lord, Lord Forsyth of Drumlean, expressed some incredulity at the idea that after a Brexit EU nationals would be less keen to visit our great country. I believe he is right—indeed, the devaluation of the pound that might follow Brexit may make visiting the United Kingdom even more attractive—but if we are so keen to regain control of our borders that we feel the need to impose visa restrictions on our erstwhile EU colleagues, might that not put people off coming to the United Kingdom simply because it will not be worth the effort? Have the Government any idea what impact that would have on the rural economy?

6.36 pm

The Earl of Arran (Con): In the peninsula economy of south-west England connection is vital to ensuring good-quality local jobs and high levels of productivity and that all our communities, particularly those in the rural economy, can achieve their full potential.

What is taken for granted in most urban centres across England—a good road, a decent local bus service, a reliable train and an airport with a hub link—are

[The Earl of Arran]
scarce resources across large areas of Devon, Somerset and Cornwall. For us, the car is a necessity, not a luxury, yet even here services are contracting, as evidenced by the alarming rate of closure of small rural garages faced with competition from multinational petrol companies and supermarkets in never-ending price wars. However, what can rectify all this at a stroke and place businesses great and small, including the sole trader working from his or her third bedroom, on a national or international trading platform is broadband—I make no apology for returning to this—and a 21st century mobile telephone service rather than a 20th-century one.

The economic evidence is very clear indeed. In 2013, digital businesses grew at 12%, compared with growth of 4% for those not connected. Connected businesses are projecting growth four times faster than those that are not connected. By 2017, a lack of digital knowledge will mean that 25% of businesses will lose their market position. Digital access is drastically changing the knowledge economy to a point where 35% of jobs, many in the white collar sector, will be automated.

This problem has been recognised and is being partly addressed. Cornwall has received a superfast network, which means that it has more fibre per head of population than London. This is powering the economy of the poorest county in England by enabling many small and micro businesses to break into new markets and, importantly, by inspiring a new, young generation of entrepreneurs to enjoy exciting careers with a decent work-life balance. Many lower-cost public sector support services are being developed as a result, with huge potential in areas of remote learning. Cornwall has a realistic opportunity to break out of decades of subsidy as a direct result of this technology.

Would that this investment was reflected across the rest of the peninsula. Cornwall has the benefit of a significant European funding package but this does not apply to all areas. Connecting Devon and Somerset has enabled many areas to enjoy a level of digital access that will deliver a minimum of 2Mbps—which is an internet speed—to 90% of the area by the end of 2016. This programme has been funded through state aid, with up to £1.6 billion allocated to subsidise BT's introduction of a fixed-line fibre network to a target of 95% of the UK. However, this has not silenced criticism about the rate of the rollout and the speed and extent of the service. A 2Mbps service is regarded as no more than a fig leaf when compared with many parts of mainland Europe, as well as with countries that are less developed than the UK. The Prime Minister, thank goodness, has got it and has now announced that access to the internet should be a right in 21st-century Britain secured by law under a universal service obligation regardless of where you live. We welcome this.

6.39 pm

The Earl of Kinnoull (CB): My Lords, I, too, congratulate the noble Baroness, Lady McIntosh, on tabling this important Question. I will make two points. The first concerns the economic and biodiversity damage done by the invasive alien species, the grey squirrel. Here I declare my interests as set out in the register; in particular, as chairman of the UK Squirrel Accord, which has 34 signatories comprising the four Governments within the UK, the relevant private sector bodies and the relevant voluntary bodies. The accord has twin aims: first, to promote the survival of the red squirrel; and, secondly, to try to do something about the great damage done to our broadleaf trees by the rapidly expanding population of grey squirrels.

The damage done by grey squirrels is caused by their ring-barking the trees. Trees aged between 10 and 40 years have their bark gnawed away so that the grey squirrels can get at and suck the sap. This kills the trees or, at best, kills them above the area of ring-barking, and causes the rural economy, according to industry estimates, tens of millions of pounds a year of damage to this very large and important industry. It means that for the oak, beech and other broadleaf trees in our country, there are no replacements coming up for the existing stock of old trees. People are stopping planting these trees and it is a big problem. The accord represents a determined effort to co-ordinate UK efforts, involving many scientists and others, to address this. The Minister is highly engaged and knowledgeable about everything and very generous with his time—indeed, Defra is a signatory—but I would like him to affirm his determination on this very difficult issue.

Secondly, I raise the England Coast Path. This admirable initiative of Natural England is going to produce 2,800 miles of coastal path around England by 2020. Last month a 60-mile section in Somerset was opened. It provides enormous benefits to the countryside through people coming to visit. Indeed, the South West Coast Path reports that it generates more than £400 million a year to the local economy. There is a second benefit to the nation in that going for a walk makes people healthier and this reduces costs and burdens on the NHS. There are various estimates of that running into millions of pounds. I ask the Minister to join me in congratulating Natural England on its energetic handling of this tremendous initiative, which benefits not only the rural economy but the health of our fellow citizens.

6.42 pm

The Earl of Shrewsbury (Con): My Lords, I am grateful to my noble friend Lady McIntosh for securing this important debate today. I declare an interest as a member of the NFU, the Countryside Alliance and other similar organisations, and my younger son is a free-range egg producer in Lincolnshire.

Currently, agriculture is experiencing some of the toughest times seen for very many years. Pigmeat prices are atrocious and dairy prices are shocking, with overproduction of milk and milk products and a seriously depressed world market in which many export outlets have either diminished or been closed to us. Dairy farmers continue to leave the industry at an unprecedented rate, finished livestock prices are greatly depressed and it would appear that one of the very few positive agrisectors is free-range egg production, and that is really only because of cheaper cereals.

In general terms, considerable economic success has been achieved through wide diversification: conversion of redundant farm buildings to accommodation and offices; farm-shop retail businesses, many of considerable quality; equiculture; tourism—the list goes on. Angling

and shooting more than play their part. Shooting and fishing are most important sources of revenue to the countryside economy, providing much-needed employment in both full-time and part-time jobs, often in areas where employment is very hard to come by and where land use is, at best, restricted. The benefits of both activities to the countryside are numerous. Both must be treated as tourism and, additionally, as a seasonal harvest of delicious, healthy, natural food for the table. Ever more top-end chefs are extolling the virtues of preparing and serving game products.

Both pastimes are becoming ever more popular. In particular, shooting brings into this country a considerable number of high-net-worth individuals, many from America. Their spend is very substantial indeed. I know: I shoot with them. Without the shooting sports—this is backed up by extensive research by the shooting organisations—investment in conservation, and hence the promotion of habitat in these often less-favoured areas, would simply not happen. For example, without the responsible and selective burning of stale, unproductive moorland areas to promote new heather growth, grasses and reeds would encroach and engulf the hill. Grouse numbers would tumble and a valuable source of considerable income to the rural economy would be lost. Without coppicing, headlands, wildflower meadows, beetle banks and myriad other regimes, habitat is lost to both game and wildlife. Unless we conserve and invest, we cannot reap the benefits.

With respect, I submit that the entire subject of the rural economy is far too diverse and important a matter to be restricted to a few three-minute offerings in a one-hour QSD. I implore my noble friend the Minister to persuade his colleagues to promote a full two-and-a-half-hour debate on this subject very early in the new Session.

6.46 pm

The Earl of Caithness (Con): My Lords, I rise in the gap very briefly to support what my noble friend Lord Shrewsbury just said. I wanted to put my name down for this but when I saw the list of speakers I thought that that would only delay matters. My noble friend the Minister is Deputy Chief Whip. It is high time the Government allowed time for a full debate on the rural economy, like we used to have. This is such a varied and complex issue. In fact, the noble Lord, Lord Grantchester, said it was a complex jigsaw. It has got a lot more complex in recent years and therefore I plea that we get a decent time for a good full-length debate.

6.47 pm

Baroness Jones of Whitchurch (Lab): My Lords, I am grateful to the noble Baroness, Lady McIntosh, for tabling this debate today and to all noble Lords, who have brought great insight and experience to it. Of course, if the Government were to be honest in their response, they would have to admit that things are not going very well. It is tough for working people trying to bring up families in the countryside today. Average annual wages are more than £4,500 lower than in urban areas and the gap between the two has grown by £1,000 since 2010. Rural communities have been the worst affected by reductions in public services. Energy, transport and childcare costs, for example, have spiralled. There are GP shortages in many rural areas. Educational attainment is lower than in the urban equivalents and, as we have heard, the housing crisis has hit rural communities hard, with prices rocketing and waiting lists getting longer.

In addition, the 600,000 small rural businesses in England and Wales are feeling undervalued by this Government, despite the fact that they contribute over £200 billion to the economy in England alone. As we have heard this evening, the number one cause of small business complaints is poor or non-existent broadband. It is time the Government got a grip on this. Will the noble Lord confirm that the target of 95% of the country receiving broadband by 2017 will be met? What is the answer to critics who say that the universal service obligation, far from being universal, will add a cost penalty to those living in very rural areas?

Finally, a number of noble Lords raised the economic plight of farming communities and, undoubtedly, it would be worse under Brexit. In addition, the problem of delayed payments from the Rural Payments Agency has come at a particularly difficult time. The recent Public Accounts Committee report makes painful reading, highlighting a failing IT system and a payments fiasco. Will the noble Lord confirm that these problems will be sorted before the next payments deadline?

Meanwhile, the dairy sector is caught in the perfect storm of global market saturation and a plummeting milk price, with a growing exodus from the sector. We all feel alarmed at the implications of this for our rural communities and for longer-term food sustainability. Clearly, one aspect of recovery would be to strengthen the labelling of milk products and to encourage consumers to buy British. Another aspect would be to strengthen the role of the Groceries Code Adjudicator to cover indirect as well as direct suppliers. Will the noble Lord give insight into his department's longer-term projections for the UK dairy industry? I look forward to his response.

6.49 pm

Lord Gardiner of Kimble (Con): My Lords, I am more than grateful to my noble friend Lady McIntosh for securing the debate. A strong and vibrant rural economy is vital for the health and wealth of our national economy. At the outset I declare my farming interests and my rural background, which are in the register.

What is the current position? Rural areas contribute more than £200 billion to the English economy each year—around 17% of the total. They are home to nearly a quarter of all registered businesses in England and employ almost 20% of the country's workforce. Some 76% of residents in rural areas are in work. There are more registered businesses per head of population in rural areas than in our urban areas, excluding London. I have to say to the noble Baroness, Lady Jones, that my politest words are that I dispute her accusation that the relationship between small businesses, rural businesses and the Government is poor. It is completely the contrary. My experience of

[Lord Gardiner of Kimble]
having met many rural businesspeople around the country is that the environment which the Government seek to create for the economy is one that they identify with. Business start-up rates remain strong at 47 per 10,000 people. The rural economy is extremely diverse. Manufacturing represents 13% of gross value added from rural areas and the service sector is significant. Business services now represent 10% of rural output.

But this Government and this department agree that much more needs to be done. We want to help the rural economy achieve its full potential. Indeed, an increase in annual growth of just 0.1 percentage point would add around £500 million per year to rural gross value added. So the Government set out in the rural productivity plan, published last August, a range of measures. This relates to what my noble friend Lady McIntosh said in her wide-ranging speech, because so many of the features of rural life are so wide-ranging and they interconnect. Many areas of rural England are seeing improved broadband, mobile and transport connections. Wearing my former hat as DMCS spokesman, I very much agreed with what my noble friend Lord Arran said about Cornwall and the extraordinary impact that the enhanced connectivity in Cornwall, including the Isles of Scilly, has made. It has made a dramatic difference. Everyone can now access basic broadband speeds of 2 megabits per second—fast enough for online access to every government service, including CAP payments. Some 90% of UK premises now have access to superfast broadband and we are on track to reach 95% by 2017.

A number of your Lordships, my noble friend Lord Arran in particular, referred to the broadband universal service obligation. We and Ofcom are consulting on the introduction of that USO so that we have it in place for everyone by 2020. A broadband USO aims to provide a safety net for those without access to superfast broadband. Our ambition is to set the USO at 10 megabits per second. I am conscious—I declare an interest as I await a better service in my part of rural Suffolk—that we need to extend the mobile phone 2G coverage, allowing access to basic voice and text services to 90% of the UK land mass by 2017. I was reminded by what the right reverend Prelate and my noble friend Lady Redfern said of the use of church spires. The department entirely recognises the appropriateness of using church buildings; it wishes to use them and I hope that we might have a discussion. It might be a topic for one of the rural bishops' meetings that we have in Defra. That would be extremely helpful.

We are also very conscious—the noble Baroness, Lady Jones of Whitchurch, was teasing this out, and rightly so—of the question of how we deal with the remaining 5% of premises that are in hard-to-meet and difficult areas. That is why we have deployed pilot projects in Wales, Northern Ireland, Scotland, Hampshire, Northumberland, North Lincolnshire, North Yorkshire, Devon and Somerset. These are to test the options of expanding to that final 5% of premises where the commercial case for investment is at its weakest. We all recognise the importance of this service, which is essential for all communities, whether urban, rural or suburban. This is something that we all need to have. Indeed, as entrepreneurship has been mentioned, it is essential for small businesses that rural areas can be part of that.

The Government are also seeking to improve the availability of skills in rural areas through better schools and more apprenticeships. Clearly, ensuring a skilled workforce in rural areas is vital to their future economic success. That is why the Government will increase apprenticeships in rural areas, including tripling apprenticeships in food and farming. The right reverend Prelate spoke of the need to expand the number of businesses in rural areas. In fact, as part of the productivity plan, 15 new enterprise zones in smaller towns and rural areas will give businesses the space to grow and the opportunity to take advantage of tax and planning benefits.

A number of your Lordships raised the issue of rural housing, and I was very conscious of my noble friend Lady Redfern, who is such a great champion of North Lincolnshire. We are committed to increasing the availability of housing in rural areas, allowing rural towns and villages to thrive, while promoting the greenbelt and the countryside. I can express my personal commitment to this. I should perhaps declare that I facilitated a rural housing scheme on the farm at Kimble. I am very much committed to this as a way in which we can assist villages to prosper so that the school roll remains vibrant and the hubs in the village community can continue. Thousands of families will also benefit from the 30 hours of free childcare that will be rolled out from September this year. Three of the eight early-adopter local authorities are in rural areas.

We also wish to devolve more decision-making to local areas, including devolution deals. My noble friend Lady McIntosh mentioned the northern powerhouse and other areas where the Government have been working. We are also seeking to ensure this in the west of England, greater Lincolnshire and the east of England. The Government also recognise the strong part that tourism plays in rural areas, and that is why we have set out measures to support tourism in our five-point plan. The noble Earl, Lord Kinnoull, spoke of the English coastal path. It is clearly very important for our well-being, but it is also important as a catalyst for tourism and all the knock-on positivity for economic growth.

My noble friend Lord Shrewsbury mentioned the contribution country sports make to the rural economy. Shooting alone annually contributes £2 billion and 74,000 jobs. I know my noble friend has experience of it. You only have to go to those very remote areas to see that shooting is one of the major economic contributors, if not the only one. Anyone who does not understand this ought to go to see it before they make observations. It is essential to those remote rural areas. I know many noble Lords would be very pleased to facilitate a visit from any of your Lordships who would like to take the opportunity.

Tourism relies on a beautiful and varied countryside—landscape—and trees play a pivotal role in it. I can confirm that the comments about the grey squirrel made by the noble Earl, Lord Kinnoull, chime with what Defra is seeking to do. There is no doubt that the

grey squirrel is the greatest destroyer of trees. The arrival of this species has been a great disaster for our treescape, and we need to do something about it.

I am very conscious of the importance of a vibrant agricultural sector. It is at the core of the rural economy, generating £100 billion and supporting one in eight jobs. I have two minutes and a lot more to say.

It is our ambition to make the industry ever more a world leader. We are very determined to ensure that we have better procurement policies and that we enhance exports. The Secretary of State has just returned from the United States, promoting British food and products. I particularly want to take on board what my noble friend Lady Byford said about beer and hops. The whole basis on which the department works on pests is to receive the best scientific advice available: that is the basis on which we make decisions. We are in the year of great British food. Where there is a contribution that we need to make, including opening up beef exports to America and Japan, there is a lot going on in the department across the ministerial team.

The noble Lord, Lord Grantchester, mentioned the dairy sector in particular. Given the time, I can say only that we are certainly not complacent. I am very glad that the noble Lord raised this, because dairy farming is at the heart of farming in many rural areas, particularly on the west side of the country. We need to work as hard as we can to support the dairy industry. I do not have time to go into Brexit and so forth, but I say to the noble Baronesses, Lady Miller of Chilthorne Domer and Lady Smith of Newnham, that the package received from the European Commission —£26.3 million of aid to the dairy farmers, which was paid out in November and December—is an indication of the sort of community support we receive. Indeed, the new system of tax averaging introduced this month will help farmers. I am very conscious of the need to help the farming industry.

Unfortunately, there is more to say but I will take away all that was said on rural-proofing, which the review by the noble Lord, Lord Cameron of Dillington, was all about. Having once achieved a two and a half hour debate on the countryside, I will take away what my noble friend Lord Caithness and others have said about the need for a debate. The countryside is very important to us. It is in the national interest that we have a vibrant rural economy. We should respect its traditions and its way of life, but surely our objective is to unlock the enormous opportunities that there still are for the rural economy. I am most grateful to noble Lords and I will take back all that has been said and write to them.

Committee adjourned at 7.02 pm.

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