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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

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

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House of Lords

Monday 4 July 2016

2.30 pm

Prayers—read by the Lord Bishop of Ely.

European Union

Question

2.36 pm

Asked by Lord Soley

To ask Her Majesty's Government what role they see for the United Kingdom in relation to the European Union.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): Following the decision by the British people to leave the European Union, the Prime Minister has been clear that the nature of the relationship we secure with the EU will be determined by the next Government, but we must not turn our back on Europe nor on the rest of the world. While we are still a member of the EU, we will continue to engage with EU business and decision-making in the usual way.

Lord Soley (Lab): Can we now focus on process? We will presumably have to start talks with individual countries, but also with the European Union centrally. First, how will that be structured, and what is the European Union going to do in response? Secondly, and very importantly, how will we ensure that our well-known diplomatic skills are still engaged with the European Union to deal with the wider world in the interests of both the European Union and Britain? At the end of the day, both of us must end up being winners in this process, not losers.

Baroness Anelay of St Johns: Indeed, my Lords, the fact that there is a formal process does not exclude the possibility of informal talks. One talks to colleagues around Europe: it has already happened and it will continue to happen. The European Council has appointed a Belgian diplomat, Didier Seeuws, to lead a Brexit taskforce, which will negotiate the terms and conditions of withdrawal with UK Government officials. That has been announced by the European Council, but Seeuws's appointment is reported to have created what I might call some tension between the Council and the Commission over who should lead the withdrawal negotiations.

The noble Lord draws attention to the importance of diplomatic skills. I can assure him that on the Friday the result was known, our Permanent Under-Secretary called an all-staff meeting to impress on them exactly that point, and to reinforce the undertaking that we would continue to develop diplomatic skills and the strength of the Diplomatic Academy to take account of the decision by the British people.

Lord Cormack (Con): My Lords, is it not crucial that we have a British Government who are effective in office as soon as possible, and should not the members of the Conservative Party in the country bear that in mind?

Baroness Anelay of St Johns: My Lords, yes.

Baroness Smith of Newnham (LD): My Lords, when the Prime Minister announced his intention to stand down, he suggested that, pending the election of his successor, he would do everything to "steady the ship" over the coming weeks and months. Does this commitment mean that every Minister has to come to the Dispatch Box with the same ministerial briefing—that this is a matter for the next Prime Minister or the next Government—and if so, is this really steadying the ship, or has the ship run aground with the Prime Minister as the first leader overboard?

Baroness Anelay of St Johns: As a maritime nation with a proud history in international relations and trade, this ship is not only afloat but is avoiding the Dogger Bank and negotiating a way forward. It will of course be a matter for the next Prime Minister and the next Government to agree on the details, but this Government are putting in place the processes by which information can be gathered to inform the next Government and ensure the success of this great country.

Lord Watts (Lab): My Lords, do not the actions of the leaders of the leave campaign demonstrate that now, they have no idea how to take Britain forward?

Baroness Anelay of St Johns: My Lords, it is important that we listen to the views of all. The people decided that they wished to leave the European Union. When we have our two-day debate tomorrow and Wednesday, I and my officials will be listening very carefully to the views of all Peers on all sides of the argument. That will inform our way forward, just as constituents can inform the way forward of their Members of Parliament.

The Lord Bishop of Ely: Whatever happens in the long term, in the meantime will the Government speak up trenchantly against the ugly and unseemly behaviour of some of our fellow citizens in the way they speak to and are violent towards citizens from the EU who are resident here, and who are productive citizens in our midst?

Baroness Anelay of St Johns: The right reverend Prelate is of course not only right but clearly has the complete agreement of this House. This country has proved throughout its history that it not only tolerates but welcomes those who come here to contribute to our society. I deplore attacks upon them.

Lord Collins of Highbury (Lab): My Lords, the noble Baroness stressed the role of the Government in the negotiations, but she has failed to mention the role of this sovereign Parliament in that process. Will she indicate just how Parliament will be involved in the process of negotiations?

Baroness Anelay of St Johns: My Lords, last week the Leader of the House repeated the Prime Minister's Statement, in which he said that,

"we have now got to look at all the detailed arrangements, and Parliament will clearly have a role in that in making sure that we find the best way forward",

and that, as we move ahead towards leaving the EU, it will be important to,

"ensure that the interests of all parts of our United Kingdom are protected and advanced".—[*Official Report*, Commons, 27/6/16; cols. 23-27.]

That still stands.

Viscount Waverley (CB): My Lords, to what extent will the Ponsonby rule or its successor arrangements under the constitutional change brought in in 2010 be applicable to this process?

Baroness Anelay of St Johns: My Lords, that will be under consideration.

Lord Anderson of Swansea (Lab): My Lords, apart from the vote to leave, how do we ascertain what the British people—or, at least, the 36% of the electorate who voted to leave—really want? We cannot negotiate with the people.

Baroness Anelay of St Johns: My Lords, in a democracy the people negotiate with government when they express their view at the ballot box, which they have done. It is then the duty of the Government to take into account the security and interests of the whole of the British people when putting together proposals for negotiation. I suspect that we will have an opportunity in this Chamber further to discuss these matters. It will of course be a matter for the usual channels to determine how that happens, both within the Chamber and outside it in a more informal way.

Lord Hamilton of Epsom (Con): My Lords, my noble friend indicated that informal talks can go on with the EU. Is she happy that that can happen without our triggering Article 50?

Baroness Anelay of St Johns: My Lords, my noble friend raises an important point. In any event we have discussions with the other 27 countries outside the European Council; that will not only happen but has already started. I hope that that will continue to ensure that our relationships are firm and good, which will help when we come to the formal negotiations.

Lord West of Spithead (Lab): My Lords, I thank the Minister for reminding the House that we are a maritime nation, and I ask her to remind the Treasury and the MoD that perhaps we should buy some ships. However, my question relates to the important role we play as the bridge between the North American and European parts of NATO. Does she agree that we still absolutely have to carry out that role for the security of our part of the world?

Baroness Anelay of St Johns: That is a crucial point and I feel sure it will be very much in the mind of the Foreign Secretary when he attends the NATO summit this weekend.

Landfill: Textile Waste Question

2.44 pm

Asked by **Baroness Jenkin of Kennington**

To ask Her Majesty's Government what action they are taking to reduce the amount of textile waste sent to landfill.

Lord Gardiner of Kimble (Con): My Lords, we are working with the Waste and Resources Action Programme—WRAP—and organisations from across the clothing life cycle to reduce of amount of textile waste sent to landfill and minimise environmental impacts. This includes action with designers and manufacturers to increase clothing durability, work to promote greater reuse and recycling of textiles and action to influence consumer behaviour through the Love Your Clothes campaign.

Baroness Jenkin of Kennington (Con): My Lords, we can all do more to make our clothes last longer and look at innovative ways to do so. To that end, all noble Lords are invited to a swishing event tomorrow in Committee Room G, 5 pm to 7 pm, hosted by the APPG on Ethics and Sustainability in Fashion. I declare an interest as a trustee of WRAP, which leads the Sustainable Clothing Action Plan—SCAP—which is focused on diverting textiles from landfill. Can my noble friend inform the House what progress SCAP is making?

Lord Gardiner of Kimble: My Lords, my noble friend's initiative sounds very interesting and noble Lords, including those who are not in the Chamber, may well want to go. So far as SCAP is concerned, I am very pleased to say that only last week Primark, one of the UK's largest clothing retailers, became the latest business to sign up to SCAP. This means that SCAP now represents 65% of clothes sold in the UK by volume. This clearly shows the enormous potential for this agreement.

Baroness Parminter (LD): My Lords, lower prices and reduced demand are lessening incentives to collect used textiles. Will the Minister say what plans the Government have to introduce extended producer responsibility, as they have done in France, to stimulate demand for sustainable markets?

Lord Gardiner of Kimble: My Lords, I certainly will look into what the noble Baroness has said in greater detail, but what we are seeking to do through SCAP is to ensure that there is a greater reduction in textiles going to landfill. Obviously, clothing is the most important area but there are a number of innovative initiatives with the use of textiles, for instance carpets, going into roofing, road surfaces, equestrian surfaces and engineering plastics. So there is a lot going on in both the clothing and non-clothing textile sectors.

Viscount Ridley (Con): My Lords, is my noble friend the Minister aware of research that suggests that synthetic fleeces, when they are washed, are responsible for a

significant proportion of the microplastics that end up in the sea and inside the bodies of mussels and other things such as that?

Lord Gardiner of Kimble: My Lords, I think I am safe in saying that wool is a very good alternative to synthetic products and also that we are very keen indeed to ensure that microbeads and marine litter are much reduced. On that subject, the United Kingdom will consider acting separately if we need to, but I am pleased to say that many of the manufacturers of UK cosmetics are no longer using microbeads and I hope that that will increase dramatically.

Baroness Jones of Whitchurch (Lab): My Lords, is the Minister aware that a number of companies belonging to the Textile Recycling Association have gone out of business recently? This is the result partly of a lack of sustainable markets for used clothing and partly of downward pressure on prices. Given that it is in all our interests to help this market thrive and to avoid clothing going into landfill, should the Government not be doing more to work with this sector to create new markets, including putting more money into investment and innovation where that would make sense?

Lord Gardiner of Kimble: My Lords, it is very clear that this is an innovative area where we need to do more and where as we increase the capability of recycling there will be some great and continuing successes. I understand that, with the issues particularly in east Africa and Ukraine, where there has been a reduction in the reuse of clothing and also a reduction in prices, this is a challenge that we need to work on, and it is one of the things I very much hope we can work with WRAP on.

Lord Wallace of Saltaire (LD): My Lords, to follow up the question from the noble Viscount, Lord Ridley, the mix of artificial and natural fibres is a real problem for recycling in the textile industry. I am old enough to remember when we had a thriving shoddy industry in Yorkshire—but that was wool, not wool mixed with polypropylene and all sorts of other things. Will the Government in this deregulatory age consider the virtue of some regulation of mixtures between artificial and natural fibres to assist in recycling?

Lord Gardiner of Kimble: What the noble Lord has said is very interesting. Just as anaerobic digestion is one of the issues with energy, the problem with many textiles is the non-biodegradable nature of the material. So although what the noble Lord suggested may present some complications, this is an area where we need to think much more freshly and in an innovative manner.

Immigration Officers *Question*

2.50 pm

Asked by Baroness Afshar

To ask Her Majesty's Government what are the qualifications of those whose job it is to assess and review applications for non-European Union citizens seeking leave to remain in the United Kingdom.

The Parliamentary Under-Secretary of State, Department for Transport and Home Office (Lord Ahmad of Wimbledon)

(Con): My Lords, while there are no formal qualification requirements, the recruitment and selection of staff to these roles follows a standard process based on the Civil Service core competency framework. A comprehensive training and mentoring programme is in place for all staff recruited to these roles.

Baroness Afshar (CB): I thank the Minister. Given the serious shortage of expertise in academe and in the health and care sectors, will the Minister consider revising the provisions that prevent graduates in this country who are from abroad working in these sectors to help out? Even if such graduates offer their work free of charge, they are limited to a number of hours of service, which deprives communities of freely available and badly needed help. Will the Government reconsider this provision?

Lord Ahmad of Wimbledon: My Lords, I believe that the noble Baroness is referring to the issue of students working here. The main purpose of the tier 4 visa, the arrangements under which she refers to, is that students should be able to maintain themselves for the duration of their course without resorting to employment in the UK. However, as noble Lords will know, students are permitted to supplement their income and can work for up to 20 hours a week.

Lord Howell of Guildford (Con): My Lords, whatever the outcome of the EU negotiations on immigration referred to earlier, does my noble friend agree that it is the skills of migrants, from Commonwealth countries particularly, on which we heavily depend and that these should be encouraged rather than penalised in the new situation which we are moving into? Does he further agree that, if the 183,000 students who are classified as migrants were looked at slightly differently from the overall migrant figures, it might clarify and ease what is otherwise a very misunderstood situation?

Lord Ahmad of Wimbledon: My noble friend raises two important points. On the first, the UK is committed as a member of the European Union until the decision is taken formally to invoke the appropriate articles, but in our future negotiations with our European partners and with the world in general it will be important that we look at the skills requirements of the nation to ensure that we fulfil them. On my noble friend's second question, it would be remiss of me at this point to start changing immigration policy, but, as I always do, I have listened to him with interest and will take back his comments.

Baroness Sharples (Con): Can my noble friend say what help can be given to British citizens living in Europe? I have a daughter and two grandchildren living in Spain; they have been there 22 years.

Lord Ahmad of Wimbledon: The advice is very clear. We remain members of the European Union and nothing changes. I know that this issue has come up in your Lordships' House previously and I shall

[LORD AHMAD OF WIMBLEDON]

repeat an Answer to an Urgent Question on it later today. It is important to remember in the new world that we find ourselves in that Britain always has been, and will remain, a nation which is compassionate in welcoming people from around the world. Certainly, that will be the basis of any discussions with European partners and nations beyond Europe.

Lord Rosser (Lab): Is either the number of applications seeking leave to remain in the UK from non-EU citizens or the percentage of such applications that are accepted projected to increase or decrease between 2015 and 2020? If so, to what extent are they projected to increase or decrease?

Lord Ahmad of Wimbledon: I am not going to speculate on what will happen over the next five years. The important thing to remember, when it comes to immigration and applications for leave to remain, is that we look at the best interests of our country, but also at the best interests in regard to what we are on the global stage. We are a welcoming nation to people from all around the globe, and long may that remain so, to ensure that Britain continues to prosper and grow on the global stage.

Baroness Hamwee (LD): My Lords, while I would like to encourage the noble Lord to change immigration policy from the Dispatch Box, I will restrain myself. With regard to the officials who are the subject of this Question, I understand that there is a difficulty with retention. Is that correct, and if it is, are the Government aware why there is a problem with retaining the officers?

Lord Ahmad of Wimbledon: We currently have 1,280 full-time equivalent staff who are undertaking this casework. The noble Baroness talks about retention; there is normal turnover of staff. We are also enhancing some of the requirements, particularly on English language, for such staff, which will come into play in this area, and across the public sector, from October 2016. It is important in any role undertaken within government and the public sector that career paths are pointed out to people—the mentoring scheme we deploy for such staff is a valuable asset in this regard.

Baroness Butler-Sloss (CB): My Lords, I have several friends from different parts of the EU who have indefinite leave to remain and have lived in this country for many years. They are now asking me whether they are safe to stay here in the future. Will the Minister make it clear, through the Government, that those people will be able to remain, regardless of what the details regarding the EU are?

Lord Ahmad of Wimbledon: As we have previously heard from this Dispatch Box, the Leader of the House, the Prime Minister as well as others, the position of EU nationals within the United Kingdom who have indefinite leave to remain does not change. In any future discussions we have with our European partners, the important thing is the need to reflect that fact and also—as my noble friend raised in an earlier question—the

needs and requirements of those UK citizens who have made their home in the member states of the European Union.

Baroness McIntosh of Hudnall (Lab): My Lords, is the Minister aware that what he has just said is significantly at odds with what his right honourable friend the Foreign Secretary said today on the “Today” programme? Could he clarify, between the two of them, who is right?

Lord Ahmad of Wimbledon: I do not think there is an inconsistency. The important thing in this issue, which the Government have made clear, is that first and foremost we remain members of the European Union. The position of those citizens of the European Union who are residing in the UK does not change until such time as negotiations begin. I say that because it is important to have a factual reality check as to what the situation is. However, I would add that the position of European Union nationals here who have indefinite leave to remain, much akin to those from other parts of the world who have indefinite leave to remain, remains a vital part of the discussions we will have with our European Union partners. Prevailing within that is the importance of recognising that this is about providing stability and security to all citizens who chose to make the UK their home.

Lord Dobbs (Con): My Lords, I know my noble friend will be ashamed at the racist and ethnic bullying that has resulted from the referendum vote. Should we not also be ashamed that nobody in government seems to be able to reassure those victims in the way that they require? People who are already settled here, legally and responsibly, are our friends and neighbours and should not be used as bargaining chips in the Brexit negotiations. Will the Minister please make sure to remember that any Government who come back from Brexit negotiations with a result saying these people will have to be forcibly removed from this country would very soon be out of time and out of a majority?

Lord Ahmad of Wimbledon: My noble friend has made a valid point very well. Let me assure him that no Government moving forward in the unprecedented circumstances we find ourselves in would in any sense be looking at any citizen in the way that has been suggested by some. The important thing is to provide reassurances at this juncture because there is uncertainty and to ensure that to deal with the attacks we have seen up and down the country being perpetrated by those who are using this opportunity to divide us, we send a simple and straightforward message: those who incite hatred against any community or person for whatever reason will be dealt with using the force of the law.

Let me provide once again some comfort to my noble friend because this is an important point. As we move forward in what as I have said is an unprecedented situation, we must ensure that the rights, security and safety of all citizens who have made Britain their home are fully protected. They make Britain what it is and I am sure that they will be at the forefront of the mind of whoever emerges as the Prime Minister and the new Government of our great country as they lead on the negotiations.

Health: HIV

Question

3 pm

Asked by Lord Hunt of Kings Heath

To ask Her Majesty's Government whether they will instruct NHS England to commission the use of pre-exposure prophylaxis (PrEP) for patients with HIV.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, after taking legal advice, NHS England has concluded that it has no legal power to commission pre-exposure prophylaxis. NHS England's decision is currently subject to judicial review by the National AIDS Trust and we are therefore unable to comment further on the legal position. We will consider the options available following the outcome of the legal review.

Lord Hunt of Kings Heath (Lab): My Lords, this is a perverse decision on a ground-breaking drug that could save many people's lives. Essentially, NHS England is hiding behind the responsibilities of local authorities in relation to sexual health services. How long must we wait before the public get the use of this drug, which is widely available in other countries? The Government should instruct NHS England to get on and make it available.

Lord Prior of Brampton: My Lords, the judicial review is being held next Wednesday, which is only 10 days from now, at which point we will know the exact legal position. I really cannot comment further on it today. As far as this drug being widely available as a prophylaxis, it is widely available only in some countries for very specific groups of people. If we commission it in the future, it is important that we are clear about where we can get the most benefit from it.

Baroness Walmsley (LD): My Lords, the PROUD study reported in the *Lancet* last year showed that the PrEP use of Truvada in high-risk groups reached nearly 100%. Are there any other preventive treatments for life-threatening diseases which are 100% effective but for which NHS England is refusing to take responsibility?

Lord Prior of Brampton: It is true that in the control group used in the PROUD trial there was a very high level of success—85% or 87%, I think—but it is critical to identify the right group of people. That is why NHS England is providing £2 million to test Truvada as a prophylactic among a wider group of people to see whether it is equally efficient.

Baroness Gould of Potternewton (Lab): My Lords, I declare my interests as a member of the All-Party Parliamentary Group on HIV and AIDS and as a patron of many HIV organisations. Further to the Minister's last reply and to the fact that trials are going to take place, will he indicate what action the Government are taking to ensure that there is no gap in the provision of Truvada—PrEP—for those who are on the PROUD trial? Those people will be in great

difficulty if they have to stop taking the drug. Will they be included in the trial, how are the trials going to be determined and who is going to decide how the money is going to be spent? Lastly, we think the trial will be a two-year process, so it will be 2019 before we get a decision. Will the Minister say how the decision is ultimately going to be taken?

Lord Prior of Brampton: I can confirm that all the people who are receiving PrEP as part of the PROUD trial will continue to receive it going forward, which I think answers the main point made by the noble Baroness. In terms of the conduct of the trials that I referred to earlier, they will largely be organised and shaped by Public Health England.

Baroness Jay of Paddington (Lab): My Lords, I have to declare an interest because my husband chaired the Medical Research Council committee that oversaw the original trial on this. The trial was suspended because it was so successful. It was suspended on ethical grounds because it was thought that the people in the control group must receive the drug. Do the Government agree that it is unethical, whatever the legal or financial situation, not to make the drug more available now, particularly given the alarming rise in new cases of HIV in gay men?

Lord Prior of Brampton: I am not an expert in this area, but having thought and read about this issue a lot over the past few days, it seems to me that the number of people who have not been diagnosed with HIV is a critical issue. As those people are not aware that they have HIV, their behaviour is not adjusted and because they are not taking treatment, they have a greater amount of the HIV virus. It is estimated that 18,000 people have not been diagnosed so, if one had to make a choice, increasing our rate of diagnosis must be crucial. However, I do not disagree with the noble Baroness that the evidence around PrEP as a prophylaxis is strong.

Lord Cashman (Lab): My Lords, I have a simple question. Does the Minister agree that we cannot afford not to provide PrEP on the NHS, given that it saves lives and prevents HIV infection?

Lord Prior of Brampton: The critical issue is: to whom do we provide it? The whole purpose of the trials that NHS England is now funding is to ensure that when we provide PrEP, we do so for those who can most benefit from it.

Baroness Finlay of Llandaff (CB): Do the Government recognise that the number of new cases in London is not falling, despite all the public health measures, and that there is therefore an urgent need to address the continuing at-risk behaviours? Will the Government also consider a trial of PrEP in the prostitute population, in which heterosexual transmission can occur and who are often not spoken about in relation to HIV, partly because all their activities are underground?

Lord Prior of Brampton: That is a good point. I am sure that Public Health England is aware of the risks to sex workers and that it will factor them into the trials it is devising over the next two years.

Bus Services Bill [HL] *Committee (2nd Day)*

3.07 pm

Relevant document: 1st Report from the Delegated Powers Committee

Clause 4: Franchising schemes

Amendment 21

Moved by Baroness Jones of Whitchurch

21: Clause 4, page 14, leave out lines 36 and 37

Baroness Jones of Whitchurch (Lab): My Lords, our Amendments 21, 38, 39 and 40 go to the heart of the concerns that we raised at Second Reading about the restrictions on local authorities being able to access the new franchising model set out in the Bill. As it stands, a mayoral combined authority can automatically opt for a franchise scheme if it feels that it is right for its locality. However, all other categories of single or combined authorities must first seek the permission of the Secretary of State. Their decision would then need to be endorsed by affirmative regulation. Our amendments simplify and streamline that process, taking the Secretary of State out of the equation and creating a level playing field for local authorities.

We share a common purpose in wanting to improve the number of passenger journeys and drive up standards. We know that the franchising model works; the statistics for bus use in London are testament to that. No doubt this is part of the reason that the Government have finally embraced it as appropriate for mayoral authorities. However, no one has satisfactorily explained why, if it is good for one model of local authority leadership, it should not work equally well in other areas. It is not at all clear what the unique wisdom of mayoral authorities is. As I said at Second Reading, there is a wider game of politics going on here. Clearly, the Government are scratching around to find incentives for local authorities to adopt their preferred model of local leadership. This has been alighted upon as a bargaining chip; it has nothing to do with improving bus provision.

The threat of Secretary of State interference in local authority decisions, as set out in this Bill, surely runs counter to the shared aspiration of both the Government and the Opposition to devolve more power to localities and let local communities shape the services that are right for them. Our view is shared by the Local Government Association, which has endorsed our amendments. It takes the view that all areas should be given automatic rights to bus franchising powers, with the decision taken locally, based on robust evidence and taking into account the needs of passengers, local residents and other circumstances such as the performance of local bus markets. Its view is shared by many other smaller bus operators. For example, Dai Powell, the chief executive of HCT, which provides more than 20 million passenger journeys a year said:

“The power for Local Authorities to franchise their local bus services has the ability to revolutionise the UK bus industry. It’s pretty clear that franchising has the capability to bring significant benefits to the travelling public through enabling network development that meets the needs of communities”.

The only group that seems to be lukewarm about the franchising model and our proposals to streamline and extend the model are the existing local large bus operators. However—being realistic—they would say that, wouldn’t they? The existing arrangements have, of course, served them well. They may result in a poorer bus service, but they have also delivered large profits for them. A recent Competition Commission investigation concluded that bus operator profits are higher than in any other business sector deploying comparable levels of capital at equivalent risk. Across Britain, bus companies’ average operating profit in the 10 years to 2013 was £297 million a year. Bus companies in the unregulated big cities made average profits of 8%, whereas profits in London are less than 4%. So we can see why they may be reluctant to embrace change and support the franchising model. However, we do not accept that position. It cannot be right that around 10% of public money going into bus subsidies is ending up being paid out in profit dividends rather than improving the local bus service. Our amendments would make it clearer for local authorities as a whole to do what is in the best interests of their local community, without bureaucratic, costly and lengthy interference from the Minister.

Meanwhile, as the noble Lord the Minister has been made aware, the Delegated Powers and Regulatory Reform Committee has also raised its own concerns about this clause. It has flagged up the inadequate explanation in the Explanatory Notes as to why different rules are being applied to mayoral and non-mayoral authorities. It says:

“We have therefore found it difficult to assess, on the basis of the explanation in the memorandum, whether it is appropriate to delegate to the Secretary of State a power to allow the authorities referred to in section 123A(4)(b) to (f) to become franchising authorities, instead of this arising immediately upon the commencement of clause 4. The House may therefore wish to ask the Minister to provide a fuller rationale for the power in new section 123A(4)”.

I think that we would all like to have an explanation for the Government’s discrimination against the non-mayoral authorities in the Bill. The noble Lord has said that he intends to respond to that committee. We would all be interested in that response, so perhaps the noble Lord can let the Committee know when it will be available. In the meantime, regardless of that, we believe that these amendments are crucial to making the Bill a success. I beg to move.

3.15 pm

Earl Attlee (Con): My Lords, while it is clearly right to explore these issues, I strongly urge the Minister to resist these amendments. The noble Baroness, Lady Jones, mentioned London, but she will know that London is almost a city state. The circumstances are very different, and with very different funding arrangements. She mentioned the lower profit available to operators in London, but the reason for that is that they are taking less risk than in a non-regulated service.

This is all about accountability. If we are not careful, we might well find ourselves hurtling down the same avenues as we did during the debates on the Cities and Local Government Devolution Bill last year. Combined authorities with elected mayors, or any other local authority with an elected mayor, are very different beasts from local authorities that have not gone down the route of having an elected mayor. The appointment of a directly elected mayor provides those authorities with a considerable battalion of powers where they have agreed devolution deals with the Government. That of course includes the power to franchise local bus services.

Authorities with agreed devolution deals already have the necessary consent to pursue their new bus franchising powers and will be allowed to do so when the relevant parts of this Bill are brought into operation. However, I do not believe that that should be the case for other local authorities. They have not been through the process of acquiring what could be said to be a higher status in terms of local accountability. It is a fact that those authorities with elected mayors and agreed devolution deals already have the powers by virtue of that process. We know that the process is not necessarily straightforward and requires hard-fought agreement between the authorities that comprise those areas.

Lord Woolmer of Leeds (Lab): The noble Earl emphasised mayoral combined authorities and mayoral powers. Why, then, has Cornwall—which is not going for a mayoral model—been promised franchising powers?

Earl Attlee: My Lords, I do not know that, but I expect the Minister will tell us.

The agreement between the authorities that comprise those areas is hard fought. Some tough battles are still extant where devolution deals just could not be worked through. Through their earlier legislation, the Government have established a process for a new kind of local authority, which has wide-ranging powers but first has to satisfy the Government that the right kind of structures and accountability are in place. The amendments would give the same wide-ranging powers to local authorities that have not taken those brave and often difficult political steps.

I am afraid therefore that I disagree with those noble Lords who say that this Bill treats local authorities without elected mayors or an agreed devolution deal differently from those who have. There is no unfairness here. It is a simple fact that authorities with elected mayors and agreed devolution deals already have government approval to introduce bus franchising; other local authorities do not. What would be unfair, I believe, is allowing any local authority access to bus franchising powers without having gone through the democratic process of electing a mayor and acquiring government agreement to a devolution deal. I am not at all convinced by the arguments put forward for these amendments and the Minister has my full support should he ask the Committee to resist them.

Baroness Randerson (LD): My Lords, the amendment to which I have added my name, along with the noble Baroness, Lady Jones, would remove the power of the Secretary of State to decide what other local authorities,

along with mayoral authorities, may have franchising powers. The report of the Delegated Powers and Regulatory Reform Committee states that it is,

“puzzled by the implication in the memorandum that mayoral combined authorities have expressed an interest in pursuing a franchising approach, given that there are currently no combined authorities with a mayor”.

Although an order has been made preparing Greater Manchester for this situation, its mayor will not be elected until 2017. I would be interested to hear the Minister's response on exactly what the provision in the Explanatory Memorandum refers to. Does it refer to Manchester or other areas? Even more fundamentally, why should a mayor be any better at running bus services than a designated executive member within a transport authority? After all, the previous Mayor of London did not have a glorious record when running the buses. A great deal of resources were wasted on the “Boris bus”, and the fact that London buses run very well is down to the experience and expertise built up over many years by Transport for London. Compare the record to which I have just referred with that of Reading, which has an excellent municipal bus service run on a traditional civic structure, and has had the wisdom to invest well in its bus services over the years and maintain its municipal service operating at arm's length from the council.

I give another example: the Mayor of Liverpool, in his wisdom, shut all the bus lanes. I do not think those are examples of mayors' wonderful wisdom trumping other forms of local government organisation. I am puzzled about the position in which this Bill puts Cornwall, because, as the noble Lord said, Cornwall was promised franchising as part of its devolution deal but now, according to the Bill, has to get the Secretary of State's permission to go ahead with franchising. Previously in Committee, My noble friend Lady Scott referred to Jersey as an excellent example of how franchising can work, even with small authorities. Jersey has 80 buses and a population of 100,000, but has increased bus passenger usage by 32% since it had franchising, saved more than £1 million a year in public subsidy, added five routes and increased the frequency of its buses. That is an example of franchising working in a very small locality. Therefore, I very much hope that the Secretary of State will accept our arguments, agree to look at this issue and consider whether the need for the Secretary of State to intervene can be removed from the Bill. I hope the Minister can give us hope in this regard.

Lord True (Con): My Lords, I have given notice to my noble friend on the Front Bench that I strongly disagree with what was said by my noble friend Lord Attlee and strongly support the principle of Amendment 21. I spoke on this matter at Second Reading. I declare an interest as an elected leader of a local authority. I suggest to my noble friend that if I were suddenly told that I had to become an elected mayor overnight, I would be no better or no worse at my job than I am now. I do not understand why this obsession—and it is an obsession—with mayoral authority continues.

I venture to suggest that, in the light of recent events, whatever else has happened—and one does not know from hour to hour what is going to happen

[LORD TRUE]

next—it is the idea of imposing mayors that many of us object to. If local authorities wish to come together, have combined arrangements and do things together, that is fine; we have recently agreed a shared staffing arrangement with our neighbouring authority in Wandsworth. But it is a denial of local democracy in any place to insist, from the centre, for whatever reason, that a local authority, or group of authorities, may only have something on the condition that they do the bidding of central government and have a mayor whom nobody wants. This had led us to the absurdity of a Conservative Government proposing and requiring that there should be a mayor of East Anglia. Not even Mr Edward Heath suggested that. It may be that the local authorities in East Anglia will come together and say that it is a great idea and that they want it. That is fine; let them do so.

However, this is just a small example of a wider policy. Let us not beat about the bush: this policy is coming down from Her Majesty's Treasury, where it is being actively encouraged by my noble friend Lord Heseltine. In the light of changed circumstances—in the next few months we will have a new Prime Minister and many other new Ministers—I hope that the next Government team will take a look at this policy of imposing mayors. I concentrate on the word “imposing”. It has been done by a form of blackmail from the centre: you can have more money if you do what we want. I dislike that: we want dispersed power in this country, dispersed choice and dispersed opportunity, not single models handed down from above.

This is a small example of a policy which I believe to be wrong democratically and in principle. I could not sign the amendment because the Marshalled List was full, but unless I get some assurances from the Front Bench that the Government will think again about this principle, I might be tempted to support such an amendment on Report. I see absolutely no reason why competent authorities that come together should not be treated in the same way as competent authorities that come together with a mayor on top. The first version might actually be rather cheaper than the second, given all the stuff that comes with a mayor.

I am very sorry to speak in these terms; they are addressed not to my noble friend on the Front Bench, but to rather more senior people in government than him or me. This is one stage too far in the policy of imposing mayors on unwilling communities and authorities. I suggest that the policy should be paused, then stopped.

Lord Berkeley (Lab): My Lords, I support these amendments and am grateful to my noble friend Lady Jones for setting out the arguments so clearly as to why we do not need the Secretary of State's approval for any authority that does not have a mayor. Let us be clear about Cornwall. It is not mentioned by name in the Bill, but we have heard lots of statements from Ministers that this one authority—which does not have a mayor and probably never will—will be allowed to have a franchising service. This is quite surprising. Devolution for Cornwall has involved a lot of proposed changes in health and social security. There is no money there, but they are going along with it. However,

as I mentioned on the first day in Committee, they are going ahead now as if they had a franchise, but on a voluntary basis. The bus companies concerned are fully supportive—I talked about integrated ticketing, timetabling, routes and so on—but they are doing it without the need to apply for franchising because it is going to happen anyway. That is the impression I get. So why do the Government believe that they have to impose this ridiculous approval process, as the noble Lord, Lord True, outlined, for authorities that do not have mayors? It seems a complete waste of time. Since it is being done on a voluntary basis, at least in one county, to achieve what I believe will be a very successful outcome, I will be interested to hear the Minister's explanation of why mayors are good and everybody else is bad. It is a bit like *Animal Farm* in the early days but I will not go on about that.

3.30 pm

Lord Horam (Con): My Lords, I agree that there is no distinction, really, in accountability terms between a mayor and a councillor who is considering these matters. I strongly agreed with the remarks of the noble Baroness, Lady Jones, about London and London franchising. I live in London and I can certainly attest that what she said about that is entirely correct. London buses are, frankly, marvellous. Whether you congratulate Boris—poor chap, he is receiving rather a bad press at the moment so I might as well praise him for his new buses—or Thomas Heatherwick, who actually designed them, they are absolutely superb. Whether you praise Thomas Heatherwick, Boris Johnson or Ken Livingstone, London really works from a bus point of view. In fact, my wife said to me the other day, “You're becoming a bus junkie”. I actually took a bus to go one stage because the bus routes give you priority over cars, et cetera, so it really does work. Therefore, I am emphatically in favour of the Bill, which tries to extend franchising to the rest of the country, which I think badly needs it.

However, I am, frankly, horrified by Clause 4, which submits everything—apart from the one aspect of mayors with combined authorities—to the requirement that the Secretary of State should process it. It means that a council which wants to put on a new bus service from, let us say, Little Dribbling to Nether Wallop has to take it to the Secretary of State. That is absolute nonsense. I was a Minister of Transport in a Labour Government a long time ago and this system does not work. You need to get somebody who knows the situation locally, understands it well and can take a decision. Okay, there are always a few problems and occasionally things go wrong, but pushing it up to a civil servant and then to a Minister, who probably has no knowledge of the situation you are talking about, does not work. All it does is congest the Government at the top level.

I saw the other day that Prime Minister David Cameron was complaining that in comparison with Angela Merkel, he had much more to do because he had to take decisions about education, transport, the NHS and so forth and she did not; in Germany it was all farmed out to the Länder. This is why. We are taking all these absurdly detailed decisions at government level. Although my experience is quite different from that of the noble Lord, Lord True—his is extensively

in local government, mine is not—from the point of view of a government Minister, it is nonsense, frankly. It simply does not work.

The noble Earl, Lord Attlee, tried his best to give a reason, which was about accountability. There is no difference between the accountability of an elected mayor and that of an elected councillor. It is a simple fact. They are both elected; they are both responsible to the local electorate. There is no distinction that I can see. I am not surprised that the Delegated Powers Committee said that there was no adequate explanation. I looked through the Explanatory Notes, hoping to find some rationale for this procedure, and there is none. Therefore, we have a real problem here and the Government really have to think again.

Another difficulty is that quite apart from overcentralisation, the British Civil Service seems to go in for too much complexity. If we raise the bar too high, either because things have to be processed up or because we put in a lot of regulations, which are sometimes unnecessary—they are no doubt sensible in some ways and no doubt advisable; none the less there is more and more regulation—it becomes likely that lots of local authorities which could use these powers will simply say, “Oh, it’s too much trouble. We don’t want to bother with all that. We won’t do it”. There are easy ways to get out of it and then blame the Government. When people ask, “Why isn’t there a decent bus service here?” they can say, “Because the Government made it so complicated”. It is an easy way out for them.

Therefore, while, like my noble friend Lord True, I am in no way criticising my noble friend on the Front Bench, who has his job to do and who does it extremely well, I believe that between now and Report in September the Government should look at this and extensively modernise it. If they do not, I do not think, frankly, that they have much chance of getting it through this House.

Earl Attlee: My noble friend Lord Horam observed that the Explanatory Notes do not justify the policy, but my understanding is that that is not the purpose of Explanatory Notes. Explanatory Notes, as I understand it, tell us what the Bill does and how it works and do not seek to justify the policy.

Lord Horam: It is not just that the Explanatory Notes, which should explain what each clause does, do not explain why this does what it does; the overview, which we also get, does not explain it either.

Lord Snape (Lab): My Lords, I am not getting involved in the squabble between noble Lords opposite, because I want to start one of my own, on this side. The fact is that I have never been in favour of franchising and I do not think that the proposals for franchising in the Bill are particularly sensible either.

I listened with interest to the view of the noble Lord, Lord True. I know that he is enormously talented, but I am not sure that he is qualified to run a bus company—although, obviously, as the leader of a council, he feels that he should. I share his view that elected mayors are not capable of running bus companies either, but we all know why they are being given that

responsibility. Having created these large authorities against the wishes of the electors in cities such as Birmingham and Manchester, they have to give them something to do—and I am sure that letting them run the buses seemed to the Treasury to have been a good idea at the time.

I have asked Ministers about this and, indeed, the Minister here today indicated that the extra money needed to run those bus services in our large cities will be provided by the Treasury. That is not normally the way that the Treasury goes about things and it seems to me that these responsibilities are being passed on to big-city level without the resources to deliver them adequately.

Again, I have to say to my noble friend on the Front Bench that I do not share her view of the bus industry as it used to be. It is a bit like British Rail: everybody tells me how wonderful it was. Actually, I used to work for it and I did not think that it was particularly wonderful at the time. Now it is implied that the bus industry, when it was under municipal control, was a picture of tranquil harmony, with lots of satisfied passengers. I have bored your Lordships before with my own career, such as it was, in the bus industry, but, when I worked for Travel West Midlands, it was a group of municipal undertakings that were put together as a result of the 1968 Act, semi-privatised by the Conservative Government of the 1980s and actually acquired by its employees.

When I became a director of the company I did not think for a moment that it was due to my talent: I was told afterwards that I was the one person who both management and staff could agree on at the time. I am not sure whether that was praise or condemnation, but I became a director of the company in 1992. Many of its buses were quite ancient. The average age of the bus fleet of Travel West Midlands in 1992 was nine and a half years. After we, the employees, voted in 1997 to join the National Express Group, the age of the bus fleet when I stepped down as chairman in 2000 was just over six years. That was a quite dramatic reduction and indicates the amount of investment that was put into new vehicles during that period.

If bus services are franchised, what will happen to that investment? I have to say to my noble friend that, because we were a subsidiary of the National Express Group, it was my job and the job of the other directors to make a case for investment to the main board. We actually invested around £30 million during the time I was directly involved, in tranches of around £10 million each time. We had to convince the board of the National Express Group that it was sensible to invest that sort of money in bus services in Birmingham.

Does my noble friend think for a moment we would have got the go-ahead from the National Express Group if the idea of franchising was being held over the company’s head at that time? I will answer my own question: the fact is that we would not have got the go-ahead, because the view of the National Express board would have been, “We are not prepared to spend £10 million of our assets on buses when someone else—whether it is the noble Lord, Lord True, or someone else—will tell us where to run them, when to run them and how much to charge”.

[LORD SNAPE]

Again, reverting to those so-called halcyon days of municipal control, my noble friend talked about the amount of profit that was made by the five major bus operators. As I have indicated, many of them operate new fleets. As far as wages are concerned, I will confine my remarks to Travel West Midlands, where I was chairman of the board. We paid our drivers the best rates in the United Kingdom, so those profits were not made off the sweat of the brow of our employees, although of course some went to shareholders. I know that we have some disagreements at the moment about the leadership of my party, to say the least, but I do not think that we are entirely anti-profit-making yet. We will have to see what happens in the next few days and weeks, but I do not think we object to companies paying their shareholders a dividend and paying their staff an adequate wage.

Baroness Jones of Whitchurch: I have been listening to my noble friend's rant, and I have to say that he is completely misrepresenting the point that I was making. I am not advocating a return to the old days, and he is rehearsing the history of things that were probably before my time. First, municipal services, as it happens, now have some of the highest satisfaction levels, so I am not saying that there is anything wrong with municipal services. That is a debate for another day, and we will return to it. Secondly, we are here today because, having allowed the free market that he is advocating to thrive, passenger numbers and satisfaction levels are going down. That is why the Government brought this Bill forward in the first place. To be absolutely honest, I am not sure that my noble friend has addressed that. We are considering options such as franchising because it is considered that it will drive standards up again, which is what we all need.

Lord Snape: Passenger numbers are indeed going down—they are going down in London, as a matter of fact—as is passenger satisfaction. I do wish that my noble friend, instead of relying entirely on the Local Government Association and what used to be called the Passenger Transport Executive Group, would actually look at the facts. Passenger satisfaction in London, according to the most accurate survey, by Passenger Focus, is currently less than that in Birmingham, for example. Passenger numbers are also going down in London, and they are going down for one simple reason: it is nothing to do with franchising, private ownership or whatever but because of congestion. We all know how bad congestion is in London, and it is getting worse, which is impacting on passenger carryings at present.

I have been trying to find out how many staff are employed in Transport for London exclusively on franchising matters. I am told that it is some hundreds, but I cannot get anything more accurate than that. This is not going to be a cheap operation if the noble Lord, Lord True, and his colleagues are going to run the buses in his part of the world. Despite his talent, he is not going to do it on his own; presumably there will be a director of franchising, perhaps a couple of assistant directors and other staff. Lots of money that perhaps could and should be spent on improving bus services will be spent on the bureaucracy that is

necessary—I am not complaining; it is a fact—to run a franchising operation. I have to say to my noble friend that it is not just in London where the operation is run like that; Belfast has a franchising system, and, of course, due to congestion in Belfast, passenger carryings are falling there too.

If my noble friend had stood at that Dispatch Box and advocated the rest of the London experience such as sensible traffic control, the proper maintenance and policing of bus lanes, and perhaps even a congestion charge—or car park charges, as introduced in Nottingham—there would be some sense in that, but we are getting none of that. We are told that if we go to franchising, somehow the situation for the bus passenger, who rarely gets a mention when we discuss these matters, will magically improve. I do not believe a word of it.

3.45 pm

As far as my noble friend's, and my party's, amendments are concerned, will the rest of the bus operators invest in new bus services or new vehicles in the county areas if it becomes possible under these amendments to introduce franchising virtually overnight on the whim of the leader of the council perhaps or the change of political control in the local authority? What will that do for bus investment in the United Kingdom as a whole? It is not just the big five—as they are called—bus operators which are against franchising. On 29 June, the Competition and Markets Authority sent a letter to the department and publicised it. It is fairly long, so I will not bore the House by reading it, but a couple of extracts might be useful:

“The CMA recognises that the introduction of franchising may be appropriate in specific circumstances”—

well, so say all of us—

“but believes that on-road competition should only be abandoned in favour of competition for the market in circumstances where it is clear that this is the only way to secure better outcomes for the travelling public”.

It goes on to say that a deregulated market risks,

“being more harmful to competition and passenger interest”.

It is not a wicked capitalist or a big five bus company; it is an undertaking whose job it is to look at these matters and what is proposed.

I do not believe that franchising is necessarily the way forward. I understand why the Government have decided to take that particular approach as far as big cities are concerned. Having wished the mayors on the larger conurbations, against the will of most people in those conurbations, I repeat that they have to find them something to do, but I do not think that extending and spreading that system outside the major cities would help the bus passenger and the bus services one iota.

Lord Woolmer of Leeds: My Lords, before I turn to the detailed issues that I want to raise with the Minister, I will say a word or two in response to my noble friend Lord Snape. The Bill does not insist that local authorities introduce franchising; it gives them the option. My noble friend's arguments to your Lordships appear to be that if they are given the powers they will use them. It will be a matter for individual authorities to assess the risks, the benefits and so on, and the Bill itself spells out a considerable number of assessments that

they would need to make. So here we are really talking about whether franchising is an option that should be available if a local authority wished it. I have heard nothing from my noble friend, other than the feeling that he was against franchising in any circumstance, that would gainsay that.

I turn to the details in this clause and its subsections. I will seek clarification from the Minister and conclude with some observations about the amendments. First, new Section 123A(4)(b) to (f) refers to the range of different types of local authorities, which is the subject of my noble friend's amendment. It is not clear from the wording in the Bill whether it is a category as a group or individuals that might fall within that category. Paragraph (f), for example, refers to,

“a combined authority which is not a mayoral combined authority”.

Does that mean that the Secretary of State would need to consider whether any combined authorities that are not mayoral should be a franchising authority, or could the Secretary of State authorise or approve one individual one? That is really rather important.

The wording is very vague. The only time one sees wording that appears to make that clear is in the memorandum on delegated powers, where it appears to make it clear that new Section 123A(4) relates to categories of local authorities. If that is the case, how could the Secretary of State provide regulations that would enable every authority that fell within the category to become a franchising authority? It might not make sense for some of them. What if it made a lot of sense for one out of five? Would that individual authority not be able to be a franchising authority because the Secretary of State felt that four others should not?

This is a very confusing part of the Bill, so I would be grateful if the Secretary of State could make it clear and, if need be, clarify in due course with his own amendments whether the categories in new Section 123A(4)(b) to (f) relate to individual authorities that fall within a category or to a whole category. This is relevant because, in order to authorise an individual or a category to become a franchising authority, the Secretary of State has to provide regulations. Will those regulations apply to all parties in the category—that is, even if not all of them have asked to be franchising authorities, they will get it because someone did—or would the Minister refuse to authorise one individual authority on the grounds that some others in that category did not meet whatever his criteria were?

That leads me to the question of criteria. What criteria would the Minister apply in considering whether any of these categories—or individual authorities within the categories, because I am not clear on that—could become a franchising authority? It is extremely important for transparency purposes that local authorities know what the criteria are. Will the regulations include the criteria, or will they be set out in some kind of advice or guidance? Will the House have the benefit of the draft regulations before Committee, and will the criteria be set out before then? If not, we will have no idea what the Secretary of State's intentions are, which would be very unhealthy—effectively, your Lordships' House would be giving the Secretary of State *carte blanche*.

If an individual authority within a category wished to obtain franchising powers—should they so wish to use them, and they may not wish to in the event—does it have to get all the other authorities in that category to put in a joint proposal that that category be approved, or could it alone make a proposal? In which case, would the Secretary of State be judging the individual authority's proposal to become a franchising authority, rather than the group as a whole? If so, what criteria would the Secretary of State apply to an individual authority?

Noble Lords can readily see the problem for an authority—in my case, the West Yorkshire combined authority, which is not a mayoral authority. If it wishes to have franchising powers, should it wish to use them, how does it get them? It cannot apply to have them because its group has not been approved as a category that can have franchising powers. What would West Yorkshire do? How would it proceed? That is very puzzling and it would be certainly be very helpful to me to understand it. The Secretary of State might say, “Well, West Yorkshire, you might have a good case but actually we don't want this whole category to be approved because too many are being granted franchising powers”. There is a hint in some of the clauses and subsections that they are about spinning this out. I forecast now that no franchising powers will be granted to any authority outside mayoral authorities this side of the next general election.

As with HS2, HS3 and the northern powerhouse, I have to say that we in the north of England are slightly fed up with hearing Governments announce not that they may do something but that they will do it, just as they announced that local authorities will get franchising powers. People think they are going to get such powers, but the Bill does not say that at all. It says, “Well, if you are in a certain category, you probably won't get them. If you do, we are not sure what the criteria are, so you'll have to wait for others to want them as well, and then we'll consider it. We will have to get regulations through, and that will take time.”

On the evidence of the Bill, I am pretty sure that that is the case, which is a great disappointment to me. When I first looked at it I was encouraged to see that it was giving powers to local authorities, but the proposed new sections in effect set out the detail of the obstacles and the unknown difficulties being placed in front of local authorities wishing to seek franchising powers.

If a category of authority or an individual authority within a category—the Minister will enlighten the House about that—becomes a franchising authority, that does not mean it will be able to have a franchise. To have a franchise, the individual authority putting forward proposals will of course have to do all its homework and, if it wishes to go forward, it will have to make various assessments and so on, as set out in the Bill. Under proposed new Section 123C, the Secretary of State has to consent to a franchising authority even preparing a proposed assessment. The authority would have the power in principle, but if it wanted to develop a proposal, it would need the Secretary of State's consent. That is the second consent. Will that consent fall within regulations, where is the power to grant consent and what criteria would the Secretary of State apply in deciding whether to give consent?

[LORD WOOLMER OF LEEDS]

It would be ironic if the criteria for an individual authority to have the power to develop a proposal were exactly the same as those applied to becoming a franchising authority under proposed new Section 123A. That would mean going through exactly the same hoop twice, which is nonsense. However, if the criteria are not the same, why are they different? Why does an authority have to prove that it can have a franchise, and then have to meet different criteria if it wants to bring forward a proposal? I would be grateful to the Secretary of State if he expanded on that.

To conclude on the details of the Bill, it would be helpful to me, at least, and I hope to your Lordships, if the Secretary of State set out his understanding of the process by which a non-mayoral authority can acquire franchising powers and seek to implement them. What is the process, and what is his reasonable estimate at the moment of how long it would take? He must have some idea of how many authorities are interested in having franchises, and he must have thought through how long each of these steps will take—the process of setting out regulations, and of developing and defining the criteria in the two cases—so how long will it take?

To come back to my earlier point, as I have examined the Bill in more and more detail, I have gained the distinct impression that obstacles are being put in front of local authorities. I think the noble Lord, Lord Snape, would be delighted, because the obstacles seem to me to protect large bus companies from having to compete for franchises. I fear that he may be able to reassure his colleagues that this will not happen this side of a general election, and then goodness knows what will happen.

The Minister—unless he surprises me—has disappointed me badly so far on the detail of the Bill. I look forward to hearing his response.

4 pm

Lord Berkeley: My Lords, I will respond to one of the points made by my noble friend Lord Snape, who implied—I think my noble friend Lord Woolmer of Leeds also pointed it out—that the big bus companies do not like franchises because they involve competition. However, I think that most of us think that competition is quite a good thing. Apart from anything else, if you have a free-for-all in London like there used to be in Manchester, you have even worse traffic jams and probably less investment, although that is a different issue. However, I again point out that in Cornwall one of the bus companies, which is without competition, is voluntarily introducing a new set of double-deck buses on the main spine route. They are very smart buses, as they even have tables on the top deck, so that you can get your laptop out, as well as chargers for your laptop and wi-fi. The bus company sees this as a good investment which will attract more passengers. If this can be done voluntarily, I suggest that it could also be done in a franchise, if franchise terms are set out to encourage quality as well as the most important thing of the lot, which is the timetable to link with other services—trains, ferries, planes and whatever—which you will not get in a free-for-all around the country. Sometimes the bus companies seem to do it on purpose so that you do not make a connection.

The Parliamentary Under-Secretary of State, Department for Transport and Home Office (Lord Ahmad of Wimbledon)

(Con): My Lords, I thank all noble Lords who have taken part in the discussions. Several times in his contribution the noble Lord, Lord Woolmer, referred to me—I am flattered by the suggestion—as the Secretary of State. I know that there are certain unpredictabilities in government as we move forward into what I said earlier today in answer to a PQ are unpredictable times, but perhaps he is party to something I am not.

I shall respond to a number of issues which noble Lords have raised. I thank the noble Baroness for laying down a series of amendments. As she illustrated, her amendment would enable all authorities listed at proposed new Section 123A(4), rather than just mayoral combined authorities, to access franchising powers without the need for regulations or for the Secretary of State's consent to be given. Several noble Lords spoke in favour of this, but I also recognise that some voices were not in favour of the amendment. I know from previous meetings with noble Lords that queries have been raised regarding the Government's stance on mayoral combined authorities and the policy that such authorities should be given automatic access to franchising powers while others would require regulations and the consent of the Secretary of State. It may be helpful if I say a bit more about the Government's rationale for favouring the mayoral combined authority model, then I will answer some of the specific questions and issues that have been raised.

As I have said before, moving to a model of franchising is a big decision which is likely to have implications for passengers, bus operators and the local authority itself. Our view is that strong governance and accountability are key to making franchising a success, together with a commitment to improving transport and a coherent economic geography. Mayoral combined authorities, when established, will provide centralised decision-making for transport across a relatively wide local geography, be that city areas such as Greater Manchester and Sheffield or regions such as East Anglia. The mayor will be the individual responsible for deciding whether to implement franchising and can be held accountable for that decision. Those factors, together with the fact that transport will be considered at a strategic level, mean that the mayoral combined authority model is well suited to making franchising a success.

However, as the noble Baroness, Lady Jones, noted at Second Reading, the Government do not want to preclude other types of authority becoming franchising authorities in future if there is a compelling case for doing so—I will come on to Cornwall in a moment. The Bill enables other authorities to access franchising powers if regulations so provide and the Secretary of State provides his consent.

The noble Lord, Lord Snape, rightly raised the impact on the bus industry. We are concerned about the impact of uncertainty on the bus industry and want to ensure that bus operators continue to invest and develop services to the benefit of passengers. There were some suggestions during the debate that by establishing the mayoral combined authority model as the preferred model and limiting access in the first instance—I stress that—somehow we are excluding all

other authorities. We are not. By limiting access in the first instance to the category of authorities, the bus industry will have greater certainty as to the areas that will have access to franchising powers and will be able to take commercial decisions accordingly.

In addition, as noble Lords have noted, the Secretary of State will also need to provide his consent before any individual authority can access franchising powers. Franchising is a big step which will have implications for local passengers, bus operators and the authority itself, so we want to ensure that franchising is pursued only where it makes sense to do so.

I shall answer some of the specific questions and then come back to any other issues I wish to raise at this juncture.

Baroness Scott of Needham Market (LD): Before the Minister moves on, will he clarify something for me? I am struggling to understand why the question of certainty for the bus industry has been raised in this context. It seems to me that if we have the situation as pertains in this Bill there will be a raft of local authorities around the country which may at some point have access to these powers, but only if the Secretary of State says so. I am not sure how that adds to certainty. Would it not be more certain if all local authorities had the potential powers to bring this in?

Lord Ahmad of Wimbledon: It is not just about local authorities. I have already alluded to other factors. I state again that the geographical nature of the authority applying for franchising powers is important. The noble Baroness's important point about the Secretary of State approving access to the powers was perhaps not covered in the debate. There would, of course, be instruments introduced in both Houses to allow for discussions on the particular models. I stress that this is an enabling Bill that allows all authorities to have access. It is the Government's view—noble Lords have expressed views to the contrary—that mayoral authorities are best suited in terms of their governance models and their geography for franchising, which, as I have said, is a big step. At the same time, we have to balance that with the nature of the bus operators. That is the Government's view. I am not saying that all noble Lords will immediately subscribe to it. That is why we are pursuing the mayoral combined authorities model, but not to the exclusion of others.

The noble Baroness, Lady Jones, raised the response to the Delegated Powers Committee. It is fresh off the press. I know my honourable friend in the other place has today written to the committee outlining the Government's proposals and I will ensure that full details are made available to all noble Lords. To avoid prolonging this debate if there are specific questions on the letter, I will be pleased to answer either later in Committee or through correspondence, but I think that what I will say will deal with some of the issues and concerns that the DPRRC's letter raised. The Government's response from my honourable friend sets out the issues around access to franchising. It also goes further and mentions that the Government are looking to accept the proposals raised by the committee on open data. I am sure the detail is in the letter.

The noble Baroness, Lady Randerson, also mentioned the memo about mayoral combined authorities and

said that they have expressed interest. She raised a very valid point about whether they actually exist. The noble Baroness and the Committee were right to pick this up, but I am sure that she will accept that we have been referring to areas which have agreed deals—I referred to Manchester and Liverpool as two examples. We have made it clear in response to previous questions raised by the noble Lord that the deals would be issued in time for those new governance procedures to come on board. Cornwall, where devolution deals are being discussed, illustrates the Government's willingness to allow the devolution debate to take account of what we are looking to do in terms of bus services. In our discussions to date with Cornwall, franchising is something that it has indicated it would seek to pursue. That is why the Cornwall example has come to the fore, although it would still need to go through the same process that we have illustrated for non-mayoral authorities.

The noble Baroness, Lady Jones, referred to London. As several noble Lords acknowledged, London is very different, and the local government role has been defined for the past 30 years in terms of devolution of powers and financial and investment risks. These have been the major differences between London and other parts of the country.

The noble Baroness talked about the concerns raised by the LGA about the franchising model and whether it makes sense locally. As I have already said, we need to address the concerns. This is about providing access to all authorities, but we need to balance that against the need to provide certainty to the bus industry and to ensure continued investment. I stress again that the Bill provides the ability for other local authorities to access the powers if there is a strong case for doing so.

I have already said that we are in discussions with Cornwall on its devolution deal. The noble Lords, Lord Woolmer and Lord Berkeley, both raised issues pertaining to Cornwall. Cornwall is committed to improve local transport in the wider area, and it has made a strong case for having access to franchising powers. If Cornwall decides that it wishes to pursue franchising, the regulations will be brought forward for discussion via the affirmative procedure. As I have already said in response to the noble Baroness, Lady Scott, it is important to note that in laying out the intent behind the proposals in the Bill the Government have been very clear that they believe that mayoral combined authorities provide a model which is able to take forward the proposals around franchising. However, that does not preclude others doing so. By making the provisions subject to the affirmative procedure, with applications subsequently made to the Secretary of State, we are providing the locks, the vehicles and the necessary checks and balances to ensure that the best deal is done for all local authorities. I shall respond shortly to questions relating to specific procedures relating to the Secretary of State.

My noble friend Lord True asked why competent authorities cannot come together when they have franchising powers. I assure him that nothing in the Bill prevents this. They can make their case, and the Government will listen. Whether it is me or Ministers at a more senior level, we want to ensure that the competence powers needed are in place to make franchising accessible to whatever type of authority. I

[LORD AHMAD OF WIMBLEDON]

stress again that the economic geography of the authorities coming together is an important and attractive part of this. I assure noble Lords that we have no intention of excluding any particular local authority in this respect.

The noble Lord, Lord Snape, asked what would happen to investment under franchising. I have already talked about the concerns of bus companies. When franchising is implemented, authorities will be able to specify things such as vehicle age, but they will need to ensure that a scheme remains affordable. The noble Lord also asked about the Competition and Markets Authority. We have received several recommendations from the CMA. We are considering them and will respond shortly.

The noble Lord, Lord Woolmer, asked about the regulations to allow certain categories of authority. I have answered this in part already. We want to make franchising powers available only where there is a real desire to use them. Regulations will be made only if at least one authority from that category makes its case to government. The Secretary of State will then need to give consent to individual authorities which want to use the powers.

We have talked, to some degree, about criteria, and I am conscious that in response, to the noble Baroness's question, and I think, to the noble Lord, Lord Woolmer, who also asked about this, I gave a commitment at Second Reading to publish the criteria which the Government and the Secretary of State will use. We will make the detailed criteria available before Report. At this juncture, I can share some of the headlines. There will be, in essence, four key factors that the Secretary of State will consider: first, the powers the authority has; secondly, the governance arrangements which are in place; thirdly, the economic geography of the area; and fourthly, the track record and ability of the area to deliver upon this. There is further detail to follow and, as I have said, I will seek to ensure that that is published before Report.

During this debate, I have talked about a number of factors, including the importance of powers of governance, the arrangements the authority has in place, the economic geography of the area and the track record which I have just alluded to. I hope that, in part, this has helped reassure noble Lords that the Government's policy has been determined with the interests of passengers and the continued health of the bus industry in mind. It is about balancing and ensuring that local authorities that we believe have the governance arrangements in place and are able to take forward franchising are able to do so, but not to the exclusion of others. I believe that with the measures we have in place, the affirmative procedures of debate in this House about other authorities that seek to apply and the criteria that the Secretary of State will apply in decisions, I have been able to reassure some noble Lords that the Government's policy has been determined with the interests of passengers in mind. With those reassurances, I hope the noble Baroness will withdraw her amendment.

4.15 pm

Lord True: My Lords, I am, of course, grateful for what my noble friend has said about competent authorities. I know that he has a great knowledge of, and esteem

for, local government. My problem remains, although I have studied carefully what he said. I should say to the noble Lord, Lord Snape, that I have no vested interest in this, because my council is a London area council and we come within the London arrangements, although I will have some points to make on Clause 21. In his opening remarks, my noble friend talked about the advantage of mayoral arrangements; there is a centralised decision-making element—I think that probably came in guidance or advice he had received. This is the problem, because, as I said in my previous intervention, this is a small part of a wider policy; there are certain people inside government who wish to create centralising models. It is an idea of managing the country by larger functions, which are responsible to, and look upwards to the Treasury and the Government for guidance—we see it in education, with the emergence of regional schools commissioners. That is not the philosophy I believe in, as a Conservative; I believe, as I said earlier, that we need more dispersed authority.

My noble friend is right that it is clearly open to any sort of authority to go ahead; however, there are more obstacles put it in the way of other authorities, whereas the mayoral authority can leap forward. My noble friend Lord Horam must be right: the Government cannot keep taking on these functions to take all these decisions. I do not want to stray into education, I know we are in Committee, but can the Government and their institutions make every decision for every school or group of academies around the country? We do not have enough civil servants to do that. We do not have enough civil servants with the competence to take decisions about transport in different counties all over the country. Devolution is a marvellous idea, which I strongly support, but what creeps into legislation time and again is not devolution but control masquerading as devolution. So when I hear talk of centralised decision-making, I believe that I am looking at the tip of the iceberg of a philosophy of government which is not one I share.

Although I am extremely grateful for what are in many ways the reassuring and typically courteous remarks of my noble friend, I would still find it very difficult to support any legislation that gives an advantage to a putative mayoral authority, not just an existing one, above any other form of authority. It would mean that someone in a department somewhere can say, "Look, you guys. You can have what you want if you do what we say". Power should come from the people through local government and through local authorities coming together. I give notice to my noble friend that I am still uneasy about these proposals.

Lord Ahmad of Wimbledon: Of course I will reflect on the thoughtful remarks made by my noble friend, but let me reassure him that from my perspective and indeed of those within the Department for Transport, the view is very much based on all authorities having access if they have not only the governance models but, as I said, the other criteria on geographical coverage as well to ensure that they can make franchising a success. Ultimately the Government's intent behind this enabling Bill is to ensure that bus services work for local people.

Lord Woolmer of Leeds: Let me give a specific example. If West Yorkshire Combined Authority agreed tomorrow to have a mayoral structure, presumably that would immediately parachute it from one part of this Bill into another. I agree with the noble Lord in his remarks that that is bizarre. It would be very welcome, but as I say it is bizarre. That is not transport policy, it is a political policy on mayoral authorities.

Lord Ahmad of Wimbledon: Perhaps I may respond to that. As I am sure the noble Lord appreciates, every devolution deal involves detailed discussions between the Government and those proposing the deal. No doubt if a particular area, wherever it may be, wishes to go down that route, it would be subject to discussions around the devolution deal.

Baroness Jones of Whitchurch: I thank the Minister for his response and I thank noble Lords around the Chamber for their support, particularly that of the noble Lords, Lord True and Lord Horam, which I welcome. The noble Lord, Lord True, has done half of my summing up of the debate for me which I would otherwise have done. I want to look carefully at the *Hansard* report of this debate because I am still not clear about what is so special about mayors. I was really hoping that the Minister would explain what is so unique about that particular model. My noble friend Lord Woolmer made the point that you could have two adjoining authorities with the same geography, the same population and income, but one of them would have a fast track to automatic franchising purely because of the fact that it has a mayoral system rather than another one while the other would have to go through a very convoluted process.

I do not understand what it is about the mayoral model that is so important. It is not just about the geography and economics or even the strategic role, as the Minister has suggested; there is something much more singular about a particular local government structure. The fact is that we trust local authorities with making very serious decisions already. We entrust social services issues to them where they make life-or-death decisions about child protection. We trust them to take serious decisions in the commissioning of all sorts of services. It is not as if they do not already commission services and of course they have the expertise to do so. Running a bus service does not require particularly special skills which authorities do not already have. Some might not choose a franchising model, which is perfectly understandable, while others may want to have it. I do not quite understand what is so special about having a mayor in charge that would qualify them in this way.

Lord Snape: My noble friend mentioned the special skills of local authorities, which certainly exist. But, with respect, they do not have any franchising skills because that is not the way we operate bus services at present. Does she agree that setting up franchising in a big-city area would be an expensive and bureaucratic process? I have no idea how many people it would take, but it could not be done by one person or even a small department, could it?

Baroness Jones of Whitchurch: Of course, the provisions in the Bill allow for all that, and that is one factor that needs to be taken into account. But the local authority would not do it unless it thought that the outcome would be better than the current provision. If the authority did a cost-benefit analysis and decided that the cost outweighed the benefits, it simply would not do it. All that we are asking for is for authorities to have the flexibility to do that analysis and then decide whether it is in their interest to go ahead.

Another thing that I was going to pick up on was what the noble Lord said about providing certainty to the bus operators. Franchising also provides some certainty; the operators' profits may not be as high but they would certainly have a guaranteed long-term contract. That outweighs the higher-risk, more market-driven decisions that the operators would otherwise take.

I think that everyone in the Committee knows that the Minister cannot make a decision on this today. We have all talked about the current political uncertainty. We all know where this is coming from and I do not expect for one minute that the noble Lord will say today that he will overturn the decisions of the higher authorities in the Conservative Party on this. But perhaps at some point before Report he could take back a message to whoever is calling the shots and say that there is a strong feeling in the Committee on this and that there should be an opportunity for a rethink. On that basis, I do not wish to say any more and I beg leave to withdraw the amendment.

Amendment 21 withdrawn.

Amendments 22 to 24 not moved.

Amendment 25

Moved by Lord Snape

25: Clause 4, page 15, leave out line 22 and insert—

“(3) In making an assessment of the proposed scheme, a franchising authority or authorities must be satisfied that—”

Lord Snape: My Lords, the Committee will be relieved to know that I will spend considerably less time on this group of amendments than I did on the previous one. These amendments are designed simply to ensure that any franchising arrangement is brought in only after other avenues have been explored and that it would be for the benefit of passengers in a particular area.

In the debate on the previous group of amendments, my noble friend on the Front Bench said that she did not know why big companies were against franchising. I declare a non-interest—I have no shares in any bus company, nor am I paid by any. I base my prejudices entirely on my own experiences, rightly or wrongly. But I have to say to my noble friend that what she said was not quite true, was it? It is all very well to say that a franchise operation would mean continuity. Of course it would, for the length of time laid down in the franchise, for the company chosen as the franchisee, but there would be no guarantee.

[LORD SNAPE]

Let us take Birmingham, the area where I worked in the bus industry and where, incidentally, it has been made plain by the local authority that it is not interested in franchising because it has a good partnership arrangement. But suppose that Stagecoach won the franchise in Birmingham. From memory, it does not have any garages nearer than Coventry. Would Travel West Midlands be expected to hand over the keys to one of its garages, take its bus fleet elsewhere and bid for another franchise? The issue is not as simple as my noble friend makes out. She said in her previous speech that local authorities would not seek franchising arrangements if they were happy with the current standard of service—and that is true as far as Birmingham is concerned. But who judges the happiness?

One of the problems of local government being offered services is that it finds it very difficult to turn them down. In my 40 years in local and national politics, I have known few democratic organisations that would refuse powers offered to them. If they are offered the opportunity of franchising, I should think that many local authorities would say, “That sounds like a good idea. Let’s give it a try”. It would be understandable if they did, but to suggest that we could move towards a system of franchising comparatively painlessly and that it would be in the interests of the franchisee is a mistake.

4.30 pm

My noble friend Lord Woolmer is shaking his head. I am always very diffident about falling out with my noble friend as he and I share an office, and he is bigger than me—and a Yorkshireman to boot. But I have to say to him that in a short intervention when we debated this Bill a couple of weeks ago, he indicated that he was in favour of franchising—he is nodding, so I take that as assent. I do not know whether he reads the *Times* on Saturdays, but in an independent supplement, entitled *Super North*, there was an article headed:

“On the road to new success”.

I do not think that it was written by anybody in the bus industry. It mentions his part of the world and states:

“Today, Park and Ride services offered by First Bus with Leeds City Council and West Yorkshire Combined Authority have achieved a recommendation rating of more than 99 per cent”.

This is Korean or Chinese Communist stuff—99%. Let us find the other 1% and make them walk in future: that would be my answer to that. The article goes on to say that,

“the introduction of partnership agreements in South Yorkshire have helped deliver the right framework to attract customers”.

As is plain in the Bill, if we have franchising in the West Yorkshire area, the partnership agreement that I have just outlined, and which has just been praised by the *Times*, could not operate because we cannot have franchising and a partnership together. It is one thing or the other. So, at great risk to my personal safety tomorrow, I have to ask my noble friend—I will give way a moment when I get far enough away from him—what does he want: partnership or franchising, bearing in mind that the consequence of franchising would be the withdrawal of that partnership?

Lord Woolmer of Leeds: My Lords, my noble friend yet again sets up a straw man. I am simply in favour of local authorities having the power to have franchising, not that they must use it. It should be an option available to them. My noble friends talk as if I am saying that they must. That would be silly. If bus services can be adequately provided in the way in which a local area wants without franchising, I am sure that no one would disturb it. I am certainly in favour of having that option, but not that it would be compulsory to use it.

Lord Snape: I am grateful to my noble friend for that definition of his view. However, that view would pertain only between reasonable people. We have to bear in mind that not all people—some of them elected—are necessarily reasonable.

In Tyne and Wear, for example, the passenger transport authority went to court to try to get what was called a quality contract under the previous legislation. A considerable amount of public money was spent, and eventually the people appointed to rule on these matters said that the existing service should be continued and denied the PTA the right to a quality contract. As I said, Tyne and Wear PTA went to court, and spent a considerable amount of public money, despite satisfaction ratings of more than 80% with the current services, as set out by Passenger Focus, of thousands of bus passengers countrywide, including in the north-east. We are not dealing entirely with completely reasonable people. I hope that I can convince my noble friend. I repeat that the temptation for any democratic body when being offered extra powers is not to turn them down.

The amendments are designed to ensure that the question of a franchising agreement is a last resort rather than a first one. The consequential amendments follow on from that. I hope that the Minister will feel that they are both sensible and reasonable and will be inclined to accept them. I beg to move.

Baroness Jones of Whitchurch: My Lords, I will be brief. I have listened carefully to the contribution of my noble friend. As he indicated, he is making these proposals in the context of being against franchising. On that basis, we are not convinced that these amendments are necessary.

As it stands, the Bill requires those considering a franchise scheme to prepare an assessment that considers the merits of franchising weighed against other options. My noble friend is suggesting that they would just steam ahead regardless, but the checks and balances in the Bill make that unlikely and, indeed, impossible. We would expect there to be a detailed, thoughtful piece of work by the local authority that genuinely balances the different options in the context of what is in the best interest of the local community.

As it stands, the Bill requires the assessment to consider affordability, value for money and how it would apply to wider authority policies. We believe that that is the right tone to adopt when making an assessment. My noble friend’s proposals would go further than that and require greater certainty that all the conditions are met at that stage. We believe that that would go too far and discourage authorities from going through that appraisal and assessment process before making any decisions, which is the important point.

Therefore, we believe that the checks and balances in the Bill are the right way to go forward. There are many stages in the assessment process that would allow the proposal to be fully scrutinised, including a full audit, which we are going to talk about later. We want authorities to consider all that in an open and thoughtful way and go through what is in the best interests of the locality, taking into account all the factors and complexities of moving to a franchise situation, which my noble friend has identified—but it must be done in a balanced way. We believe that the provisions in the Bill should be supported.

Lord Ahmad of Wimbledon: My Lords, I thank the noble Lord for tabling his amendment. He proposes a series of amendments that would change the nature of the assessment that franchising authorities must prepare for their proposed franchising scheme before determining whether to introduce franchising.

In thanking the noble Lord, let me assure him that we recognise the importance of ensuring that decisions to move to a model of franchising are taken on the back of a robust assessment. In developing the Bill we have been keen to move away from the processes set out in the Transport Act 2000 that must be followed before a quality contract scheme can be established. That legislation required authorities to be satisfied that a number of tests had been met before introducing such a scheme. As was touched on at Second Reading, only one authority ever attempted to use the quality contract scheme legislation to introduce a quality contract scheme. In part I think this was because the “must pass” tests proved to be too restrictive.

I agree entirely with the noble Lord that authorities looking to franchise must consider whether the scheme is affordable, represents value for money and contributes to the implementation of relevant policies. But I think that devolved decision-making must be respected, with the mayor or authority considering the issues listed in Section 123B and any other relevant issues when assessing their scheme, and then taking reasonable decisions with their eyes wide open. I do not want to repeat the failings of the quality contract scheme legislation, and I want to ensure that franchising is a realistic option where it makes sense locally. I am concerned that the amendments as proposed would unnecessarily restrict mayors and authorities by requiring them to be satisfied about a number of issues, rather than requiring them to set out their thinking and rationale. I agree entirely, though, that I would expect authorities to proceed with franchising only where there is a strong case to do so. However, I do not want to rule out, for example, an authority proceeding with franchising where a scheme contributes hugely to its transport policies but not necessarily to its other published policies affecting local services.

The noble Lord raised a specific issue about operators having assets such as bus garages being taken away or awarded to winning bidders. It is important to note that the Bill does not give authorities powers to acquire bus operators’ assets. Authorities could potentially come to agreements with operators or lease new depots or garages to those winning businesses.

I trust that this short debate has helped to assure the noble Lord that the Bill as drafted will ensure that

authorities consider a number of specific factors in their assessment of whether to move to a franchising model and allow decisions to be taken in the light of local circumstances. I hope that the noble Lord is reassured to the extent that he feels able to withdraw his amendment.

Lord Snape: Of course, I listened with care to what both Front Benches said but was not entirely surprised at the contribution from either side. I can envisage a situation where a company based in a city loses a franchise. The Minister said that there is no power for the local authority to commandeer a particular garage or vehicles. However, they are not much use based in the middle of Birmingham if, for example, there is no franchise to operate in the middle of Birmingham. Presumably, we could build another tower block in the centre of Birmingham and move the buses elsewhere. Again, that rather places a darker cloud on the somewhat optimistic view from my own Front Bench that all these matters can be agreed by civilised discourse between two people, and that everything in the garden can be rosy, if I may mix my metaphors.

However, having listened to what the Minister had to say, I beg leave to withdraw the amendment.

Amendment 25 withdrawn.

Amendments 26 to 32 not moved.

Amendment 33

Moved by Lord Kennedy of Southwark

33: Clause 4, page 15, line 43, at end insert—

“(g) how the operators of the franchise will seek to increase passenger representation through the life of the plan.”

Lord Kennedy of Southwark (Lab): My Lords, as this is the first time I have spoken in today’s Committee debate, I declare that I am an elected councillor in the London Borough of Lewisham.

The two amendments in this group are in my name and that of my noble friend Lady Jones of Whitchurch. As regards franchises and enhanced partnerships respectively, they would require operators to set out how they will seek to increase passenger representation. As I said in previous debates, this Bill is very technical in parts but the issues we are talking about today, and that of buses in general, are about people and delivering a reasonably priced local service which delivers for them and their local communities, and keeps places alive and vibrant by connecting communities with other communities and enabling people to travel to work, go to school and enjoy leisure activities. For all that to happen in a responsive manner, we need mechanisms in place to hear the voice of the passenger at a local level. I am fully aware that we have a body—Passenger Focus—which provides a voice for England outside London, but I am talking about what happens at a very local level. It is important that people and communities are able to discuss their experiences face to face and say what they want. That can include working with Passenger Focus at a local level or perhaps other arrangements.

[LORD KENNEDY OF SOUTHWARK]

Operators and local transport authorities often carry out surveys and other work and meet local councillors and MPs. That is always very welcome. However, what is proposed in these amendments is the need to ensure that the views of passengers are taken into account, and to make provision in the Bill for the planning of these services. I beg to move.

Earl Attlee: My Lords, I shall try to be brief. These amendments are what are often termed “no-brainers”. As the noble Lord, Lord Kennedy, explained, the purpose of these amendments is to ensure greater participation and involvement with passenger groups in the process for developing a franchise scheme and the consultation and throughout the life of an enhanced partnership scheme. During Second Reading, a number of noble Lords commented that there was little mention of passengers in the Bill, so these amendments address that point.

I know that bus operators do a huge amount of work to ensure that they engage with the people who actually use their services. After all, who are they providing their services for? They are for passengers. On what basis would bus operators, and local authorities for that matter, not want to seek the views and opinions of the people who will be using their services?

Organisations such as Bus Users UK exist for the very purpose of giving passengers a voice, and do great work with operators, including holding local bus surgeries where passengers can engage directly with operators. Together with operator and local authority open days, these events are invaluable. Passengers are able to give solid feedback to those actually running the services, and in turn operators can inform and explain their decisions. Those decisions may not always be popular, but to my mind people are much more likely to accept a decision if the reasons for it are helpfully and properly explained.

I hope that my noble friend has a piece of paper in front of him marked: “Agree to consider”, or something similar. Even if he cannot advise the Committee to accept the amendments in the form that we see them today, I hope he will agree with the sentiment and spirit in which they have been brought forward so that we might see some government amendment which would achieve the same effect, at a later stage.

4.45 pm

Baroness Randerson: My Lords, I support Amendment 33. I have tabled other amendments which will make a similar point. I also raised the issue in our previous sitting. It amazes me that the Bill specifies bus operators and a number of other organisations for consultation on a regular basis, but not bus users. Bus users are specified in that way in one place; the rest of the Bill refers to “such other persons” as local authorities think fit. That is not good enough for a Bill which purports to put the passenger at its heart. The point of the Bill is supposed to be to increase the number of passengers and improve bus services. You will not, of course, improve bus services if you cannot increase the number of passengers. To be able to do that, bus services have to be more sensitive to the needs of passengers. The difference between a good, effective bus service and

one which is trotting along almost empty is how much you have consulted people about where and when they need the service.

I draw the Committee’s attention to the latest report from Passenger Focus. As a result of its survey, it makes the point:

“At present, passengers believe they have no involvement in determining how bus services are provided; few could think of any examples where they had been given the opportunity to be consulted, and therefore even fewer where they had been actively engaged”.

It goes on to say that they could all “recall significant changes” to bus services but had no recollection of being asked about them. Many years ago, I was a local councillor. I clearly recall how important it was to get the details of bus services right: where the bus stops were, the timing so they fitted in with local trains, and so on. Those are crucial decisions which passengers—who are, after all, the ones doing the journeys—are able to advise on.

I urge the Minister to listen to this plea, which has already gone out in previous debates and will go out again on a number of other amendments: please specify bus users; be precise about this; and enshrine in the Bill a role for bus passengers and their representatives at whatever level. Even down at the lowest and most informal level, bus passengers need a voice. The amendment talks about an increasing voice for bus passengers. We need a good, strong voice there right from the very start.

Lord Whitty (Lab): My Lords, I too have a later amendment which deals with this subject, so I will be brief. I agree with what my noble friend and the noble Baroness have said. What ought to be in the mind of the Government is the kind of bus service and its relationship, not only with those who currently use buses, but with those who might do so if the service was significantly better and integrated with other means of transport. My noble friend Lord Berkeley spoke about plans in Cornwall to link together the train and bus timetables more effectively. I have to tell him that in my area of Dorset they are not integrated at all. Quite frequently, even in the main part of the day, you get off the London train and there are no buses for another hour and a half.

It ought to be a precept from the word go for these new and enhanced arrangements that there is effective passenger representation in the decision-making process. I quibble slightly with the noble Baroness in that I think that probably has to build up over time. You need an organisation in there right at the beginning, but the way in which my noble friend has phrased the amendment puts an obligation in the new contract or the new franchise for the operator to make part of that improved performance be an improvement in taking into account the views of passengers. As Transport Focus—as it is now called—surveys have shown, there is a pretty pathetic level of trust and appreciation among bus passengers about services at present. So we are starting in most parts of the country, outside London, at a pretty poor low. It is therefore important that this is there in the Bill and that it underlines the whole philosophy of the management approach of the new operator, and that ought to be specified at this early stage of the Bill.

Lord Ahmad of Wimbledon: My Lords, I thank the noble Lord for moving Amendment 33. My noble friend Lord Attlee behind me referred to summary sheets that may or may not exist on the Front Bench. I am becoming increasingly conscious that telepathy is at work.

Moving on to the amendments, as I have said before—and I agree with all noble Lords who have spoken in this short debate—improving bus services for passengers is one of the key aims of the Bill. The amendment in the name of the noble Lord, Lord Kennedy, relates to increasing passenger representation through the life of franchising and enhanced partnership schemes. I sympathise with his aims and agree that one of the issues that authorities and bus operators should be considering is how passenger representation can be increased. Hearing from passengers helps authorities and operators understand the needs of their local communities and encourages meaningful engagement in the future.

Many noble Lords—the noble Baroness, Lady Randerson, in particular—spoke about passenger representation at Second Reading and in earlier Committee debates, particularly the need for passenger groups and representatives to be fully consulted on any proposed changes to bus services in their area. I too would like greater passenger representation across the board—I share the intent behind the amendment—particularly in areas where partnerships are established or where the status quo remains, as well as where franchising is implemented. I encourage bus operators and authorities to work with local people and community groups to design services that are attractive to users.

However, the amendment as drafted—and I am sure this was not the intent of the noble Lord when he tabled it—may not fully address those aims in particular circumstances. It addresses the issue of considering passenger representation in the context of franchising and enhanced partnerships, rather than where other partnership proposals are put in place or where the status quo is felt to be the most sensible way to deliver local bus services. It also refers to operators increasing passenger representation during the life of the franchise or the enhanced partnership plan, rather than the authority involved engaging with passenger groups directly as the schemes and plans are developed.

I assure noble Lords, especially the noble Baroness, Lady Randerson, that the Government are committed to ensuring that passengers have a say as plans for bus services are developed, and we welcome further debate and thought on this matter as we consider how we can best deliver this through the Bill.

Baroness Randerson: Is the Minister willing to give a commitment that the Government will consider bringing forward amendments that actually place the phrases “bus users” or “passenger groups” within the Bill, to counteract the balance of power whereby it mentions operators and local authorities but not passengers?

Lord Ahmad of Wimbledon: I have already said that I am open to discussing how we move this matter forward. I hope that I am indicating that I believe we should proceed in a collaborative way on the passage of the Bill through Committee and Report. I am

happy to discuss with the noble Baroness and the noble Lord, Lord Kennedy, how we can develop this amendment to reflect the intent behind it, which I share and which I am sure she shares, and also incorporate the issues raised by the noble Baroness. On that basis, I hope that the noble Lord is minded to withdraw his amendment.

Lord Kennedy of Southwark: I thank the noble Lord for that very helpful response. When we tabled the amendments we should have included the advanced partnerships and the current arrangement, as the noble Lord mentioned, but is he saying that, through the discussions that will take place over the coming days and weeks, we will seek to agree an amendment that will deal with the issues raised here?

Lord Ahmad of Wimbledon: It is certainly my intention to discuss with the noble Lord and the noble Baroness how best to take this forward. Yes, if it needs to be in the Bill, that is something we can discuss. I am sure we can overcome the drafting issues and it is important to reflect the points raised by the noble Baroness, Lady Randerson, in any amendment that comes forward.

Lord Kennedy of Southwark: That is very helpful. I am very happy to get involved in discussions on an amendment that we are all happy with and can work with, and which delivers the aim expressed across the Committee today of making sure that passengers are properly involved. However, what I do not want to see at the end of those discussions is a note in guidance, because, importantly, that does not have the same strength as something in the Bill.

Earl Attlee: Will the Minister take great care to make sure that everyone who has an interest in the Bill is included in these discussions? Sometimes it is possible for people to fall out of the loop and not be fully involved.

Lord Ahmad of Wimbledon: I give my noble friend that assurance. I will go further and say that I never forget my noble friend when it comes to such discussions. He has made a very valid contribution throughout this debate and I am sure he will continue to do so in debates going forward. Any noble Lord has an open invitation to meetings, as I have said, as we look to strengthen the provisions of the Bill and the services it provides.

Lord Kennedy of Southwark: I thank the noble Lord for those very helpful responses. I am very pleased to have received support from the noble Earl, Lord Attlee, and the noble Baroness, Lady Randerson. It is beneficial that local transport authorities and operators seek the views of their passengers, who are, in fact, their customers. Being sensitive to the needs of your customers is usually good practice for any business or public service and benefits everybody concerned, particularly the providers of the service. A role for bus passengers, as the noble Baroness, Lady Randerson, said, is important and needs to be in the Bill. I am very

[LORD KENNEDY OF SOUTHWARK]

pleased with the comments of the noble Lord, Lord Ahmad of Wimbledon, and look forward to our discussions. I hope that we can agree an amendment we can all be happy with during Report.

Lord Ahmad of Wimbledon: Before the noble Lord sits down, let me assure him that that is the Government's intention with all the provisions we have discussed. Putting passengers at the heart of what we seek to do is a key part of delivering either the franchising model or the partnership model. Importantly, as I said, the current amendment does not incorporate, for example, the issues around the status quo.

I know the noble Lord is working with me to ensure that that is what we do. That is certainly the intention—one that is resonating around the Chamber. Given that assurance and the positive nature of the debate, I think the noble Lord is moving towards formally withdrawing his amendment.

Lord Kennedy of Southwark: I thank the noble Lord again for his very helpful comments. I beg leave to withdraw the amendment.

Amendment 33 withdrawn.

House resumed.

EU Nationals: Legal Status

Statement

5.01 pm

The Parliamentary Under-Secretary of State, Department for Transport and Home Office (Lord Ahmad of Wimbledon) (Con): My Lords, I beg leave to repeat an Answer to an Urgent Question given in the other place by my right honourable friend.

“EU nationals make an invaluable contribution to our economy, our society and our daily lives. They should be assured that, as the Prime Minister and the Home Secretary have repeatedly said, there will be no immediate change in their status in the UK. The Prime Minister has been clear that decisions on issues relating to the UK's exit will be for a new Prime Minister. I am therefore not in a position to make new policy announcements in this area.

The discussions that we have with the EU to agree the arrangements of the UK's exit will undoubtedly reflect the immense contribution made by EU citizens to our economy, to our NHS, to our schools and in so many other ways. But they must also secure the interests of the 1.2 million British citizens living and working elsewhere in the EU. The Home Secretary was clear yesterday when she said we seek to guarantee that the rights of both groups are protected, and that this is best done through reciprocal discussions with the European Union as part of the negotiations to leave the EU.

It has been suggested that the Government could now fully guarantee EU nationals living in the UK the right to stay. This would be unwise without a parallel assurance from European Governments regarding British

nationals living in their countries. Such a step might also have the unintended consequence of prompting EU immigration to the UK. It is in the best interests of all that the Government conduct detailed work on this issue, and that the new Prime Minister decides the best way forward as quickly as possible.

In the meantime, I would like to stress that EU nationals continue to be welcome here. We have seen some truly abhorrent hate crimes perpetrated against EU nationals in the past week or so. We will not stand for these kinds of attacks. They must be, and will be, tackled in the strongest possible terms.

EU nationals can have our full and unreserved reassurance that that their right to enter, work in, study in and live in the UK remains unchanged. But to pre-empt future discussions at this point risks undermining our ability to protect the interests of EU and British citizens alike and to get the best possible outcome for both”.

5.03 pm

Lord Collins of Highbury (Lab): My Lords, I thank the noble Lord for repeating the Statement. I declare an interest in that my husband is Spanish and I have just returned from a brief weekend to visit our family in Spain.

In the debate on your Lordships' EU Committee report, I asked the Minister what plan B was if the UK voted to leave. The committee highlighted the acquired rights of the 2 million or so UK citizens living in other members states and, equally, those of EU citizens living in the UK. Bearing in mind the importance to our economy, as the noble Lord said, and to our health service, I am shocked that no contingency plans appear to have been made.

The Minister, and of course the Minister in the other place, say that the Government's position must be seen in the round and that their interest is to protect all citizens. Well, I fear that by putting in doubt the rights of EU citizens here, it will have the complete opposite effect from protecting UK citizens in the EU. As I say, I have just come back from Spain; Rajoy's recent statement and those of the Spanish Foreign Minister are not giving people much comfort either; they repeat the same sort of statement the Government are making. Rajoy says, “Don't worry, nothing will happen, at least for the next two years”. Two years is an incredibly short period when people have made their lives, bought homes, got jobs, and contributed to the economy. Earlier the Minister explained—as did the Minister in the other place—that there are existing rights, such as the right to remain after five years. But how are people made aware of this? They have never needed to exercise it. So how will the Minister explain that that right exists and people need not worry as they have that protection? How are people going to follow through? Would it not be better, both in terms of protecting our own citizens abroad and our economy, if we removed the uncertainty now?

Lord Ahmad of Wimbledon: My Lords, I thank the noble Lord for his remarks. The Government, of course, are listening carefully. As I have done on a couple of occasions from this Dispatch Box, let me reassure

noble Lords that it is the Government's intent to provide reassurance to all our citizens. It is right that we protect the rights of EU citizens in the United Kingdom and provide them with the security of knowing that they can continue to practise, work, live and study in the UK. The issue now arising is one of great uncertainty. As I said earlier this afternoon, we are going through unprecedented circumstances. As we reflect on the situation in which the country has now voted—in the referendum the country voted by a majority to proceed to leave the European Union—it is important that in the discussions we are taking forward with our European partners we protect the interests of British citizens who are working and living, and have done so for many years, in the European Union, and at the same time, put at the forefront the very valid discussion and concern that the noble Lord has just raised again about EU citizens who have made their lives in the UK and who contribute to the UK and its progress.

I can give the reassurance that exactly those sentiments, thoughts and principles are very much in our minds. It is not for me to speak about the future Prime Minister specifically, but I am sure that all those candidates putting themselves forward for Prime Minister, and indeed the new Government, will reflect very strongly about this, because it is central to our future relationship. We may choose to leave the European Union—the people have elected to leave it—but we have not left Europe. Our relationship with Europe will continue.

Baroness Smith of Newnham (LD): My Lords, it would appear that the people of the United Kingdom have rejected the Kantian ideal of perpetual peace and the European Union. Are Her Majesty's Government determined also to walk away from the categorical imperative that people be treated as ends in themselves, not as means? The idea that EU nationals resident in this country should be used as pawns in the negotiation seems to be wholly wrong. Can the Government not commit to assuring those EU nationals who were here at least at the time of the referendum that they can have their rights assured? Surely it is right to respect the dignity of EU nationals resident here and the benefits that they have brought to this country.

Lord Ahmad of Wimbledon: I share the sentiments expressed by the noble Baroness. Let me assure her that the Government are looking at this situation. It would not be appropriate to put down a particular marker as to which point, but there are legal considerations to take on board. Of course, the noble Baroness makes a very valid point. We will continue to put the concerns about the security of EU citizens here and UK citizens in the European Union at the centre of discussions as we move forward.

Lord Cormack (Con): My Lords, for the second time in a week I say to my noble friend that while his credentials are beyond question, it is possible for us to come to some basic agreements before we invoke Article 50, and this should be one. I urge him to talk to the Home Secretary after this Statement and say, "Can we not agree a reciprocal arrangement with our

European friends and neighbours that will not threaten the security of those who are living here and those of our citizens who are living there?"

Lord Ahmad of Wimbledon: I will certainly take that back. My noble friend has spoken about this before. I assure him and indeed all noble Lords on this point, which has been raised before: before invoking that particular article, it is important that the terms of negotiation are determined and we know exactly what position we are negotiating from. One important thing to retain in all this is that it is clear that the citizens of the United Kingdom as one nation voted to leave the European Union. That is a fact. We need to ensure that we secure the best possible arrangements across the board. I am sure that the protection of the rights of those who live in the UK as EU nationals and those British nationals who live in the EU will be at the heart of those discussions, both from our perspective and from those of our European partners.

Lord Richard (Lab): My Lords, when the Minister was speaking a moment ago, he said we must get the agreement of member Governments. I am slightly worried as to whether the negotiation—because that is what it is going to be—about EU citizens living here and our citizens living in the EU can take place at a European level, or whether we are not going to have to negotiate with each member state of the EU separately about their arrangements for continuing to receive our citizens and for our citizens to continue to live there. In other words, will we not have to have separate negotiations with Spain, France and each other country individually, and are we not likely to get different receptions depending on which country we are negotiating with? If so, how on earth are the Government going to do it?

Lord Ahmad of Wimbledon: My understanding, and I think I am clear on this, is that the negotiations we will have across the range of different areas regarding the single market, trading arrangements and so on will be with the EU. We continue to be part of the EU and will continue to have those discussions once we have established our negotiating criteria with the EU.

Viscount Waverley (CB): My Lords, I suspect we are going around in circles, but is not a perfectly reasonable solution to this whole problem, for those who are properly registered in individual countries of the EU and may well be taxpayers, to have the uncertainty removed and, possibly prior to a certain date, have permission just to remain where they are and get on with it?

Lord Ahmad of Wimbledon: I respect the noble Viscount's sentiments—

Viscount Waverley: I apologise; I should have said that I live in Portugal.

Lord Ahmad of Wimbledon: The noble Viscount talked about those who are properly registered and who pay tax. Those phrases underline some of the

[LORD AHMAD OF WIMBLEDON]

important discussions that we need to have, without putting down some markers just for the sake of clarifying one point or the other. The central point that must be at the heart of all the negotiations, which I clarify again will be between the UK and the EU, will be ensuring and protecting the rights of all EU nationals here and UK nationals in the EU.

Baroness Wall of New Barnet (Lab): My Lords, my noble friend on the Front Bench talked about someone who was very close to him. Is the Minister aware that there are staff in this House who are now questioning all the time what is going to happen to them? There are Italians and Portuguese, for example, who look after us so well. There is uncertainty surrounding their children who have been born here, while they themselves came here from European countries. This is totally unacceptable. These people are really worried while trying very hard to make our lives as easy as they can.

Lord Ahmad of Wimbledon: My Lords, I reiterate that I respect the sentiments and facts that have been presented today in your Lordships' House, and I shall of course share them with colleagues across government.

I shall end on this point because I am conscious that we have reached our time: this country has always been compassionate in dealing with people irrespective of whether they are from the EU or outside it. Those are guiding principles that define us as a nation and I believe they will be what define us as a country. I am reminded of what Archbishop Desmond Tutu said:

"My humanity is bound up in yours, for we can only be human together".

Surplus Target: Corporation Tax

Statement

5.14 pm

The Commercial Secretary to the Treasury (Lord O'Neill of Gatley): My Lords, I shall now repeat as a Statement the Answer to an Urgent Question made by the Chancellor in the other place.

"Mr Speaker, I have always sought to level with the British people about the economic challenges we now face, but to mix that realism with reassurance that we can rise to those challenges. The financial contingency plans that the Governor of the Bank of England and I put in place have proved effective to date. Financial markets have adjusted, but I can report today that they have shown no signs of disorder.

The next task is to be ready to respond to the developments in the real economy. This will require a supreme national effort. Here are the five steps we should now take. First, we need to look to support demand and make sure credit flows freely in our economy. The governor said on Friday that,

"some monetary policy easing will likely be required over the summer".

Thanks to the reforms that I have introduced, the independent Bank has the tools it needs to act against the cycle and support lending in the economy. The Financial Policy Committee will publish its decisions

tomorrow, and we stand ready in the Treasury to act in concert with the Bank should more need to be done to support funding for lending.

The second part of our national effort must be to maintain Britain's fiscal credibility. Eight years ago, people questioned Britain's ability to pay its way in the world. Eight years later, British gilts are seen as a safe haven and funding costs have fallen to record lows. We should maintain the fiscal consolidation measures we have announced, but our rules were always explicit that in the face of what the charter calls a "significant negative shock", we should allow the automatic stabilisers to operate. With the consensus of economic forecasters now lowering the forecast growth for the UK next year from close to 2% to 0.4%, that we will do. We have to be realistic that the target for a surplus is unlikely to be achieved in 2019-20. The OBR will conduct a formal assessment when it produces a new independent forecast in the autumn, and then we will have a clear idea of what additional measures are required to maintain fiscal credibility.

Thirdly, we should broadcast loud and clear the message that Britain remains the best place in the world to do business. Over the past six years, I have reduced Britain's corporation tax from 28% to 20% today and 17% in the future. I did that at the same time as taking difficult decisions elsewhere to balance the books. In my view, the strongest signal we could send to the world that Britain, after this referendum, is open to the world and ready to do business would be to cut corporation tax still further. We should aim for a rate of 15%, and preferably lower, because if you are pro-business, you are pro-jobs, pro-living standards and pro-working people.

Fourthly, the referendum result revealed a deep-seated feeling of disfranchisement in too many of our communities, especially in the Midlands and the north of England. As I said in Manchester on Friday, devolving power and building a northern powerhouse is the right response, and we need to double down on those efforts. We will have new elected mayors, and new transport and science investments, and projects such as HS2 and HS3 are more necessary than ever. Once both parties have determined who their new leaders will be, we should take the decision quickly on where to build a new runway in the south-east. Britain cannot be open to the world if we cannot fly there.

Fifthly and finally, while we must seek the best possible terms of trade in goods and services, including financial services, with our European neighbours, now is the time also to redouble our efforts to promote trade with the rest of the world. I have already spoken to my US counterparts. Later this month I will travel to China to build on our important new partnership.

This is a blueprint to meet our economic challenge. Nothing positive will come from looking back in anger. We must lift our eyes to the horizon ahead and make the best of what is to come".

5.20 pm

Lord Tunnicliffe (Lab): My Lords, I will make four quick points. Does this announcement not show a woeful lack of contingency planning? How could any reasonable man who threatened a £30 billion punishment

Budget a few weeks ago turn round today and say that what is needed is a corporation tax giveaway? Why was this announcement not made to Parliament and accompanied by a proper OBR appraisal? Given last week's abandonment of the 2020 surplus, of which we approve, how can the Chancellor claim to be maintaining the UK's financial credibility? Has a single target he has set since 2010 been met? Why has the Chancellor started a negotiation with the EU by declaring a tax dumping war? As the former World Trade Organization chief Pascal Lamy said,

"if you want a proper balanced, win-win relationship in the future, starting with tax competition is not the right way psychologically to prepare this negotiation".

Lord O'Neill of Gatley: My Lords, in the interests of time, I shall try to be brief. In the framework that has existed over the past six years there has been a well-identified escape clause in the event that GDP is foreseen to go below 1% for four consecutive quarters. That is the circumstance in which our decision within the country last week has left us, hence the Chancellor's Statement. On corporation tax, it is intended and recommended that that is an appropriate response to show to the world at large that Britain remains open for business.

Lord Newby (LD): My Lords, I will pursue the response the noble Lord just gave. First, the week before the referendum result the Chancellor talked about an emergency Budget; now he is talking about a tax giveaway. Are any fiscal rules still in place? Secondly, the aim is to reduce corporation tax to at least 15%. Current government plans are to reduce it to 17% by 2020. By what year does the Chancellor intend that a 15% rate might be introduced? Finally, does the Minister accept that there will now be immediate problems for many small and medium-sized businesses, which will see many of their purchasers' decisions put on hold while we have this tremendous uncertainty in the economy? Will he therefore ask the Chancellor to provide a line of funding to the British Business Bank to provide lending, overdraft facilities and other support to small and medium-sized businesses, particularly innovative companies, which, frankly, simply will not be around to receive any corporation tax benefits in years to come unless they are given support now?

Lord O'Neill of Gatley: My Lords, in repeating the Chancellor's Statement I clearly said that tomorrow the Financial Policy Committee will report on its recommendations and the Treasury remains in a position to act on whatever advice is given with respect to support for whatever area of business—small, large or otherwise—that may or may not require additional help. On corporation tax, as I also said, that is a recommendation of an appropriate policy response in the event of the decision we have made to send a message to the world that Britain remains open for business. I imagine that a specific policy will be put in place in line with the Autumn Statement plan as envisaged previously, once we have a new Prime Minister in place.

Lord Higgins (Con): My Lords, it is fortunate that the Chancellor has remained in post, since it would have created enormous trauma in financial markets if

not only the Prime Minister but the Chancellor had decided that he would not continue to deal with the immense problems we face. Can I ask two simple questions? First, as far as the corporation tax cut is concerned, will my noble friend tell us—I am sure he ought to do so—whether the Treasury estimates that this will increase or decrease revenue in the immediate future? Secondly, as far as the abandonment—I think that is the right word—of the target on the deficit reduction is concerned, that is clearly necessary to have greater flexibility in fiscal policy, but does he agree that it is essential that none the less the long-term objective of reducing the deficit is maintained?

Lord O'Neill of Gatley: My Lords, in response to my noble friend's question, let me repeat that the fiscal charter, including all its rules, allowed specifically that if an external shock—in this case one that we essentially brought upon ourselves—would result in a four-quarter basis GDP forecast of less than 1% the framework could be adjusted. That is the environment in which the Chancellor made his comments in the other place, and that is what I am repeating here. With respect to the comments on corporation tax that are receiving so much attention, the Treasury will—as it always does—indicate what any cost or benefits revenue-wise or otherwise might be as and when a specific policy proposal is brought to Parliament.

Lord Davies of Stamford (Lab): May I correct the noble Lord? Brexit was not an external shock. It was an internal shock. It was a policy shock. Does the noble Lord think it is serious that we have lost our AAA credit rating? What is his estimate of the increase in borrowing costs we will face as a result of that?

Lord O'Neill of Gatley: My Lords, I notice to my right some noble Lords with strong views on and experience of these kinds of events. Let me just reflect on my own judgments, including some from my past life. Let me also quickly state that in the last week our long-term borrowing costs have gone down. It is the job in terms of policy to focus on doing what is right in the circumstances. I do not believe that we should react to or be excessively focused on what a rating agency may say one way or another. It is important that we do the right thing.

Lord Forsyth of Drumlean (Con): My Lords, can my noble friend help those people in the country who might be a bit puzzled as to why the Chancellor said a few days before the referendum that if we voted to leave the European Union interest rates and taxes would have to go up? Now we are faced with the proposition that taxes should be cut and interest rates might go down. Why did that strange transformation take place over such a short time in the Treasury?

Lord O'Neill of Gatley: My Lords, forecasts are forecasts and I have spent a considerable part of my life having that dubious challenge. We are dealing with an outcome as opposed to a forecast. From what I remember of the specifics, I do not remember a statement that interest rates "will" rise, I thought it was more that they "could" rise. Importantly, while the Chancellor has responded with the appropriate flexibility for the new circumstances we may find ourselves in, based on

[LORD O'NEILL OF GATLEY]

what the OBR comes up with in its new forecasts for the Autumn Statement, it may well be that there are still difficult choices to be made.

Lord Wrigglesworth (LD): My Lords, is it not clear that the Government are not going to meet their borrowing targets? The Chancellor has said that. Is it not ludicrous against that background to be announcing today that there is going to be a cut in corporation tax costing £4 billion to the Exchequer? Can the Minister tell us what the position is going to be in the autumn? We will have a new Prime Minister, a new Chancellor of the Exchequer and a new OBR forecast. Can he guarantee that this announcement today will ever be carried out?

Lord O'Neill of Gatley: My Lords, I could give a very brief answer and say, "No, I can't tell you what is going to happen in the autumn". It is pretty hard these days to tell people what is going to happen next week.

A noble Lord: Tomorrow even.

Lord O'Neill of Gatley: Or tomorrow even. The process by which the Government's fiscal position is influenced by the forecasts of the independent OBR is one of the few things that do not appear to have changed in the past week or so. That will set out the circumstances in which fiscal policy choices will be made by a new Prime Minister and the team under them.

Lord Desai (Lab): My Lords, the Chancellor mentioned in his Answer disenfranchised people in the north and elsewhere. Will he give some thought to the idea that now is not the time to cut taxes, which may lead to loss of revenue, but to increase expenditure inasmuch as the fiscal charter allows us to break rules as long as we break them in the right way?

Lord O'Neill of Gatley: My Lords, I was very pleased to hear the Chancellor refer to that. We will indeed endeavour to put even more effort into rebalancing the economy of this country, including in the north, in the Midlands and possibly in other parts of the country as well.

Bus Services Bill [HL]

Committee (2nd Day) (Continued)

5.31 pm

Amendment 34

Moved by Lord Kennedy of Southwark

34: Clause 4, page 15, line 43, at end insert—

"(g) the extent to which not-for-profit bus operators can be integrated into a proposed scheme in order to contribute to the long term sustainability of the scheme."

Lord Kennedy of Southwark (Lab): My Lords, Amendment 34 is proposed by me and my noble friend Lady Jones of Whitchurch. It would require the franchising authority or authorities to give consideration when drawing up a scheme to how the not-for-profit sector could be involved, the purpose being to contribute

to the long-term sustainability of the franchising scheme, which, one hopes, will give local people a better bus service than they enjoy at present. The not-for-profit sector is thriving in a variety of areas. Expanding this model in the delivery of bus services is one way to contribute to ending the decline in bus services and routes that we have seen over many years, especially outside London, and which has been the subject of discussion during consideration of this Bill. It can complement other providers and deliver on a smaller scale bus routes that really benefit local communities and that can boost the local economy, connecting people with jobs, shops, schools and other services that they may not have had access to in recent years. Our amendment would require any assessment to include such proposals.

I hope that the noble Lord, Lord Ahmad of Wimbledon, does not have "resist" in his notes against this amendment. He has been very responsive today and in our previous day in Committee, and I hope he continues in that vein. Perhaps he will say to us that the amendment is not necessary, or suggest that it might be included in guidance. Of course, it could be in guidance, but as I hope he can see, that would not have the weight of its being clearly in the Bill.

We all want to see better bus services, and this Bill is a very positive step forward, but we need to go a little further to strengthen the proposals in some areas, as this amendment would certainly do. It would make it easier for different models of service to come into play and give a better bus service for all. I beg to move.

Earl Attlee (Con): My Lords, not-for-profit bus services, or community transport, cover a wide spectrum of services, including those operated by charities. I am the first to praise the extraordinary work the sector does for people who need a lot of support in their daily lives—drivers who walk users to their door to make sure they have not lost their keys and then carry their shopping into the hall are local heroes. The sector can also plug a few gaps in services for the general public where there are not enough passengers to make a route a commercial proposition and the hard-pushed local authority does not have sufficient resources to fund a standard bus service.

However, I urge my noble friend the Minister to resist the amendment. Community transport services are not subject to the same regulatory regime as local bus services. Their drivers are not subject to the same stringent training regime as those driving registered services, nor do they need to satisfy many of the other compliance requirements set down by the traffic commissioner.

Services operated under Section 19 of the Transport Act 1985—it is mainly this type of service we are talking about with this amendment—are exempt from many safety and fair competition rules so long as they are not provided to the general public. So how on earth can they contribute to the success or otherwise of a franchise?

The whole issue of services operated under Section 19 and indeed Section 22, permits has been a bone of contention for many years with the EU. If community transport operators were required to enter the local bus market and operate under the same rules as operators

of registered services, it would be a different matter, but they are not. There is no level playing field and, at the moment, community transport operators are able to operate more cheaply but without the regulatory safeguards in place for other operators. I therefore urge my noble friend to resist the amendment as gently as he can.

Baroness Randerson (LD): My Lords, in contrast, I support the noble Lord, Lord Kennedy, in his amendment, because I believe strongly that there is a valuable role for community transport and not-for-profit operators. That role is particularly important in rural areas. I take this opportunity to thank the Minister for the very useful letter that I received today, which gives great detail about the Government's approach to rural areas. I regret that the information is not in the formal impact assessment; nevertheless, it is now publicly available and useful to us all.

It is important not just that not-for-profit operators work in rural areas but that we look at the widest possible range of community-based schemes in urban areas as well. I give as an example Hackney Community Transport, which operates commercial services for Transport for London, and Ealing Community Transport, which runs buses in Dorset with Go-Ahead. Those are urban examples that have spread out from the area where they started, but the point I am making is that community-based and not-for-profit transport services are part of a flexible mix. If we are truly to improve bus services, we must have more variety: we must have an alternative to the big five bus companies which effectively run the vast majority of bus services outside London. Although they compete, in most cases they do not do so on the ground—they rarely compete against each other service to service. We need an alternative to that if we are to have a flourishing bus service throughout Britain.

Baroness Scott of Needham Market (LD): My Lords, I support the comments of my noble friend. I had not intended to speak, but the noble Earl, Lord Attlee, slightly provoked me into it when he commented that not-for-profit services “plug a few gaps”. I can tell him that in areas such as mine, in Suffolk, they are the service. Almost all rural areas in Suffolk now have no bus service.

I agree with the noble Earl that I would not want community transport schemes to be tied up in a whole plethora of red tape, but nor would I want emerging franchising models to ignore the opportunities provided, in the way that my noble friend Lady Randerson has described, or inadvertently to disadvantage smaller community services. It is easy to see how you could do that—by cherry picking parts of their routes and not linking with others, you can affect their viability. Whether it is an urban or a rural area, but particularly in the rural area I know, it is important to understand and get the ecology of the bus industry right: to understand that something you do to one part is going to impact on another.

Earl Attlee: My Lords, if I can stimulate a contribution from the noble Baroness, I have done the Committee a great service.

The Parliamentary Under-Secretary of State, Department for Transport and Home Office (Lord Ahmad of Wimbledon)

(Con): My Lords, I thank the noble Lord, Lord Kennedy, for his amendment, which would require franchising authorities to consider, as part of the assessment of their proposed franchising scheme, the extent to which not-for-profit bus operators can be integrated into a franchising scheme to contribute to its sustainability. Let me say at the outset that I sympathise with the aims of his amendment. I recognise the good services that community bus service operators and other not-for-profit bus operators deliver to our communities across the country and know that they often provide flexible and bespoke services which act as a lifeline to many. The intervention from the noble Baroness, Lady Scott, underlined that element.

The Bill recognises the important role that community transport operators play in providing local public transport. Provisions have been included in the Bill to ensure that services operated under community bus permits will not be affected by the introduction of franchising or enhanced partnerships. This will enable them to continue to run their services unaffected by these schemes. I hope noble Lords will agree that these provisions are sensible and that they will help ensure that community bus providers can continue to deliver their valuable services to our local communities.

Even with these protective provisions in the Bill, I recognise the valid point the noble Lord, Lord Kennedy, raises, and agree that authorities looking to improve local bus services should consider how services provided by community transport operators can be best integrated to deliver a better overall network of services for passengers.

Let me assure noble Lords that the Bill does not preclude authorities, as they develop their franchising or enhanced partnership proposals, working with community transport and not-for-profit operators to determine how they can best be integrated into the wider network of services, but I agree with the noble Lord that this approach should be encouraged. I am, therefore, of the view that these issues are best covered through further guidance that will be published to complement the provisions of the Bill. I hope the assurances I have given in this contribution enable the noble Lord to withdraw his amendment.

Lord Kennedy of Southwark: Will the Minister say a little more about why he thinks that this should be in guidance? He says that authorities can do this, and that is all well and good. Why then is it not going to be in the Bill? Why should it be in guidance? My worry is that guidance is not legislation. Guidance is forgotten over time, things get moved on and revised, and all of a sudden it is not there and gets forgotten about. Why is guidance better than the Bill?

Lord Ahmad of Wimbledon: My Lords, I have already said that there are provisions within the Bill that protect that element of community transport and not-for-profit operators. While the noble Lord feels that the guidance is not sufficient, it forms part and parcel of the guidance in support of the Bill, on which these new proposals go forward.

Lord Kennedy of Southwark: I am not sure the Minister answered the point I was making there. I am thinking of organisations such as Hackney Community Transport. If it wants to provide services elsewhere in the country, like it currently does for TfL, why should that not be in the Bill, rather than in guidance?

Lord Ahmad of Wimbledon: I do not think I can add any more. If the noble Lord feels that the strength of what the Government are presenting does not meet what he is suggesting, I suggest we discuss this issue. At the moment, we are minded that existing provisions within the Bill, with the assurance of including such provisions in the guidance, provide the necessary safeguards alluded to by the noble Lord. I hope, with this assurance and the continuing discussions we are having on various aspects of the Bill, that he will be minded to withdraw his amendment.

Lord Kennedy of Southwark: I thank the Minister for that contribution. I will take up his kind offer to have a discussion outside the House. He has been very generous with his contribution today and with his time. I appreciate that very much. I thank all noble Lords who have spoken in this short debate. I do not agree with the remarks of the noble Earl, Lord Attlee, as I want to see the not-for-profit sector being able to provide bus services, as elsewhere. I thank the noble Baronesses, Lady Randerson and Lady Scott, for their support. The noble Baroness, Lady Randerson, was spot on in speaking about the needs of rural areas and the widest range of schemes available to deliver those services. As she said, Hackney Community Transport delivers services for TfL, so why cannot it, or other providers in the not-for-profit sector, deliver bus routes elsewhere, in urban or rural areas? This Bill is about improving bus services and my amendment helps in that respect, improving the Bill further and giving further options for the provision of bus services. I will leave it there and look forward to talking it over outside the Chamber, but I may well bring the amendment back on Report. I beg leave to withdraw the amendment.

Amendment 34 withdrawn.

5.45 pm

Amendment 35

Moved by Earl Attlee

35: Clause 4, page 15, line 43, at end insert—

“(g) whether the proposed scheme would be more efficient, effective and economic than any other option, taking into account any compensation payable to bus operators whose businesses would be wholly or partially expropriated by the scheme.”

Earl Attlee: My Lords, this amendment is all about compensation for loss of business, and its purpose is to make it a requirement on a franchising authority to factor in the cost of compensating bus operators as part of the assessment of a proposed franchise scheme.

I can anticipate the Minister's response, but I would still like to explain my concerns. If the state needs to remove something from a person for the public good, then the state should compensate that person. It is

quite simple: if land is purchased under compulsory purchase power, the owner of that land gets paid for it. I am fully aware that compensation would not have been payable under a quality contract scheme, although the days of quality contracts are severely numbered, and that when toes were dipped in that particular pool of water it ended rather badly, but it does not make it right, which is why my party was not keen on it.

The cost of compensating a bus operator who has to close his business, having failed to win a contract bid, could well run into millions of pounds, taking into account the physical assets—vehicles, depots and land—and the good will that the business enjoys. In one of our previous debates, the noble Lord, Lord Snape, asked what would happen to garage premises in the city centre, and would they be redeveloped and lost, and about all sorts of complications. I will speak about good will again when we reach Clause 5.

If that is not bad enough for the large plc's which would have to redeploy—hopefully—their staff and assets, we should consider the position of SME operators. These businesses will have been established on the back of solid hard work and with considerable financial risk and energy on the part of private individuals, who will have invested their life savings to see their company grow. They stand to lose all that not because they have performed badly, not because they are bad companies and not because their passengers have decided they no longer want to use their services. They stand to lose it all simply because they lost out on a bidding process for the franchise. Apparently, all their endeavours are worth nothing.

The Bill is currently silent on the matter of compensation, which I believe is wrong. I was really quite alarmed by the comments made by my noble friend Lord Young of Cookham at Second Reading, when he said that foreign owners of bus companies, but not British ones, might be entitled to compensation under the TTIP agreement, currently being negotiated at European level. I suggest that the whole issue of compensation needs to be revisited. Is it right that a foreign company could be paid millions of pounds of taxpayers' money, because its local authority has decided to take control of its local bus services, while a British company is left high and dry with no business and no compensation? The Minister will have to answer this point. I hate to say it, but this all sounds rather unconservative.

It is vital that when a local authority pursues a bus franchising scheme, the process, including a detailed assessment of the scheme, must be as robust as possible. The assessment must look at every single aspect of the proposed scheme, including whether the franchise scheme stacks up financially and represents good value for money because whose money will it be? It will be local taxpayers' money, so the compensation to bus operators who are put out of business must be an important part of the mix. I beg to move.

Lord Berkeley (Lab): My Lords, I am interested in the noble Earl's comments about the poor small investor who has put their life savings into a bus company which is then put out of business because exactly the same thing happens on the railways, where most passenger services are franchised. I suppose the difference is that

it is usually large bus companies making the bid. Some of them are owned by foreign state-owned enterprises, which means that the Government allow foreign state-owned enterprises to bid and operate train franchises but they do not allow British state-owned franchises to do the same. However, that is a slightly different matter.

Surely this is a question of which end of the telescope you are looking at. If it is question of small shareholders running a bus company in an area, they may well be worthy of sympathy in a different way from what might be called the big multinationals, but either way, experience on the railways shows that while the top management does not usually remain when a franchise changes, everyone else generally retains their job if they want it. In some cases there may be TUPE arrangements in place, but they may not be appropriate here. However, I am not convinced that the arguments for and against franchises are particularly affected by this because in practical terms many members of the workforce of a franchise of, say, a small bus company might think that they are losing their jobs, but they might well be taken on by the people running the franchise because they have local knowledge, they live locally and so on.

Lord Snape (Lab): I have great sympathy with the amendment moved by the noble Earl, Lord Attlee. I have also listened carefully to my noble friend Lord Berkeley. He commented when speaking to an earlier amendment that there is not a great deal of competition in the bus world. There was competition immediately after deregulation when there were lots of small companies, many of which were perfectly reputable but some not quite as much. My noble friend mentioned the difference between franchising on the railways and franchising for buses. The difference between them is quite simple: we are against one and in favour of the other. I am not quite sure why or how, but that is the situation we find ourselves in as a party.

Lord Berkeley: I think that my noble friend is speaking for himself; he is not speaking for me.

Lord Snape: I suspect that when we come to debate the future of the railway industry I will be speaking for my party, which is against franchising. And, as I currently understand it, the party wishes to see the railways back in some degree of public ownership. However, let us not get bogged down in the differences within our party between the two industries otherwise we could be on this amendment for a lot longer than we should be.

On the previous amendment, we talked about not-for-profit companies making a bid for franchises. The problem with that reflects directly on Amendment 35. If a successful franchise bid depends on a lower bid, and there is every chance it will given the shortage of cash in local government and the cutbacks that have been made so far as support for bus services is concerned, obviously some of the smaller and perhaps less reputable companies will start out with an advantage. If you are running a major operation that recognises trade unions, pays trade union rates, provides proper canteen facilities, uniforms and so on, you are not in a particularly

advantageous position when bidding for a franchise against a smaller company that does none of those things.

Again I remind the Minister that over the years a lot of these companies have come and gone. The bus industry has rather settled down, and although we deplore the lack of competition, when we had lots of it, it was often denounced as wasteful and unnecessary. Speaking specifically to this amendment, if a company large or small loses its assets as a result of measures inherent in the Bill, surely it is only fair that it deserves to be properly compensated.

Baroness Randerson: My Lords, I say in response to the noble Lord, Lord Snape, that of course the arguments he makes about less reputable companies fortify my argument that a lot of these things need to be set out in the Bill, so that we can ensure that only the more reputable companies—those that observe those aspects important to passengers and indeed to our environment—are able to win a franchise.

I say in response to the noble Earl, Lord Attlee, that I cannot understand why bus companies should be immune to the usual rules of business in this country. Increasingly local government services are run through commercial companies in various forms. Many commercial organisations are involved in the provision of a range of local authority services right down, for example, to care for children, the elderly and so on. Local authorities franchise services or commission them and from time to time they will change the companies they are working with; someone loses the contract. There are well-known procedures throughout our public life which account for that to happen, thus enabling a service to be handed over from one organisation to another. I cannot see why bus companies should be exempt from that general run of business.

Lord Kennedy of Southwark: My Lords, Amendment 35, which has been proposed by the noble Earl, Lord Attlee, is not one that I can support today. As we have heard, the amendment puts a requirement into the Bill that would require the taking into account of any compensation payable to bus operators whose businesses are wholly or partly expropriated by the scheme. I do not think that there are any plans in the Bill to expropriate anyone's business. The franchising model will work on similar terms to those which presently operate in London, where private bus operators happily deliver services on routes laid down by TfL. They make profits and the service works well.

I agree with the comments made by the noble Baroness, Lady Randerson, who asked why the bus industry cannot be aligned with the rest of the public sector in terms of contracts being tendered for and then won or lost. People move on and things change. That works in the whole of the rest of the public sector and is certainly the case in local government; I have said before that I am a councillor in Lewisham. I am sure that the noble Lord, Lord Ahmad, will advise the Committee, but I think I am correct in saying that the Government do not anticipate any compensation being required if a franchising authority follows the process as set out in the Bill. For me, the Bill is about improving

[LORD KENNEDY OF SOUTHWARK]

bus services for passengers and increasing the number of bus journeys being taken by people, thus halting the decline in bus routes and journeys over recent years, and that should be embraced by bus operators. Indeed, they may find that they actually make more money if they increase their routes and more people use them.

I look forward to the Minister's response and I hope that he will allay the concerns raised by the noble Earl and thus demonstrate to the Committee that the amendment is not necessary.

6 pm

Lord Ahmad of Wimbledon: My Lords, I thank my noble friend Lord Attlee for his amendment, which would require franchising authorities to consider as part of the assessment of their franchising scheme whether it will be,

"more efficient, effective and economic than any other option, taking into account any compensation payable to bus operators whose businesses would be wholly or partially expropriated by the scheme".

I recognise my noble friend's desire to ensure that impacts on bus operators are fully considered as franchising schemes are developed. The Bill already addresses many of his concerns, and it may be useful at this point to provide a fuller explanation of proposed new Section 123B, which requires franchising authorities to conduct an assessment of their proposed franchising scheme. I fully acknowledge that moving to a model of franchising is a big decision that will impact on bus operators in the area. That is why the Bill requires authorities that are considering franchising to conduct a thorough assessment of their proposed scheme, including comparing their proposals with other options, which could include partnership proposals and the status quo.

The Bill also requires franchising authorities to think about the effects of the proposed scheme and whether it represents value for money. This will include, of course, consideration of the impacts of the proposal on passengers and bus operators, together with any wider impacts. I hope my noble friend agrees that the provisions in the Bill will require authorities to think carefully about their franchising proposals, compare them to other options and then take a well-reasoned and well-evidenced decision.

I turn to the issue of compensation payable to bus operators that my noble friend referred to. I fully recognise the years of hard work that many bus operators have put into growing and operating their businesses and their concerns about the future. As I have said, the Bill requires authorities to consider both the benefits that franchising could bring for local people, as well as the potential impacts, including those on bus operators. If franchising authorities follow the processes set out in the Bill, local bus operators will have plenty of notice that a franchising scheme is being considered, will be aware of a decision to introduce franchising, and will have more than six months' notice that services are to be provided under local service contracts. This will enable operators to take any action they think appropriate and to plan ahead in the light of the decision to make a franchising scheme. Incumbent operators will, of course, be able to bid for contracts

in any area that decides to move to franchising, and I should reflect that those operators' knowledge of the local area and local customers is likely to stand them in good stead. In addition, the Bill does not provide franchising authorities with the power to take over the property of any bus operator if a scheme is made—a point made in an earlier debate.

In summary, I am therefore of the view that the Bill already addresses many of my noble friend's concerns regarding the assessment of the franchising scheme and the need to compare it with other options. He raised the issue of compensation being available to those who do not win contracts, and referred to other schemes, not just franchising. While he makes a valid point, I note that authorities have been able to introduce quality contracts since 2000. This potential risk and impact on bus operators has been around for a significant period. I hope that he has been assured and reassured by some of my comments on the existing provisions in the Bill. I disagree that consideration of compensation should form part of franchising assessments—a point made by other noble Lords—but I hope that this debate has assured him that the Bill includes a thorough and comprehensive assessment process, and that he can withdraw the amendment.

Lord Kennedy of Southwark: Can the Minister say more about something I find hard to understand about the amendment? I am a councillor in a London borough and services are tendered for all the time, whether in relation to road repairs, street lighting, refuse collection and so on. People bid for contracts, win them and lose them. If they lose them, the new company takes them on and we do not have debates about paying companies compensation because they have lost their contract. They bid for a price, the council assesses it and a number of factors and makes what it believes is the best decision. I do not see why we are having this dispute or debate. If a company loses a bus route, I do not see why it should be paid compensation. It must have tendered for that route but has lost out in the process to another company that has been deemed to offer better value for money. This is a strange debate.

Lord Ahmad of Wimbledon: My noble friend tabled an amendment and it is right that we have a discussion in Committee. I hope that through the provisions in the Bill that I have highlighted—for example, the requirement to give ample notice—his fears are allayed as regards compensating a business franchise that goes out of operation. The Bill contains proper provisions in relation to, for example, giving notice. The noble Lord, Lord Kennedy, and I are on the same page on this.

Earl Attlee: My Lords, if I have brought both Front Benches together, I have achieved something. Some noble Lords talked about disreputable operators. If, as a result of a franchising scheme, a disreputable operator goes out of business, no one would be happier than me.

The noble Baroness, Lady Randerson, and the noble Lord, Lord Kennedy, picked up on the fact that local authorities are currently putting services out for bid

and that operators are either successful or unsuccessful. Noble Lords are right but the difference here is that an operator can be sure that, so long as he has a good commercial model and keeps his customers happy, he can stay in business. However, if he gets hit by franchising, he will be out of business through no fault of his own.

The noble Lord, Lord Berkeley, made an interesting comparison with the railway industry, but he will know that that is on a different scale and people in the railway industry know that that is the name of the game. They will bid for the franchise and amortise all the costs of their investment over the length of the franchise, whereas the operators that I am concerned about at the moment have no risk of being put out of business by franchising because that simply cannot be done. It is therefore a new situation that they could not have planned for.

No noble Lord has explained away my TTIP problem. Regarding facilities for operators, franchising may well provide efficiencies because perhaps fewer workshops and garages are needed. The problem is that someone ends up holding redundant facilities that they used to have a commercial use for. I am not convinced by the response of my noble friend but I will read *Hansard* carefully and, subject to the usual caveats, I will come back on this. Oh, the Minister wants to have another go at me.

Lord Ahmad of Wimbledon: I would never dream of having a go at my noble friend; I am merely thankful that he has given way. It was remiss of me not to mention the TTIP issue. I understand that investor-state dispute settlement does not prevent a current or future Government who act in accordance with due process changing their laws or policies. My noble friends Lord Attlee and Lord Young referred to this point and it is my understanding that this element is still being negotiated between the European Union and the US.

Earl Attlee: I thank my noble friend for that response and I beg leave to withdraw the amendment, subject to the usual caveats.

Amendment 35 withdrawn.

Amendments 36 to 40 not moved.

Amendment 41

Moved by Baroness Scott of Needham Market

41: Clause 4, page 16, line 26, after “an” insert “independent”

Baroness Scott of Needham Market: My Lords, the amendment stands in my name and those of my noble friends Lady Randerson and Lord Shipley.

It really does not matter which side of the great debate noble Lords are on—whether they favour franchising, as I do, or whether they are fundamentally opposed to it, as we have heard. Both sides agree that the proposal represents a significant risk of a transfer of risk from the bus operators to the local authority. That risk will be carried by local council taxpayers and, in the new regime, local business ratepayers. I should say from the outset that I am perfectly confident in the ability of local government to manage these processes. The noble Lord, Lord Snape, is right to say

that this will not come cheap. Local authorities will need sufficient expertise in order to carry out the proposals, and I think that they will be able to, should they choose to invest that expertise. My concerns are about the mayoral model in this regard. It seems to me that what the Government see as the strengths of the mayoral model—a single point of centralised decision-making and a single point of accountability—can also very quickly turn into a disadvantage. Strong leadership can very quickly turn into headstrong leadership. Therefore, it seems to me that robust oversight is key.

In the past few years the LGA—I declare an interest as a vice-president—the Institute for Government and the Centre for Public Scrutiny have all done quite a lot of work on this. The amendment is in line with that sentiment and seeks to ensure that there is independence in terms of the information that is given out and against which a local mayor can be accountable.

I would be the first to admit that I am a bit of a governance geek. That probably comes back to having served on the Audit Commission. However, just to make it clear that this is not just some odd preoccupation of mine, on Friday the Public Accounts Committee in another place published its document about cities and local growth. It is going through these devolution proposals and its intention is to contribute to the public debate and to government thinking at this early stage. Its report raises many of the same concerns that I have just raised. I shall read out a few lines from one of the recommendations because they are important. It states:

“We are not confident that existing arrangements for scrutiny at local level of devolved functions are either robust enough or well supported. Robust and independent scrutiny of the value for money of devolved activities is essential to safeguarding taxpayers’ money, particularly given the abolition of the Audit Commission. Local scrutiny committees are an important mechanism; however, given resource constraints and the absence of independent support”, there is a limit to what they can do. It then goes on to talk about the absence of “independent institutional scrutiny”, and recommends that by November 2016 the Government should come forward with plans to ensure that local scrutiny of devolved functions will take place and will be robust.

While I confidently expect the Minister to resist this amendment, I hope that he will commit at least to making sure that this report of the Public Accounts Committee is read, understood, and, more importantly, taken into account as this Bill progresses. It is always easier to get it right at the beginning than to retrofit these things into something once it is passed into law. I beg to move.

Lord Snape: I rise to speak to Amendment 43 in this group, which seems to do something similar to the amendment so ably moved by the noble Baroness, Lady Scott.

Like the noble Baroness, I am not quite as sanguine about a local authority deciding to set up a franchise scheme, appointing someone to look at it, and then having the ability, regardless of what he says, to go ahead. That smacks a bit of the people’s courts in Germany towards the end of the Second World War. Surely we ought to have something more democratic than that on these somewhat controversial matters.

[LORD SNAPE]

The traffic commissioners, who are widely regarded throughout the transport industry—although under successive Governments, they have been sadly underresourced—ought to be the people who appoint a proper independent arbiter to look at any such proposal. It seems to me to offend natural justice for a local authority wishing to have a franchise scheme to appoint a referee to decide on the merits of that scheme and, regardless of his or her conclusion, to go ahead anyway. I hope that the Minister will look carefully at these amendments and think about toughening up the Bill considerably.

6.15 pm

Lord Bradley (Lab): My Lords, I shall speak briefly to Amendment 42 in my name and that of my noble friend Lord Berkeley. I understand that the amendment may not be perfectly drafted—it may be more appropriate to have “of” rather than “and to”, but we can deal with that when the Minister gives me comfort that he accepts its basic direction of travel.

The amendment’s purpose is to look at the role of the auditor. It would ensure that that role is restricted to areas that are both within the auditor’s competence and entirely focused on the matters set out in proposed new Section 123D(2)(a) and (b), which states:

“The auditor’s report must state whether, in the opinion of the auditor ... the information relied on by the authority or authorities in considering”,

whether the authority or authorities would be able to afford, make and operate the scheme and whether the proposed scheme would represent value for money, is of sufficient quality and that the analysis of the information is also of sufficient quality.

Without this amendment, proposed new Section 123D(2) could be interpreted as giving the auditor a wider remit, given that, as drafted, the auditor must give an opinion on whether the authority, “had due regard to guidance under Section 123B”.

This guidance covers a much wider range of topics than those set out in proposed new Section 123D(2)(a) and (b), including the effects of the scheme, comparison of the proposed scheme to one or more courses of action and the scheme’s contribution to the implementation of wider plans and policies. As such, the current drafting risks giving the auditor a role which is beyond their professional expertise as well as creating conditions whereby a third party is second-guessing a locally accountable authority’s assessment. This in turn could introduce the kind of hurdle that led to the failure of the 2000 and 2008 Acts in creating a simpler route to franchising for those authorities that wish to pursue—I stress those that wish to pursue—this option.

The Government have committed to introducing a practical and efficient method of introducing bus franchising and this amendment, as redrafted, looks to assist them in that process.

Lord Shipley (LD): My Lords, I should first declare my vice-presidency of the Local Government Association. In principle, I am in favour of the right of local authorities to franchise bus services. However, I expressed

concern at Second Reading that the audit and scrutiny of proposed franchises needed to be tightened up, and I remain of that view.

I also said at Second Reading that the Cities and Local Government Devolution Bill required substantial amendment to improve the effectiveness of audit and scrutiny to ensure public confidence in the financial robustness of franchising arrangements. Now, as the noble Baroness, Lady Scott of Needham Market, has pointed out, on Friday the Public Accounts Committee in its sixth report of this Session expressed some serious concerns about the extent to which consideration by central government of the local scrutiny arrangements had been adequate.

I quote, in particular, from its summary, which states:

“There has been insufficient consideration by central government of local scrutiny arrangements, of accountability to the taxpayer and of the capacity and capability needs of local and central government as a result of devolution”.

I have absolutely no doubt that local government may have the required capacity and capability—certainly in a number of places with which I am familiar. That is not to say that it cannot gain the capacity and capability to undertake successful franchising. However, I subscribe to the view that there has been insufficient consideration of this issue by central government and it really does matter.

In consideration of previous amendments, I noted that the Minister said that mayoral combined authorities were appropriate for taking forward the policies in this Bill and would have the necessary checks and balances in place. These amendments improve the checks and balances that the Government seek. If the Government listen very carefully to what is being said across your Lordships’ House, it is much more likely that franchising will succeed, and I am very keen that it should do so.

There are three amendments in this group. The one to which my name is attached tries simply to make it clear that the auditor should be independent of a local authority or a combination of local authorities. The other two amendments are in the same area, but address issues around affordability, value for money and the role of traffic commissioners. There are various ways in which that could be progressed. The Minister may say that this can all be addressed in regulation. However that is done, I hope that the Minister will be able to come back on Report—if he is not able to do so now—to explain that there is an understanding of the issue that the auditors’ scrutiny function in this case must be robust and seen to be robust and how the Government plan to take this forward to ensure that the public can have confidence in franchising arrangements.

Lord Berkeley: My Lords, on the amendments that we have discussed in Committee, many noble Lords have said how important it is for devolution to happen and for local authorities around the country to be able to operate franchises without too many controls from central government. Whether that happens or not, the importance of independence in the audit is vital, as other noble Lords have said. It would be so easy for some local authorities in the future to get it wrong and then for a rather nasty article to appear in *Private Eye*,

suggesting that the leader's brother-in-law was the auditor. I am sure that would never happen, but we do need independent checks. My noble friend Lord Snape's suggestion of traffic commissioners appointing the auditor has enormous merit. The two issues in Amendment 42 in the name of the noble Lord, Lord Bradley, and myself, about the affordability of the scheme and whether it represents value for money, are the two most important ones that should be focused on by the auditor. Then we would all feel comfortable that it would probably work very well.

Baroness Jones of Whitchurch: My Lords, we very much support the intent of the first amendment introduced by the noble Baroness, Lady Scott, and of Amendment 42, which was introduced by my noble friend Lord Bradley. It is important that the audit process is properly independent and provides a trustworthy external scrutiny—that makes perfect sense. It also makes perfect sense to ensure that the proposals are properly costed and that we can have confidence that they are affordable.

However, regrettably, we do not feel able to support the amendment of my noble friend Lord Snape—we seem to be making a habit of that. We believe that his amendment is too specific and restraining and we hope that, on reflection, he will feel able to support Amendments 41 and 42, which we believe would achieve the additional reassurance he seeks and ensure that a fair, independent assessment process takes place. I hope that my noble friend will reconsider and that the Minister will feel able to support the first two amendments.

Lord Snape: Before my noble friend sits down—I am sorry that she finds herself unable to support what is, in my view, a well-intentioned and well-meaning amendment—perhaps she can tell us why she objects to the traffic commissioner and why that is too specific. After all, by the very nature of his or her job, the traffic commissioner knows the business inside out and is widely trusted by all sides in the industry. Surely to have someone like that appointing an auditor is a very sensible way forward.

Lord Berkeley: And he is independent, too.

Lord Snape: And he is independent, too.

Baroness Jones of Whitchurch: Without wishing to get into a dialogue, I think that we felt that as long the role was prescribed to be independent, different authorities will have different arrangements for appointing independent auditors. We do not feel that we need to be that prescriptive in this piece of legislation. I would not go any further than that.

Lord Ahmad of Wimbledon: My Lords, there are a number of amendments in this group, all related to the audit function required as part of the franchising provisions. The noble Baroness, Lady Scott, proposes an amendment to state explicitly that the auditor, whose role is to issue a report to the franchising authority on certain aspects of the assessment of the proposed franchising scheme, must be independent. The noble Lord, Lord Snape, proposes an amendment that would require the auditor to be appointed by a traffic commissioner. The noble Lord, Lord Bradley,

proposes an amendment that would require the auditor to consider matters relating to an authority's consideration of affordability and value for money. I thank all noble Lords for their amendments, and will turn to each one.

Before I go into those details, the noble Baroness rightly talked about the Public Accounts Committee's report on local scrutiny, and I thank her for bringing that to the Committee's deliberations. We are of course ensuring that we consider its recommendations very carefully as the Bill moves through Parliament, and we will respond during the course of the Bill.

Turning to the amendments, I recognise the importance of ensuring that decisions to move to a model of franchising are taken on the back of quality information and robust analysis. As I have explained previously, in developing this Bill we have been keen to move away from the quality contract scheme processes set out in the Transport Act 2000, which, in particular, included the need for independent scrutiny by a "Quality Contract Scheme Board". While I agree entirely that there is a need for a level of independent assurance, I do not think that devolved decisions should be second-guessed by an independent panel. We introduced the role of the auditor to ensure that an independent third party provides assurance that certain information used in the assessment is of sufficient quality, that the analysis of that information is robust and that relevant guidance has been followed. It is not the auditor's role to take a view on the decisions taken by the franchising authority. As I am sure that noble Lords agree, its role is to provide a quality check.

The Bill requires any auditor to have a "recognised professional qualification" and to be eligible to act as the local auditor of the authority's accounts. As such, we would expect any auditor to be suitably qualified and able to provide independent assurance.

Baroness Randerson: Does the noble Lord accept that it is not just a case of qualifications but of perceptions? It is only too easy for a situation to arise within a public body where an auditor's assurance has been given but is not seen as good enough or independent enough by critics of the scheme. Therefore, the arm's-length rule is the safe way of going forward.

Lord Ahmad of Wimbledon: I agree with the noble Baroness inasmuch as it is important that it is not just the process, but the perception—and the perception in the mind of the public, too—that there is scrutiny, and effective independence in the auditor role. However, I believe that any auditor, on the basis of what we have suggested of having professional capacity, would be able to show that level of competence and, indeed, address the issues of perception. As such, it would be reasonable for the franchising authority to appoint such an auditor. That applies as much to the suggestion by the noble Lord, Lord Snape, that it should be the auditor rather than the traffic commissioner, particularly as it would be the franchising authority that paid for the services of the auditor.

Coming back to the point raised by the noble Baroness and also by the noble Lord, Lord Shipley, I do understand that an auditor could be perceived as more independent if they are appointed by a third party—indeed, the noble Lord, Lord Snape, used the

[LORD AHMAD OF WIMBLEDON]

example of a traffic commissioner—or if the Bill specifically stated that they must be independent. However, I would argue, again, that any auditor with an established reputation would be mindful to protect their own role and independence in any report they provided.

6.30 pm

On the amendment proposed by the noble Lord, Lord Bradley, it might be worth saying up front that I do not think the amendment as proposed quite addresses his intent, but I understand his concerns in this respect. The audit provisions in the Bill are not intended to replicate the quality contract scheme board process, but the auditor plays an important role both for the authority and for those that will be impacted by the scheme. As I have said before, the auditor will provide a quality check, and will provide assurance to the franchising authority that it has taken account of the guidance in developing its scheme. This provides a helpful check for the authority by assuring it that it has followed the necessary processes and addressed the relevant issues, while also safeguarding the interests of local passengers and bus operators. Again, I reiterate that the decision to move the franchising is the decision of the mayor or local authority alone.

I hope that this discussion has reassured noble Lords that the Bill as drafted ensures that there is a level of independent assurance while not undermining the role of the authority to take relevant decisions. That said, I note that the noble Lord, Lord Shipley, and others, including the noble Baroness, said that the auditor process should be robust and perceived to be robust. I am happy to speak further with noble Lords to understand their concerns more clearly and decide how we can move forward. However, the Government feel that the issues raised by noble Lords have been addressed in the Bill. I hope that the noble Baroness will withdraw the amendment.

Baroness Scott of Needham Market: I am grateful to all noble Lords who have taken part in the debate on this set of amendments, and to the Minister for his customary care and courtesy. However, I am afraid that I am not entirely reassured, as I think that there is a fundamental misunderstanding about what constitutes being independent. I recognise that you would, of course, go to a reputable firm of auditors. However, the person who sets the contract and pays the bill for the audit retains ultimate control. That is always the way. Anyone who has worked in this area knows that there are all sorts of ways in which the process can be subverted. This is a very important issue and involves great risk for the taxpayer, particularly in these mayoral models, where we know that the oversight of the mayoral function is not as strong as it used to be in the old days when people like me had committees which spent a lot of time going through these things. Given particularly the concerns expressed in the Public Accounts Committee report published on Friday, I think there is a need to return to this question, at least informally.

Lord Ahmad of Wimbledon: The noble Baroness again raises a very valid point. Once we have established our full response to the concerns of the Public Accounts

Committee, we will be in a better position. As I said, I welcome further discussions in this respect, because I do not think that we disagree; to use the words of the noble Baroness, Lady Randerson, this is a matter of perception which can be addressed. Once we have responded more formally, I am happy to have those discussions with the noble Baroness.

Baroness Scott of Needham Market: It is certainly an issue of our time that perception is pretty much everything.

With that, I look forward to future discussions and beg leave to withdraw the amendment.

Amendment 41 withdrawn.

Amendments 42 and 43 not moved.

Amendment 44

Moved by Lord Whitty

44: Clause 4, page 17, line 24, leave out “such” and insert “Transport Focus and such other”

Lord Whitty (Lab): My Lords, this is a slightly odd group, although all the amendments in it deal with consultation after a franchising notice has been agreed. The first amendment deals with an issue which the Minister may feel we have flogged to death at early stages, and relates to the engagement of representatives of users of the services. That is referred to in the relevant new paragraph (c), although I agree with the earlier comment of the noble Baroness, Lady Randerson, that the term “as they think fit” somewhat prejudices the possibility of effective consumer representation in this field if the authority is rather resistant to any organisation purporting to represent the users.

The additional point in this amendment is that not only would I expect authorities and operators in the new franchising situation to encourage, engage with and help develop organisations representing users in the area covered by the new franchise, and go on to develop that further during the course of the franchise, but there is also an issue of how—at least in the initial stages—these franchises develop in different parts of the country and how they relate to passenger concerns across the country. Across England we have an organisation—Transport Focus—which is based in statute and has recently enlarged its role in relation to road users of all sorts as a result of the Infrastructure Bill which passed through this House a few months ago. With Highways England it is responsible for looking after all the interests—commercial and individual—of road users; that is, cars, buses, freight, et cetera. It also has a national perspective. In the railway sector it compares the performance of franchises in the different railway franchise areas, and has done so a number of times. It conducts surveys and gathers feedback. There is a crossover of things that are appreciated by passengers in one area into other areas of rail provision. The same must apply in relation to buses. As we are just starting a new system in relation to buses, the first two or three franchises will set the tone for the way in which the system will operate. It will be important for a national passenger organisation to have at least the ability to comment on those developments and on

what passengers find good or negative about them and where they would like to see improvements. As the system develops, the franchising system in large parts of England would benefit from having an overall view from Transport Focus on how a new franchise is perceived by passengers using the system.

When setting the franchise, the authorities will wish to look at the way it has operated in areas where they have already established a franchising system. As time goes on, cross-comparison is important. The organisation, already in place, which would give this perspective is Transport Focus. There is no mention of Transport Focus in the Bill. Therefore, I hope that a role is given in the Bill to that organisation in providing a cross-reference of how the system is working for those who ultimately will be the beneficiaries of what I hope will be an improved service. I beg to move.

Baroness Scott of Needham Market: My Lords, I have four minor amendments in this group and wish to say a word or two about each of them. My Amendment 45 would include the Competition and Markets Authority in the list of consultees. This goes back to a point I made on Second Reading and in the private meeting organised with the Minister from another place.

In the days when I had much more to do with transport, the Competition and Markets Authority writ large across the operation of the bus industry, to the extent that, when I tried to deal with buses in Suffolk, I could not get two operators to sit in the same room with me because they had been told by their lawyers that that could be regarded as collusion and therefore anti-competitive. As noble Lords can imagine, that made trying to run a coherent bus network in Suffolk very difficult. We have dealt with that very effectively now—because we have very few buses. We need to really think about the point at which the Competition and Markets Authority is involved with this. The last thing we want is a very lengthy and expensive process of tendering, consultation and agreement, only to find at that point that the authority has a problem with it.

Amendment 49 tidies up the question of modification. At the moment, it is not at all clear what a modification means. You would not need to re-consult for a relatively minor one, but it is possible to imagine fairly major modifications to a franchising scheme where reconsulting would be a good idea. Amendment 52 comes back to the question of oversight. The Bill mentions “a summary of” the consultations. Given the questions about oversight and robustness, it is really important that we have all the information required. It is not going to be favoured reading among large sectors of the general public, but it is important that those involved in oversight have full information. The same goes for Amendment 53, which is about publishing all the responses so that everyone can see what everyone else has said. That is an important part of good governance and robust oversight.

Earl Attlee: My Lords, it is very difficult to find anything to argue about with these amendments on consultation, particularly Amendment 48. As noble Lords have said, they are very much in the vein of

ensuring that all those likely to be affected by either a franchise scheme or enhanced partnership scheme are consulted in a timely fashion and that the documentation—which I am sure will be quite lengthy—will be in accessible formats. It stands to reason that there is no point in consulting if you do not allow adequate time, or provide the material in a way that people can easily access it.

We have already debated similar amendments about passenger representation at an earlier stage. However, I can see one potential problem, which is how long the timescale should be for people to comment. I suspect it is impossible to answer: as human beings we always tend to leave things to the last minute—just look at the mad rush to register to vote in the recent referendum. No matter how much time you give people to do something, it will never be enough. I suspect that, like me, many noble Lords get briefings for Committee on the day it takes place, long after we have drafted our notes and determined our position.

Can my noble friend assure the Committee that there are strict guidelines that public authorities have to follow when it comes to the format et cetera of consultation documents? These amendments may not be necessary—although the point is desirable—and the issues that they seek to address may already be an established and well-known requirement, but it does no harm to reinforce the point.

I turn to Amendment 51. The bus industry was shocked and, quite frankly, appalled when the Chancellor first gave oxygen to the idea of local bus franchising some 18 months ago. Bus operators, from the large plcs to small family-run businesses, feared for their livelihoods. Time has moved on and the industry has, of course, regrouped—dare I even say, calmed down?—and engaged constructively and helpfully with the Government in developing the policy that we now see enshrined in this Bill. I sympathise with all bus operators and recognise their very real concerns. The large plcs have much to lose and need their eyes on market share and their corporate standing. They will be battered and bruised by the franchising process and we must not underestimate the effect this will have. However, small and medium-sized operators are in a different position. As I have already explained, if they lose a franchise, assuming they have the resources to bid in the first place, their business is gone. They will not be able to tread water for a few years and be in a position to bid when the franchise comes up for renewal. Their business will no longer exist, their depots and vehicles will be sold and their staff quite possibly lost to the industry or to competitors.

I know that the plight of SME operators has weighed heavily on the minds of Ministers. More than once I have heard the Secretary of State commend the work of the SME operators and say how he is keen to help protect their enterprises, so this amendment may well find favour with my noble friend. “Fairness” and “level playing field” are terms I hear used frequently in our deliberations and I am in no doubt that I will use them again before we send the Bill on its way. The processes put in place by the Bill must be fair to all operators regardless of their size.

6.45 pm

I will raise one other issue, which relates to the wording of the Bill. There are a number of instances where the Bill refers to “small and medium-sized” bus operators. Is that defined in the same way as “SME”, which is recognised economic terminology? Also, what is a small and medium-sized operator? For example, Go-Ahead, one of the big five transport operators, actually has a very small share of the market in Cornwall. Go-Ahead is clearly not an SME but, in that instance, could be said to be a small operator in Cornwall. I apologise if this question comes a bit out of left field and would be happy for the Minister to write to me clarifying the position if he is unable to deal with it immediately this evening.

Baroness Jones of Whitchurch: My Lords, I will speak to Amendments 48 and 51 in my name. I very much support the amendment tabled by my noble friend Lord Whitty. Amendment 48 takes a similar position—that as part of the consultation process, passenger organisations and trade union and employee organisations must be involved. We believe that proper time should be allocated to make this a meaningful consultation and an effort made to explain the changes in a clear and accessible form to those who may be affected. As my noble friend said, we have debated these issues in relation to previous amendments and received a positive response from the Minister. I hope a similar response will be forthcoming today.

I hope that Amendment 51 is an area where the noble Earl, Lord Attlee, and I are able to agree for once; I am pleased that some commonality is coming out of this debate. One of the problems with bus provision in this country is that the market is dominated by a small number of large bus operators. This makes the procurement process more difficult for local authorities and does not always result in the best passenger experience. It is difficult for new entrants to enter the sector, even though they often provide more responsive, quality services with high customer satisfaction. Reference has previously been made to the social enterprise company HCT, which runs highly successful services in parts of London, Yorkshire and Bristol. It also has the contract for providing bus services in Jersey. Since it took over that service, passenger usage has increased by 32%, the level of subsidy has reduced by £800,000 a year and customer satisfaction has increased by 5%. Somewhat uniquely, the contract also has a profit-sharing element and it is now giving money back to the local authority.

We need opportunities for innovative providers like HCT to enter the market and win new contracts, but the rules are stacked against them and the regulatory burden is far too onerous for the small providers to navigate. There is a danger that the proposals in the Bill will entrench local monopolies, at best replacing an unresponsive private sector monopoly with a publicly commissioned one. When it comes to enhanced partnerships, we need to be clearer about the process for opening up partnership lists to competition to allow new entrants to join. As it stands, the Bill acknowledges this problem in new Section 123F (1)(i). It requires the consultation document for authorities going down the franchising route to include a statement

on how they propose to facilitate the involvement of small and medium-sized operators. We obviously welcome that.

Our amendment takes this one step further and requires the consultation document to consider how the franchise could be divided into smaller units. This would help to break down the local monopolies and encourage new entrants into the market. I hope the Minister understands and shares these objectives: I look forward to hearing his response.

Lord Ahmad of Wimbledon: My Lords, this group contains a number of amendments to the consultation process that a franchising authority must complete before it can implement a franchising scheme. Before going any further, my noble friend Lord Attlee asked about “small and medium-sized operators” and whether in the context of the Bill that meant small and medium-sized companies. The short answer is yes. It is judged by the size of the company rather than the nature of its operation. In the interests of clarity, which is always important, I will write to him formally in that respect.

Turning to the amendments which relate to the persons or bodies to be consulted and the form the consultation should take, Amendment 44, in the name of the noble Lord, Lord Whitty, would require franchising authorities to consult Transport Focus when consulting on their proposed franchising schemes. Once again, I am delighted to say that I agree with the noble Lord that it is important that organisations that represent passenger needs have an opportunity to respond to a consultation on a proposed franchising scheme. Transport Focus already works closely with local authorities and bus operators with a view to securing improvements to bus services for passengers, and I will consider how best to ensure that the Bill gives Transport Focus an opportunity to express views on franchising scheme proposals. I hope that this provides assurance to the noble Lord, Lord Whitty, in that respect.

Amendment 45, in the name of the noble Baroness, Lady Scott, would require franchising authorities to consult the Competition and Markets Authority on their proposed franchising schemes. As I said at Second Reading, competition does not disappear when franchising is introduced; it merely moves from “on the road”, where bus operators compete at bus stops for passengers, to “off the road”, where bus operators compete for contracts to operate services. Franchising authorities will be able to design a franchising system which suits their local area and local needs, whether that be through gross-cost or net-cost contracts, or with large or small bundles of routes, bearing in mind the need to involve small and medium-sized bus operators.

However, I agree that any fundamental change to the bus market that is being considered by a local area should take account of the potential effects on competition and the benefits or impacts this could have for bus operators and local people. I further agree that it may be helpful for franchising authorities to work with the Competition and Markets Authority as they develop their proposals, and for the authority to be consulted. I hope I have reassured the noble Baroness that I am with her in ensuring that we look at how to fit that into the Bill.

Amendment 48, in the name of the noble Baroness, Lady Jones, would add some additional requirements to the consultation provisions in relation to franchising, including requiring passenger interest groups to be consulted on franchising proposals. I thank the noble Baroness for her amendment, and agree that it is vital that passenger groups and others that may be affected are consulted fully on proposals to improve local bus services. I recognise that many noble Lords spoke about passenger representation and accessibility of bus services at Second Reading and in earlier Committee debates, and I fully understand that there is a wide spectrum of views and needs to be considered when planning local bus services.

The franchising provisions already include requirements for the authority to consult organisations that represent users of local bus services. Therefore, I encourage any authorities thinking of using the new tools in the Bill to engage fully with interested parties as proposals are developed. I hope this goes some way to addressing the noble Baroness's concerns about the interests of passenger groups and reassures her that the Bill requires authorities to consult fully with those groups on franchising proposals.

Turning to the form that consultations on franchising and enhanced partnership proposals should take, the noble Baroness, Lady Jones, raised an important issue about accessibility and the need for consultations to be conducted in a manner and over a time period that is accessible to all. I agree that any consultation must give local people due time to consider and respond, particularly as proposals about local bus services are likely to have a large impact on local communities. I will therefore give further consideration to how best to ensure that consultation exercises relating to franchising proposals are accessible to all.

Turning to the amendments on the consultation materials that franchising authorities must prepare, Amendment 51, in the name of the noble Lord, Lord Kennedy, would reinforce the need for authorities considering franchising to give due consideration to small and medium-sized operators, given the important role they play in the delivery of local bus services. I sympathise with the aims of the amendment and I think we can all agree that small and medium-sized bus operators across the country deliver vital services to our local communities. Many of these smaller operators deliver tailored and bespoke services to suit local needs, and we want to see these small businesses continue to thrive, regardless of the model of bus service delivery that is employed.

The Bill requires franchising authorities, both as part of their consultation exercise and in issuing their response to that consultation, to set out how, in conducting the procurement process, they intend to facilitate the involvement of small and medium-sized operators in the provision of local bus services once franchising has been introduced. I agree entirely with the principle in the amendment that in reality, this provision will require the authority to consider in practical terms how it intends to facilitate the involvement of small and medium-sized operators, which may well include the division of local service contracts into smaller lots. However, there may be other ways to achieve that

aim—for example, through subcontracting—and I do not want to prejudice the procurement strategy that an authority may employ. I hope I have reassured noble Lords that the Government are committed to ensuring that small and medium-sized operators continue to have a place in the market regardless of the model of delivery, and that the provisions in the Bill already address this issue.

Amendment 52, in the name of the noble Baroness, Lady Scott, would require franchising authorities to include in their consultation document their assessment of their proposed franchising scheme, conducted under new Section 123B, rather than a summary of their assessment. I hope I can reassure the noble Baroness that franchising authorities are already required to publish their assessment of their proposed scheme. The Bill also requires that a summary of the assessment of the proposed franchising scheme should be included in the consultation document itself, with the aim of ensuring that the consultation document contains sufficient information for the lay person to consider, without necessarily having to refer to the full assessment. I hope the noble Baroness agrees that these proposals are sensible and that the Bill as drafted already achieves her aims.

Amendment 53 would require franchising authorities to publish all the responses to their consultation on their proposed franchising scheme. I agree that it is important for those reading the response to the consultation to be informed of the views that have been expressed in responses to that consultation. I fully expect any authority to set out in its response to the consultation the views expressed by those consulted, subject to any disclosure issues, and the authority's response to those views.

However, I do not want to be too prescriptive about how the authority should respond to the consultation and the exact form the response should take. For example, the authority may receive many responses on the same issue and may choose to summarise those responses and list the number of responses received. Again, that is common practice in local government. But I will consider how best to ensure that franchising authorities set out a summary of the responses they receive to their consultation, and hope that I have reassured the noble Baroness in this respect.

Government Amendment 50 removes the requirement for the franchising consultation document to include a description of how it is proposed persons are to be invited to tender for the provision of services. The Government believe that it is proper to remove this reference as the Bill does not make provisions anywhere else as to how the procurement process will work. This will be a decision of the authorities involved, in the context of procurement law, and guidance will be provided on procurement approaches.

Finally, Amendment 49, also in the name of the noble Baroness, Lady Scott, would require franchising authorities to have an auditor reassess their proposed franchising scheme if it is modified following consultation. I sympathise with the aims of this amendment, and agree it is vital that franchising authorities have the assurance of an auditor in relation to certain aspects of their assessment. We have already spoken about the

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audit function at length today so I do not want to go into further detail. I have agreed to sit down with noble Lords to discuss this further.

The section of the Bill to which the noble Baroness refers ensures that authorities are able to take account of the views expressed in the consultation and modify their franchising scheme appropriately. I also expect authorities to use their good sense and judgment. If the consultation unearths new data or causes the authority to radically rethink its approach, then of course I would expect the authority to take a view on whether it should choose to seek the auditor's opinion on the new data or the revised analysis, and whether it should consult again on the revised scheme. I do not, however, want to force authorities to go through these processes again when a franchising scheme is modified. It may be that an authority makes a small tweak to its proposed scheme which does not materially affect it, when it would seem unreasonable for the authority to have another assessment by the auditor.

7 pm

Again, this is an issue we can look at. I am mindful that different circumstances may arise, so we should look to address this in the guidance that is going to be issued, but I reiterate my view that the authority involved must take a sensible decision based on the particular modifications it proposes making. Several issues have been discussed and I hope I have demonstrated again that the Government are seeking to listen and to take on board practical, sensible suggestions that noble Lords are putting forward, because this is about strengthening bus provision at a local level. I hope my comments have reassured noble Lords and that they feel minded to withdraw their amendments.

Lord Whitty: My Lords, I congratulate the Department for Transport on being so forthcoming on this group of amendments, both mine and those of other noble Lords. In opposition and in government I have found previous manifestations of the Department for Transport to be slightly more resistant to the good sense of amendments put forward in this House. I am glad that a culture change seems to have taken place, epitomised in the Minister. Of course, the Bill does have a further, Report stage, when I certainly hope we will have amendments reflecting at least some of the positions taken in this group. The noble Lord agreed the other night on the one part of my noble friend's amendment he did not refer to—on trade unions and employee representatives. He has already committed on that front so I hope that, before Report, we will see many of the principles embodied in the amendments in this group in government amendments. If not, I shall be disappointed but at the moment I am feeling pretty pleased with the department.

My point about Transport Focus being referred to in the Bill is an important and newish one, and I am very glad that the Minister responded positively to it. I thank him and the department—keep up the good work. In the meantime, I beg leave to withdraw the amendment.

Amendment 44 withdrawn.

Amendments 45 to 49 not moved.

Amendment 50

Moved by Lord Ahmad of Wimbledon

50: Clause 4, page 18, leave out lines 5 and 6

Amendment 50 agreed.

Amendments 51 to 53 not moved.

Amendment 54

Moved by Viscount Younger of Leckie

54: Clause 4, page 19, line 6, after first “the” insert “minimum”

Viscount Younger of Leckie (Con): My Lords, I will speak to a group of amendments to Clause 4 and Schedule 2. Amendments 54 to 64 and Amendment 75 relate to the period which must expire before services can be provided under local service contracts. The Bill as introduced provides that at least six months must expire between a contract being awarded and provision of the relevant service, with the aim of providing a suitable period of transition for bus operators. These amendments do not change the policy but merely tidy up the Bill to ensure that this provision is clear.

Amendment 65 makes it clear that where a franchising scheme is varied to add an area which relates to another local authority, that authority must play an active part in the variation processes. This corrects the drafting of the Bill but does not change the policy intention. It has always been the Government's intention that authorities that will have a franchising scheme covering the whole or part of their combined area should play a part in making or varying the scheme.

Amendment 76 amends the Local Transport Act 2008 to remove provisions relating to quality contract schemes for areas in England which were inserted into the Transport Act 2000. My noble friend Lord Ahmad wrote to noble Lords on 16 June providing notice of the government amendments he would be bringing forward in Committee. That note provides a fuller explanation of the precise changes to the Bill. My noble friend and I are of course happy to discuss these amendments further with colleagues if there are any concerns. I beg to move Amendment 54.

Lord Kennedy of Southwark: My Lords, I have no problem with the amendment but I want some further clarification. As I said in our previous discussion on our first day in Committee, we have a whole raft of government amendments and I do not understand why this issue was not sorted out before the Bill came to your Lordships' House. Yes, the amendment adds the word “minimum”—Amendment 55 is similar—but these are tidying-up amendments and we are at the start of the Bill, not the end. It has been nowhere other than with the department and in this House. I am sure that the noble Lord listens to what all noble Lords say in this House, but it seems that a bit more work should have been done with Ministers before the Bill ever appeared here. Why we are getting these Bills so early, and why was this issue not sorted out before the Bill arrived here?

Viscount Younger of Leckie: That is a very reasonable comment. My noble friend Lord Ahmad was asked a similar question during consideration of a previous amendment, and I recall his answer. I will give the same answer, which I hope will be accepted: this Bill has been work in progress. A lot of the time, Bills are not absolutely perfect when they are presented. I will be quite open and honest in saying that it is simply a tidying-up process. I hope the noble Lord will accept that explanation.

Lord Kennedy of Southwark: I accept that it is a tidying-up exercise, but my point is that I am surprised that this could not have been sorted out in advance, given that, as we have heard, this Bill has been a long time coming and in preparation in the department. These are not major issues that have been found during our debates: it is just a question of missing words, for example. I could go through the whole raft of government amendments—none is anything major. So I do not understand why we are finding within a matter of days that odd words and phrases that should have been included in the first place are missing from a Bill that, we are told, has been months in preparation, and was due last year.

Viscount Younger of Leckie: I am not sure that my follow-up is going to give any further clarity. I simply point out that the Bill as introduced was not sufficiently clear on these points, and these amendments help to bring clarity. It is more fine-tuning and tweaking than anything particularly major.

Lord Kennedy of Southwark: That is fine. I will not pursue the point further, but for the Minister to come to the Dispatch Box and say that the Bill was not sufficiently clear, when it has been at least months in preparation, is not the best way to introduce legislation. I will leave it there.

Amendment 54 agreed.

Amendment 54A not moved.

Amendments 55 to 58

Moved by Viscount Younger of Leckie

55: Clause 4, page 19, line 15, after “the” insert “minimum”

56: Clause 4, page 19, line 17, at end insert—

“(3A) A scheme may not specify under subsection (2)(d) or (3)(c) a period of less than six months.”

57: Clause 4, page 19, leave out lines 22 to 28 and insert—

“(4A) If the franchising scheme relates to an area to which a relevant scheme or plan also relates, the franchising scheme must include—

(a) in a case where the relevant scheme or plan relates only to the area to which the franchising scheme relates or a part of that area, provision revoking the relevant scheme or plan, or

(b) in any other case, provision varying the relevant scheme or plan so that it ceases to relate to any part of the area to which the franchising scheme relates.

(4B) A franchising scheme may not otherwise vary a relevant scheme or plan.

(4C) In subsections (4A) and (4B)—

“relevant plan” means an enhanced partnership plan, and

“relevant scheme” means an advanced quality partnership scheme or an enhanced partnership scheme.”

58: Clause 4, page 19, leave out lines 29 to 40 and insert—

“(4D) If provision is made under subsection (4A)(b) to vary an enhanced partnership plan or scheme so that it ceases to relate to an area, the local transport authority or authorities to whose area or combined area the plan or, in the case of a scheme, the related plan continues to relate may vary the plan or, as the case may be, the scheme in such manner as they consider appropriate in consequence of the provision made under subsection (4A)(b).

(4E) Section 138K(3) applies, and section 138K(4), (5) and (8) do not apply, to a variation under subsection (4D).”

Amendments 55 to 58 agreed.

Amendment 58A

Moved by Baroness Jones of Whitchurch

58A: Clause 4, page 19, line 40, at end insert—

“(8) The scheme must specify whether consideration has been given to the wider social, economic and environmental benefits of the scheme, in accordance with the Public Services (Social Value) Act 2012.”

Baroness Jones of Whitchurch: My Lords, Amendments 58A and 99ZA call upon commissioners of bus services under franchise, and those developing enhanced partnership schemes, to apply the principles of the social value Act 2012 in specifying the service required.

The social value Act, brought in by this Government, recognises that many public services can have a wider role than a simple cost-benefit analysis would identify. It requires those procuring services to consider the economic, social and environmental benefits of each bid. It allows local authorities to think about public services in a more coherent way with wider benefits and encourages those bidding for contracts to be more imaginative about the community benefits their service could bring. Often this can result in better-designed services, with other benefits and efficiencies.

In the case of bus services, it could include, for example, a commitment to train and employ a number of long-term unemployed people to work on a contract. It could include a number of apprenticeships and work experience places for young people. It could include a commitment to support an existing community bus service—perhaps with some shared facilities. It could include an environmental plan with targets for green energy and reduced CO₂.

These are just examples, but the point of social value is to encourage providers to commit to their own added-value measures without costing any more money. It is essentially supplier neutral, in that it can apply to all operators, whether commercial, social enterprise or municipal. It allows local authorities to be as specific as they choose—either specifying the expected wider benefits at the outset of the bidding scheme or encouraging bids to offer up more creative service solutions at a later stage of the process.

Implementing the social value Act would appear to be an excellent tool for achieving many of the community benefits which we have been seeking in other amendments

[BARONESS JONES OF WHITCHURCH]

to the Bill so far. I am sure the Minister is aware that the operation of the social value Act was reviewed last year by the noble Lord, Lord Young. He concluded that, where it was used effectively, it resulted in commissioners being much more innovative and delivering much more responsive public services. However, the noble Lord also concluded that the opportunities and advantages were simply not widely enough understood and therefore take-up of the model was low.

This is the Minister's opportunity to put this matter right by embracing this model as it applies to bus services in the future and putting social value at the heart of the Bill. I beg to move.

Baroness Scott of Needham Market: My Lords, I am very pleased to see that the noble Baroness has tabled this amendment. I raised the question of the social value Act in a group of amendments when the Committee met last week. In doing so, I was trying to get at the point that the noble Baroness has made, which is really about extending the ambition of the Bill in terms of understanding the broader context, whether it is environmental or social. Because the inspiration of using the social value Act only came to me very late in the day, when it was too late to table an amendment, I raised it in debate rather than tabling an amendment. I am pleased to see that the noble Baroness has rather more ingenuity than I have and has found another place in which to put it.

Lord Berkeley: My Lords, I support this amendment, and will also speak to the others in the group—Amendments 58B, 99ZA and 99B. The noble Baroness, Lady Scott, hit the nail on the head when she talked about extended ambitions, and my noble friend Lady Jones gave a really inspirational description of what one might be looking for. All these amendments basically cover the same thing, which is to do with creativity. When people are looking at whether it is right to have a franchise, partnerships or whatever, I hope that the Government will, through these amendments or something similar, realise the benefits from bidders having more freedom to be creative—whether in terms of different types of bus, different types of service, frequency and timetables, fitting in with other services such as railways or opening times for hospitals and doctors' surgeries, and things like that.

7.15 pm

Amendments 58B and 99B mention,
“functions as an education authority”,
and,
“functions in respect of social services”.

In my little village in Cornwall, there is a bus that goes every morning to take people to the big school in the big town, which goes at much the same time as the little bus which takes people to the station, the supermarket or anywhere else. One has to ask why they are not combined. At the moment they have different budgets, and one is run by the private sector and the other is organised by the local authority. You could go a bit further and add river ferry services in little places like that.

The same applies to social services. This would need a great deal of flexibility: they will not all need a double-decker bus, but they might need a minibus or even a taxi. But if the information was there, there would be an enormous benefit. Small local communities, especially in the countryside, would actually realise that it was their bus and might even be able to have input into when the small ones go, on occasions. We now have the ability to do that with integrated ticketing, which we discussed on the first day of Committee. However, it is not just ticketing; people want information. Even people who might be getting a little old and are not always capable of understanding too many things about modern computers might well be able to find something which gives them the information they need about when the service might go and to get the message that it will be going. Going to hospital can be not only difficult and time-consuming for people, especially in the outlying places, but quite traumatic sometimes. With something like this, having everything bundled together—the school bus, social services and general transport—would be an enormous step forward.

How would this happen? The local authority if it is allowed to, or the mayor if there is a mayor, should be able to co-ordinate all these things. In Cornwall, they have got agreement with the Government to integrate social services with hospital funding, and I hope it extends to transport, which, in a long thin county, is extremely difficult. Those kind of things will bring benefits, and the feeling is certainly there that this can probably be done without any subsidy. If it is done properly, they might get more passengers and more revenue. It will be early days, and there may need to be some seed-corn money to start it off, but if we can get out of having every little service in a different box and never talking to each other, there could be real benefits and progress.

I am sure the Minister will say none of the four amendments in this group is perfect, but if he believes that the intent is worth pursuing, then I am sure there are discussions to be had and new drafting to be done to turn this into a reality. I very much hope that he will agree to that.

Earl Attlee: My Lords, I am sure that these are sensible and valuable amendments for the Committee to consider. However, they are “Supplementary to the Second Marshalled List”. That means that they must have been tabled on Friday, which means that there is no time for officials to consider a response for the Minister and no time for the Minister to consider the advice of officials. It is a little bit rich for the Opposition Front Bench to tease the Ministers for tabling their late government amendments when it tabled its amendments on Friday.

Lord Kennedy of Southwark: The point I was making was the government amendments that were tabled seemed to be making little drafting corrections, inserting odd words. For a Bill that has been in the planning for nearly a year, that seems to me to be remiss.

Lord Judd (Lab): My Lords, late or not, one has to look at the potential and the value of the particular amendment. I am greatly cheered by this amendment.

It seems to me that we are in danger of totally losing sight of the ideal of community and the rest. A well co-ordinated, integrated bus service can play a tremendous part in furthering community activity. We just compound the problem of our individualistic society in which community is breaking down because people resort to their cars, go and do their shopping, go back home and watch the television, put on their computer or whatever it is. The fact is that, if we are to have a life worth living, we have got to have community. The bus can potentially be central to that community. I applaud the amendment.

Lord Bradley: My Lords, very briefly, I also strongly support these amendments—late or not. We hear under the devolution deal a lot about the integration of health and social care and the integration of physical and mental health. Part of that is the integration of the transport system to enable people, particularly in the conurbations and city of Manchester—a poor and often elderly population who rely exclusively on public transport. We are developing a very effective integrated public transport system—buses, light rail, heavy rail—but we need to ensure that it benefits all the communities across Greater Manchester. This amendment enables that consideration effectively to be brought to the table to ensure that we have the best services possible to meet the real needs of local people.

Lord Ahmad of Wimbledon: My Lords, just to pick up on a couple of points, whenever you see something that can be improved, at whatever time, improve it. It is as simple as that, and better early than late, as long as time lines are met. We have heard about the inspiration of the noble Baroness, Lady Scott, and the ingenuity of the noble Baroness, Lady Jones. Indeed, this issue came up during the previous discussion. I am not sure whether the noble Baronesses received my letter in that respect—

Baroness Scott of Needham Market: Yes, I received a letter on the questions about rural public transport, which I raised at Second Reading, and a positive response on this issue. I did not mention it because I thought I would leave the noble Lord to take the glory.

Lord Berkeley: I received a lovely letter from the Minister, but only this morning.

Lord Ahmad of Wimbledon: As long as it was lovely, that is the important point to bear in mind. I thank all noble Lords, particularly the noble Baroness, Lady Jones, and the noble Lord, Lord Berkeley, for tabling their amendments, and acknowledge the noble Baroness, Lady Scott, for bringing this issue to the fore. The amendments aim to ensure that authorities think about the wider social, economic and environmental benefits of establishing a franchising or enhanced partnership scheme and remind authorities of their obligations relating to educational and socially necessary bus services.

Amendments 58A and 99ZA, tabled by the noble Baroness, refer to the Public Services (Social Value) Act 2012, which the noble Baroness, Lady Scott of Needham Market, mentioned in a previous Committee

debate. As I have already indicated, and as the noble Baroness has acknowledged, I have written to her on this matter. My understanding is that the Public Services (Social Value) Act 2012 requires authorities which commission certain public services to think about matters relating to securing wider social, economic and environmental benefits in the context of procurement.

I believe that it would be useful to use the guidance that will accompany the Bus Services Bill to remind local authorities of the duty that the Public Services (Social Value) Act 2012 places on them in certain circumstances and to give some guidance on the approach to be taken in relation to procurement activities not covered by the Act. I assure noble Lords that, on the contribution of the noble Baroness, I immediately set the ball in motion. Work is in hand in the Department for Transport to consider how best we achieve this and it is getting some accolades. The noble Lord, Lord Whitty, is not in his place, but it is becoming a fast favourite of the noble Lord.

I also agree that any authority looking to establish a franchising scheme or an enhanced partnership scheme should think carefully about the wider social, economic and environmental benefits that such a scheme could bring. The Bill includes requirements for authorities looking to establish a franchising scheme or an enhanced partnership to think about whether the proposed scheme would contribute to the achievement of relevant policies and to consider the impacts of such a scheme. I hope this has reassured noble Lords that the social, environmental and economic issues will be considered as schemes are developed and that references will be made quite specifically in the guidance that accompanies the Bill to ensure authorities are aware of their obligations under the Public Services (Social Values) Act 2012.

Amendments 58B and 99B, tabled by the noble Lord, Lord Berkeley, relate to educational and socially necessary services. Authorities have certain duties to consider whether to provide socially necessary services, and they also have certain duties with respect to providing home-to-school transport. I agree entirely that authorities should consider these obligations as they develop franchising or enhanced partnership schemes as co-ordinated commissioning of public transport for the whole area can lead to real efficiencies. This is one of the core principles of total transport, and I support it wholeheartedly.

The obligations on local authorities with respect to socially necessary and home-to-school services remain in place regardless of whether franchising, enhanced partnerships, or any other model is employed and I do not think it is necessary to restate these requirements in the Bill. I do however recognise that we can continue to do more to ensure that authorities are reminded of their obligations through the guidance that I have mentioned already.

The other issue raised by the noble Lord's amendment is that of an authority subsidising certain services which would not otherwise be provided. Authorities already have the ability to do this, and the Bill does not change that. I fully expect that authorities will subsidise certain services in a franchised model for example and confirm that this will be possible under any of the new models proposed through the Bill. The noble Lord,

[LORD AHMAD OF WIMBLEDON]

Lord Berkeley, talked about ferries. There is nothing to stop local authorities working with local operators to integrate ferries locally. Merseytravel's multi-operator ticket already does this. It is unlikely that including a reference to ferries and the 2012 Act in this Bill would fall within the permitted scope, but I will consider the point and will write to the noble Lord if I am not correct in this respect. I hope that the assurances I have given have gone some way to addressing the issues that noble Lords have raised and that the noble Baroness will withdraw the amendment.

Lord Kennedy of Southwark: I know the Minister is trying to be very helpful today and we are very grateful to him for that. He has asked my noble friend Lady Jones of Whitchurch to withdraw the amendment. Is he saying that he is going to go away and think about this? I am not clear whether he said that. The amendment that my noble friend moved is important. I am not quite clear what he is saying in asking her to withdraw the amendment.

Lord Ahmad of Wimbledon: In the interests of time, if the noble Baroness, Lady Scott, does not mind I shall share the letter I wrote to her with all noble Lords. That should have been done as a matter of course. It will perhaps highlight the Government's position, but to be clear, the Government are considering the provisions raised in the amendment, but within the guidance which will be in support of the Bill.

Lord Kennedy of Southwark: I think I got the letter, but I am afraid I not have actually read it yet. It arrived this morning in my email inbox. I just wanted to be clear what the Minister meant.

Lord Berkeley: On that point, has the Minister told the Committee when the guidance might be published in draft form? Will we be able to see it before Report, for example?

Lord Kennedy of Southwark: Apparently I did not get the letter after all. I certainly got a letter from the Minister this morning, but it may not be the one that we are talking about.

Lord Ahmad of Wimbledon: As I have reflected on before, while we are in the holy month of Ramadan, noble Lords should be thankful that they are not getting emails from me because they would be arriving at about 3 am. If I am writing them, I hope noble Lords are reading them. I will of course confirm when the guidance is due to be published, but I hope I have provided clarity and that the noble Baroness will withdraw her amendment.

Baroness Jones of Whitchurch: I think the Minister for his response and I thank all noble Lords who contributed. For a little while there, we had a sense of what is possible in the Bill. If we were not careful, we were going to get bogged down in the technical detail of franchising but, as my noble friend Lord Judd said, it is about building community and using the real advantages that you get with a Bill like this that comes along only once every 20 or 30 years. This is a chance

to build in that ambition and to have some excitement about the possibility that bus services can provide in terms of community assets. We have had a glimmer today of some of those opportunities.

My noble friend Lord Berkeley showed not only that you can have some innovation and excitement but that you can actually save money by pooling all those services. It seems foolish that social services pay for one set of transport while education pays for another, and no one ever thinks that they could pull that together into one complicated yet coherent grid.

I am pleased that the Minister spoke positively in response. I am slightly sad that he thinks this should go in guidance. I know we debate this over and over again, but guidance does not have the same weight as legislation. From our perspective, the social value Act is worth specifying in the Bill because it brings very specific requirements. I look forward to receiving the letter, when it eventually comes to us, but we need to explore how much more we can enforce this within the Bill rather than leaving it within the guidance. Perhaps that can be part of the wider discussion for us to have outside. In the meantime, I beg leave to withdraw the amendment.

Amendment 58A withdrawn.

Amendment 58B not moved.

House resumed. Committee to begin again not before 8.32 pm.

Tobacco and Related Products Regulations 2016

Motion to Regret

7.33 pm

Moved by Lord Callanan

That this House regrets that the Tobacco and Related Products Regulations 2016 place restrictions on product choice and advertising of vaping devices, were devised before evidence had accumulated that vaping was enabling many people to quit smoking, run counter to advice from the Royal College of Physicians to promote vaping and are so severe that they could force vapers back to smoking and create a black market with harmful products; and calls upon Her Majesty's Government to withdraw them (SI 2016/507).

Lord Callanan (Con): My Lords, the issue of vaping and the tobacco products directive gives me a curious sense of déjà vu. Before I arrived in this House I was a Member of the European Parliament where, alongside a number of other MEPs from many varied parties and nations, I also opposed these restrictions. We made some improvements to the text but we were unsuccessful in our aim of removing vaping devices from the directive altogether. I never imagined at the time that I would have an opportunity to return to the issue in this House.

Eight weeks ago a number of us gathered in the Moses Room to debate a Motion on this subject tabled by my noble friend Lord Ridley. Everyone who spoke in that debate—including, to his enormous credit, the Minister—expressed considerable concern about these regulations. Since it was self-evident that neither the Government nor the Opposition thought this was a helpful package of measures, I put down a Motion for a Prayer for annulment. No one likes these rules, so why implement them? I quickly realised that I was straying into controversial constitutional territory—although, given recent events, a mere fatal Motion in this House now looks like a rather inconsequential intrusion on the constitutional landscape of this country.

E-cigarettes are by far the most popular gateway out of tobacco for our nation's 9 million smokers. Some 100,000 of us die every year from smoking; that is a Hillsborough every eight hours. As my scientifically literate friends will no doubt explain, it is the smoke that kills, not the nicotine. There is now emphatic evidence of how much safer vaping is than smoking. Numerous studies have shown that vaping is 95% safer than tobacco smoking. In the UK, 2.8 million people have either stopped smoking or reduced their smoking significantly as a direct result of vaping. Yet, given all that evidence, these regulations will reduce by 95% the number of products on the market, ban the stronger liquids favoured by many vapers and ban virtually all forms of advertising to prevent suppliers from recruiting new smokers to the vaping cause.

So how have we ended up with this crazy state of affairs? The Department of Health prides itself on being a “global thought leader” on tobacco, to use its words, and while the department has played a strong game on pure control measures, by which I mean the ban on public place smoking and the taxation of smoking, it has been little short of appalling on its approach to tobacco harm reduction, by which I refer to the development of much less harmful substitutes to smoking.

There are two particularly egregious failures on the policy treatment of these smoking substitutes. The first occurred when the Minister of Public Health was one Edwina Currie. In 1988, in a moment of unhelpful decisiveness, she pushed through a ban on a product commonly called snus. This is an oral tobacco product which is a bit like sucking a teabag of tobacco leaves, and if noble Lords have not tried it I would not recommend it. Four years later, the EU decided also to adopt a ban. The only exception to the ban is Sweden, which negotiated an opt-out in the run-up to its referendum on joining the EU. Being permitted in one EU country but banned everywhere else provides us with a perfect case study of harm reduction measures. Because of the widespread use of snus, Sweden has by far the lowest smoking rate in Europe: 11% compared with the EU average of 26%. All the major forms of cancer are far lower, with the lowest disease rates correlating with the highest use of snus. The *European Journal of Epidemiology* has estimated that 200,000 lives could be saved every year if the EU had the same male smoking prevalence as Sweden, yet the product is banned because of us.

A second major blunder has been of course with the much more modern substitute of e-cigarettes. Here the Department of Health's medicines agency, the MHRA, tried to ban them outright in 2010. It failed, so it tried again in 2013, declaring that they should all be medicines. Despite its opposition to commercially regulated e-cigarettes, the MHRA has failed to get even one medicinally regulated e-cigarette on to the market during the past three years, whereas the commercial market has so far managed to produce about 25,000 product varieties.

The 2.8 million vapers using those products are not smoking literally billions of deadly tobacco cigarettes. Displaying a marvellous gift for understatement, the Royal College of Physicians this year declared that the MHRA's policy had been “counterproductive to public health”. However, in 2013 the Department of Health lobbied vigorously in Brussels for a Europe-wide policy of compulsory medicinal regulation. While I and my former colleagues in the European Parliament were able to ameliorate the policy, there was only a limited amount of change we could get through, hence the very flawed package that we are reviewing today. Economic modelling suggests that just one of the measures in it, the ban on stronger e-cigarettes, will cost more than 100,000 lives a year around the EU.

Not only was it a disastrous policy, it was also a disastrous policy process. In 2013 the then Public Health Minister, Anna Soubry, appeared before the European Scrutiny Committee to explain why she had decided to use a scrutiny override without informing other departments when she voted for this directive on behalf of the UK Government. The Minister told the committee in her evidence that e-cigarettes had in fact been excluded from the directive. They had not. If noble Lords can cope with viewing that cringe-making performance, it is, as they might imagine, widely available on YouTube. That level of competence was not just available at ministerial level. The Chief Medical Officer declared to the *New Scientist* a few months later that e-cigarettes were one of the three biggest health threats to the UK, along with obesity and binge drinking. It would be funny if the issue were not so serious.

What are the lessons of these two major policy errors by the Department of Health, which are costing us thousands of lives in this country? The first is the need for strong political leadership in the department. It is no good for the Secretary of State, who has presided over this latest debacle, to keep his head down. The new Prime Minister needs to recruit a real talent for the role of Minister for Public Health.

The other issue that needs to be looked at very hard is the role of the MHRA in policy development. It is a fact that this agency derives most of its revenue from the pharmaceutical industry. It is also clear that it has lobbied very hard for a land grab on e-cigarettes, yet has signally failed to deliver with any product available for consumers. Ministers should be extremely cautious about listening to its lobbying.

Let me give the House my favourite example of the way in which the MHRA is implementing the regulations. Many suppliers sell refillable e-cigarettes that are sold empty, ready for consumers to use their own e-liquid in them. A number of retailers told me that the MHRA had instructed them to affix warning labels to

[LORD CALLANAN]

these products saying that they contain nicotine, which of course they do not at the point of sale. I assumed my correspondents were exaggerating and had got their facts wrong, so I obtained a copy of the official MHRA guidance. Let me quote from the section headed “Labelling your Product”:

“If your product does not contain nicotine when sold, but can be used to contain nicotine, the warning statement ‘This product contains nicotine which is a highly addictive substance’ must still be applied”.

It helpfully goes on to state:

“To provide clarity for consumers, we recommend adjacent wording (not part of the boxed warning) to the effect that the warning applies when the product is used as designed and ... filled with nicotine-containing liquid”.

In other words, first, they must falsely label the product as containing nicotine when it does not, and then they must clarify for consumers that the product will contain nicotine as soon as they put some nicotine liquid in it. I do not know whether to laugh or cry at the MHRA, but in my view passing such regulations brings the law into serious disrepute.

Bizarrely, while the department is doing its best to restrict sales of one tobacco substitute, which costs taxpayers nothing, we are heavily subsidising nicotine-containing gum and patches, because they are given out on prescription. The difference, of course, is that these products are made by the big pharmaceutical companies, which appear to have the Department of Health as a sort of wholly owned subsidiary. These companies stand to lose large amounts of money as sales of their nicotine substitutes have collapsed with the advent of e-cigarettes. The pharmaceutical industry uses its massive spending power to manipulate the harm reduction debate. It funds conferences, so-called medical charities and quasi-academic research to justify its position. If the Department of Health is to improve its performance on tobacco harm reduction, it needs to be just as cautious in its dealings with pharmaceutical companies and their allies as it is with the tobacco industry.

This poverty of performance by the Department of Health led my noble friend Lord Prior to confess to the House that, if it had not been for the moderating effect of Brussels, the new regulations could have been “far worse”. This is a very difficult issue for a Brexiteer such as me to confront. Certainly, and somewhat unjustly, the EU has been on the receiving end of anger over the e-cigarette regulations. One poll found a very large majority for Brexit among vapers, who said they were angry with the regulations because of what they perceived to be the excessive influence of the big companies. Some of my noble friends might even wonder whether Anna Soubry in her role as Minister for Public Health was a sleeper agent for Vote Leave.

Where should policy go now? Although contrition from the Minister would be welcome, the key is to take concrete steps to improve the situation. Critical issues to which I ask the Minister to respond this evening include measures to rebuild consumer confidence in e-cigarettes. Smokers who do not currently vape perceive e-cigarettes to be much more dangerous than scientists say they in fact are. We need serious action, not just a

few warm words. We also need a clear plan to put into production medicinal supplies of the stronger e-liquid used by a quarter of a million vapers, including my noble friend Lord Cathcart. It would be unconscionable if the MHRA were to fail on this once again. The need is simple: several suppliers of base e-liquid should be approved by the MHRA before Christmas.

7.45 pm

Now that we are going to leave the EU, we have the opportunity to make regulations that will be evidence-based and to create a climate in which smokers can quit for safer products. We need to remove the ridiculous restrictions on product choice and the advertising of e-cigarettes and other reduced-harm products, such as heat-not-burn products. To this end, I welcome the Treasury’s consultation on the taxation of heated products later this year.

Finally, there is the global policy-making role of the department. When the Framework Convention on Tobacco Control meets in India later this year, I hope it will consider a Department of Health advocacy paper on harm reduction free from the commercial interests of the pharmaceutical industry. I beg to move.

Amendment to the Motion

Moved by Lord Hunt of Kings Heath

As an amendment to the above motion, to leave out “and calls upon Her Majesty’s Government to withdraw them” and insert “and further regrets that the Regulations are not to be accompanied by a public information campaign to reassure smokers that electronic cigarettes are less harmful than normal smoking; that smoking cessation services are being cut back at the same time as the Regulations are being introduced; and that the Regulations are due for implementation before the Government have published their tobacco strategy.”

Lord Hunt of Kings Heath (Lab): My Lords, I welcome this debate and thank the noble Lord, Lord Callanan, for allowing us to have a further go, since we have already debated it in Grand Committee. I am sure the Minister is looking forward to winding up at the end of the debate.

I should declare an interest as president of the Royal Society for Public Health, which has pronounced on e-cigarettes. I would say to the noble Lord, Lord Callanan, who was a mite critical of the organisation, that as a Minister I established the MHRA, and I am glad to see that it is doing so well in relation to this matter. I liked his rousing endorsement of the record of Ministers in his Government on this matter. When he mentioned Edwina Currie, I thought he was going to talk about eggs—he will recall that she had a bit of a downer on egg production—but she did not quite take it to Europe in the way he suggested.

I have moved an amendment to the Motion because, although I share some of the noble Lord’s concerns about the regulations in relation to e-cigarettes, my problem with his Motion is that he calls on the

Government to withdraw the entire set of regulations. The regulations cover e-cigarettes, but there are also a lot of useful measures that will discourage smoking in general. That is why I cannot support the noble Lord's Motion, although I share some of his concerns.

It is pretty clear from the work of my own organisation, the Royal Society for Public Health, as well as from that of the Royal College of Physicians and other health bodies, that e-cigarettes can actually be an incredibly useful tool in encouraging smokers to give up smoking. The core of people who have already taken advantage of e-cigarettes are often those whom traditional public health measures have not touched. That is why I am particularly concerned about whether the regulations will have a negative impact on that group.

Equally, I know that noble Lords will quote the report of the Royal College of Physicians. It is worth reading because it says that there is a case for some regulatory provisions, and the Minister will no doubt refer to that. However, my main concern is the point, which was made by the noble Lord, Lord Callanan, that RSPH research has revealed that 90% of the public have the impression that e-cigarettes are at least as harmful as tobacco. That is not helped by the fact that some organisations have notices prohibiting not just smoking, but vaping. Because some elements in the public health field—how can I put this kindly?—perhaps got the wrong end of the stick when e-cigarettes were first produced, they have given the impression that e-cigarettes are much more harmful than they are. The problem with the regulations is that they colour the context, and the public may be confused about the positive effect that e-cigarettes can have. Therefore my amendment to the Motion—I do not intend to delay the House very long—seeks to draw attention to some of the concerns that we have about the regulations on e-cigarettes, although we wish to see the regulations introduced as a package.

However, I also draw attention to the other problem that we have with the Government's current policies on smoking cessation, which is that budgets, particularly those which go to local authorities, have been drastically reduced, and we have seen a drastic reduction in smoking cessation services. As an example, the amount of money that has been spent on smoking cessation media campaigns has been drastically reduced. Some £24.91 million was spent in 2009-10, which has become £5.3 million in 2016. Of course, I understand budgetary constraints, but I would also say that because of the risk of confusion by the public over e-cigarettes, some Department of Health-sponsored public campaigning is necessary to get the right facts across to the public.

Lord Forsyth of Drumlean (Con): The noble Lord said that he could not support my noble friend's Motion because it referred to all the regulations. Why, then, does his amendment not seek simply to delete Parts 6, 7 and 8 of the regulations? Which parts of the regulations as they stand does he not agree with?

Lord Hunt of Kings Heath: I thought that my amendment elegantly dealt with the broad principles rather than going into technical details such as which paragraph I do not like. I am disappointed by the

noble Lord's intervention on that matter. No doubt he is stunned by his noble friend's remarks that in fact the EU came to the rescue of the UK. We know that if the EU had not legislated in this area, the Government would certainly have brought in legislation much earlier which would have been much more draconian than the regulations that are before the House tonight.

Lord Forsyth of Drumlean: We can change that.

Lord Hunt of Kings Heath: No doubt we will of course be able to see in the future what a Government would do in the event of Brexit. However, to be fair, at the moment we are debating these regulations, which have come into force. I have attempted to signal some of my concerns that this would have a negative impact on the use of e-cigarettes without detracting from the overall regulations. I beg to move.

Baroness Walmsley (LD): My Lords, I was most interested in the speech made by the noble Lord, Lord Callanan, and in particular his gallant admiration of his colleague the Public Health Minister, who in my experience has usually been quite on top of her brief. I venture to warn the noble Lord never to make a mistake in your Lordships' House, because I suspect that Facebook might be watching. I was also very moved by his defence—in fact it was quite tear-jerking—of the discrimination against the multi billion pound tobacco companies compared with the multi billion pound pharmaceutical companies.

I agree with much of what was said by the noble Lords, Lord Callanan and Lord Hunt of Kings Heath, about the desirability of encouraging smokers to give up smoking. There is no doubt that vaping devices have an enormous role to play in this campaign, as many former smokers have managed to give up through using them. However, the regulations are not just about vaping devices but include, as the noble Lord, Lord Hunt, pointed out, standardised packaging regulations, which are essential for ensuring the effectiveness of the health information and warnings on cigarette packs. They also help to enable the UK to meet its obligations as a party to the World Health Organization's Framework Convention on Tobacco Control with respect to tobacco packaging and labelling, and product regulation.

There is no doubt that vaping devices have already been an enormous benefit to public health—although I fail to see why we need 25,000 different kinds of them—and have saved the NHS a great deal of money. When the directive to which these regulations give effect was first discussed in the European Parliament, as has been said, the Liberal group, which contained at that time several Liberal Democrat MEPs, worked hard to ensure that while the regulation of tobacco packaging continued to be robust, the regulations about vaping devices would be proportionate. Given that the original proposals followed the World Health Organization's recommendation that these products should be licensed as medicines and would therefore be extremely tightly regulated, the Liberal group had some considerable success in making them a bit more proportionate, resulting in the directive as it is now. However, one of the things on which the group was

[BARONESS WALMSLEY]

not successful was the prohibition of commercial advertising of vaping products. This is the major item contained in my regret Motion.

According to the Royal College of Physicians, vaping is 95% less harmful than smoking and half of all smokers die from diseases that result from smoking. That is why it is vital that smokers can get information about these products and their benefits, and I regret very much that publicity about them is to be restricted. However, I support the noble Lord, Lord Hunt, in his call for a new public information programme to inform smokers of the benefits of switching to e-cigarettes. It may surprise your Lordships to know that half of smokers are not aware of how much safer for their health e-cigarettes are. I also agree with the noble Lord, Lord Hunt, in regretting the cutting of smoking cessation services—one of the many results of the public health funding cuts which I have condemned many times in your Lordships' House.

I suppose that one of the reasons for the advertising ban is the fear that advertising will attract young people to vaping even though they have never smoked. This is of course undesirable, because nicotine vapour is very addictive, and I would not want to see children being attracted to spending their money on something so addictive and with no known benefits to their health. Indeed, more research needs to be done on the effect of nicotine inhalation combined with the various flavouring chemicals used in e-cigarettes. Some evidence is emerging that if inhaled, some of the flavourings may be harmful to the delicate cells lining the lungs. But although e-cigarettes have been around for years, there is no significant evidence that they are attracting non-smokers to take them up. On the other hand, we now have a large and growing cohort of people who use vaping devices, which is why I call on the Government to fund research on the benefits and—if there are any—the dangers of vaping.

Everything should be done to encourage smokers to switch to vaping, which is why my Motion also regrets that little attention has been paid to those vapers who claim that they need the higher-end concentration of nicotine products, which would be banned by some of these regulations, to help them give up smoking. Only time will tell whether that is the case. That is why the Government need to monitor and report on the implementation of these regulations and their impact on public health. While the further regulations on cigarette packaging are likely to be good, those on vaping devices could turn out to be bad.

Therefore, like the noble Lord, Lord Hunt, I do not support the Motion in the name of the noble Lord, Lord Callanan—that the Government should withdraw these regulations—because we need the ones that affect tobacco. However, although I sincerely regret the Government's current intention to withdraw from the European Union in the fullness of time and hope very much that it never happens, the current situation does give us an opportunity. As things stand we are not able to keep the good tobacco regulations and ditch the undesirable ones, but the forthcoming negotiations do give us an opportunity to do a bit of cherry picking.

I therefore ask the Minister, what is the Government's intention with regard to these and other EU regulations? Do they plan to adopt them all and then repeal the ones they do not like? If so, I call on the Government to consider carefully any deterrent to smokers switching that might result from these regulations, and to repeal the ones that deter them as soon as possible. Of course, that would require careful monitoring and publication of the results. On the other hand, in the unlikely event that the Government plan to repeal all EU regulations and then adopt new UK ones, I call on them to replace only the ones that affect tobacco packaging and marketing to further decrease the public health burden of tobacco and the terrible effects on the health of individuals and the NHS.

Given that all these regret Motions are non-fatal, I do not intend to vote on mine, although if the noble Lord, Lord Callanan, votes on his, my colleagues and I will vote against it. We are where we are. What matters now is what the Government do in future. Lives depend on it.

8 pm

Lord Campbell-Savours (Lab): My Lords, in February 1996 I found myself under the surgeon's knife, on the slab at St Bartholomew's Hospital in London, having a tumour on my lung removed, an operation in which I lost half of my lung capacity, making it impossible for me now to walk upstairs or walk any great distance. The reason for all this was that for 25 years I smoked cigarettes.

I only wish that these new inventions that now exist had been available to me. I tried hypnosis on Harley Street. I tried patches of different forms. I could not quite do cold turkey but I tried everything possible to stop smoking, and it was utterly impossible. Indeed, I had my last cigarette the night before they took out the tumour. That is how addicted I was to tobacco.

With that in mind and knowing of my particular difficulties, a gentleman in the north of England wrote me a letter. I want to bring the salient points of his correspondence to the attention of the House, because he manufactures the product in question. He says:

"we ... have 3 Shops and 6 employees ... we are manufacturing the eliquid that is used in the devices. We have sold thousands of these devices locally"—

that is to say, in the north of England—

"and helped so many people make the switch. This has been such a rewarding and positive part of the business for myself and staff who still love helping people to remove a lifelong use of tobacco and improve their health".

If those listening to my contribution this evening can hear my heavy breathing, that is the result of the operation that took place as a result of smoking all those years ago.

In his letter, that gentleman says that the two millilitre tank size restriction is pointless and restricts future product development. I wonder if the Minister might deal with these matters in the wind-up, if he is able, because some of this is technical. Perhaps he could write to me with a greater explanation.

The manufacturer says that limiting nicotine strength to 20 milligrams per millilitre is counterproductive as it removes the 24 milligram strength which is essential

to lots of new switchers. He says the restriction of bottle size to 10 millilitres is pointless as much more hazardous household products are available in much bigger sizes. The popular size for cost-effectiveness and suitability is 30 millilitres, and bottles of 100 millilitres are available too. People can average, he tells me, 10 millilitres per day liquid usage, so a restriction on supply there is again counterproductive.

There will be a restrictive cost in introducing new products to the market. Remember, this man is a manufacturer. He says he will be classed as a producer when importing goods from outside the European Union, with MHRA notification and testing costs implications to bear. Therefore, a lot of suitable and effective products will be removed from the market. He says:

“We are looking at having to find the Cost of Emissions & Toxicology data requested per flavour SKU for our own manufactured liquids. This is estimated at £5,000 each per flavour, of which we have 20, plus Notification & data submissions for any variables of strength would also be required. Our business model could be changed from a manufacturer to a retailer with loss of jobs & future investment stifled if we are unable to bear the cost of this directive’s implementation. We can already see a burgeoning black market which the TPD (Article 20) will encourage. Individuals are now making eliquid at home & selling to whoever they please, with no testing done or age restrictions adhered to or tax paid”.

I would have thought that that is particularly relevant in this debate. He says:

“This is not a tobacco product and should not be classed as such. Doing so is disingenuous & misleading with implications for people’s health. We hope you can recognize the huge potential to save millions of lives & the health revolution this presents ... to governments the world over”.

I hope the Government will find a way of re-examining these regulations. Potentially, we could do a lot of damage to a lot of people.

Baroness Hollins (CB): My Lords, I refer to my interests in the register, perhaps particularly that until last month I was chair of the board of science for the British Medical Association.

The Motion from the noble Lord, Lord Callanan, states that the regulations,

“run counter to advice from the Royal College of Physicians to promote vaping and ... that they could force vapers back to smoking”.

Noble Lords should be aware that the Royal College of Physicians does not support the Motion. The Royal College of Physicians, together with ASH, the BMA, Cancer UK, the Royal Society for Public Health and the UK Centre for Tobacco and Alcohol Studies all support the TRPR, including the regulation of e-cigarettes. Yes, medical organisations such as the RCP and the BMA recognise the substantial harm reduction offered by e-cigarettes, but they also conclude that they are not harmless—both identify the need for regulation of e-cigarettes to protect the public.

Noble Lords may have received some very inaccurate briefings, making some assertions that are just not substantiated by the evidence. For example, “nicotine itself is not dangerous”. It is just not true. It is both toxic and addictive. Although vaping using electronic cigarettes is much less harmful than smoking, nicotine is toxic. It is also not helpful if you are going to have surgery. It is not helpful when it is swallowed. It is

harmful when it is in contact with the skin, and its addictive properties, for me as a psychiatrist, are particularly of concern.

It is just not true that the limits of 20 milligrams per millilitre will force many vapers to return to smoking. Use of high-strength nicotine is not the norm, and vapers who need more nicotine can get it by vaping more frequently.

It is not true that the regulations mean no advertising. Substantial forms of advertising would still be permitted under the regulations—at point of sale, on billboards, on buses, as inserts in printed media and as product information on websites. Furthermore, the ASH/YouGov results show that more than 90% of smokers are now aware of e-cigarettes, so existing smokers already know about vaping. It is the non-smokers, whom we do not want to become addicted to nicotine, who are not so aware.

Lord Forsyth of Drumlean: Can the noble Baroness explain why it is okay to advertise on the side of a bus but not in a newspaper?

Baroness Hollins: I do not have an explanation for the kinds of advertising that have been approved, but some advertising is still permitted. The information that is being put out is that no advertising is allowed.

There are particular concerns for people with serious mental illness, given that about one-third of all tobacco consumption is by people with current mental health problems. I could go into some of the complications of smoking and the relationship between nicotine and some of the psychotropic medications that are used. The Royal College of Psychiatrists states that e-cigarettes, “seem to be fairly effective in helping smokers stop or control their smoking”,

but it goes on to say:

“Although they seem to be safe, we aren’t yet clear about longer-term health risks”.

Any benefits or disadvantages to public health are not yet well established. This reflects concerns over e-cigarettes’ effectiveness as a smoking cessation aid, the variability of the components of e-cigarette vapour and the absence of the significant health benefit associated with the dual use of e-cigarettes and tobacco cigarettes. The BMA strongly believes that a regulatory framework is essential. I hope that noble Lords will agree with the medical experts who have supported these regulations.

Baroness O’Cathain (Con): My Lords, this has been a very interesting debate so far; it has been good-humoured and full of humour. I was glad to hear the noble Lord, Lord Campbell-Savours, and the noble Baroness, Lady Hollins, talk about the seriousness of this situation.

I and at least two other people whom I see in the Chamber at the moment fought like tigers to make sure that smoking was banned in public places. We did it because all the evidence suggested that it was a terrible scourge on people who were addicted to tobacco and smoking and just could not break the link. From a personal point of view, I come from a family of five, of whom four died prematurely from either smoking or the effects of tobacco. I know of friends who have similarly died and those have not been very pleasant deaths either. I am not saying that vaping will cause

[BARONESS O'CATHAIN]

that problem, but why do we need it? They say, “Okay, it’s part of a smoking cessation thing”. I really do not believe it; I think that e-cigarettes should be banned totally and more money put into helping smoking cessation programmes. Such programmes have worked, so why not carry on with them?

I should not say this, but I am going to: nobody knows just how manipulative the tobacco industry was during the period when we were fighting it. It was quite disgraceful—I see my fellow in arms, the noble Lord, Lord Faulkner, looking at me and agreeing. I am concerned that, with our having gone through all this and now reducing the amount of money spent on smoking cessation programmes, we will find in another 20 or 30 years—well, I will not be around—that we are doing it all again and people will be smoking. So I just say: please take care.

Lord Faulkner of Worcester (Lab): My Lords, I am grateful to the noble Baroness for referring to me and the part that a number of us played in making the United Kingdom a leader in attempting to reduce the prevalence of tobacco smoking. As your Lordships will recall, it was this House which passed the amendments to the then Children and Families Bill which led to the UK being the first country in Europe to introduce standardised packaging in 2014. Incidentally, it is my understanding that, if the regulations being debated today were annulled, that legislation on standardised packaging would be badly damaged. I would be grateful if the Minister would comment on that.

As the noble Baroness, Lady Walmsley, said, the regulations are an important part of the way in which the United Kingdom should meet its obligations to the international tobacco treaty, one requirement of which is that we take continuing action to cut smoking prevalence through “comprehensive tobacco control” strategies. The regulations include other important measures such as the prohibition of flavours in cigarettes, including menthol, designed to attract young people to start to smoke. There are new reporting obligations on the tobacco industry, and rules on notifying new tobacco products. These provisions are important and should not be lost by way of some attempt to make the climate easier for vaping.

8.15 pm

ASH estimates that electronic cigarettes, the subject of today’s Motions, are used by around 2.8 million adults in Great Britain, with users made up almost entirely of current and ex-smokers. Vapers report using these products to help them cut down or quit altogether. But we must understand that electronic cigarettes are not a magic bullet. There are still some 9 million smokers in our country and our policies need to be broader than just encouraging smokers to switch to vaping. E-cigarettes help people trying to stop, but only when they are supported by stop smoking services—my noble friend Lord Hunt referred to the regrettable cut in budgets for those services.

The noble Baroness, Lady Hollins, mentioned the Royal College of Physicians, whose report said that, although electronic cigarettes are much less harmful

than smoking, the health effects of long-term use are not yet known. Given the absence of long-term evidence and the addictiveness of nicotine, it is right and necessary that the regulations strike a cautionary note. It would be helpful for the Government to develop a review process which monitored the developing evidence on electronic cigarettes, published interim conclusions and ensured that public health organisations and users were fully consulted.

The House needs to be aware of the role of the tobacco industry in the nicotine and electronic cigarette market—the noble Baroness, Lady O’Cathain, referred to the activities of the tobacco industry during the passage of the various pieces of legislation through Parliament. Its involvement includes the growing of the tobacco from which nicotine is extracted, and the buying-up of small, independent electronic cigarette manufacturers, as well as the manufacturers of new products. Investment in e-cigarettes by the tobacco industry also offers opportunities for it to claim legitimacy and get a foot in the door for re-engaging with policymakers. I cannot believe that anybody would like to see that happen.

Viscount Ridley (Con): Surely the tobacco industry looked around the world and saw—like Kodak looking at digital photography coming along—a huge threat to it. Of course it is now trying to muscle in on the act, but this is a good thing. If it starts making electronic cigarettes and becoming more profitable, it will give up on other cigarettes. The reason it got into this industry was because it saw it as a threat.

Lord Faulkner of Worcester: My Lords, I would be a little more convinced if the tobacco industry took its responsibilities seriously in countries where the restrictions on smoking were not the same as in the western democracies. The attempt to promote, advertise and sponsor tobacco smoking, particularly in the Far East, is utterly deplorable. The industry views the whole tobacco and vaping market in a very cynical way, so I am afraid I do not agree with the noble Viscount.

Viscount Ridley: In South America, vaping is banned altogether. Why? Because the tobacco industry is big and powerful in that part of the world.

Lord Faulkner of Worcester: It is very interesting, because in countries which take tobacco cessation seriously, the tobacco industry is switching to vaping, as it knows its traditional market is largely lost. Only last month, in this country, it attempted to undermine public health by trying to overturn the standardised packaging regulations. It cannot be trusted.

Finally, I share my noble friend Lord Hunt’s call for continued funding for stop smoking services, making them accessible and available to all smokers, and for such services to work with electronic cigarettes. It is wrong that these services are being cut back while the regulations are being introduced.

Our aim must be to be as ambitious as the most committed nations are in achieving a tobacco-free society over the next few decades. Over the last 10 years, we have already come a huge distance in changing public attitudes towards smoking, which is now largely

seen as a socially unacceptable behaviour. My concern over vaping is that it must not in any way renormalise the smoking habit.

Lord Lansley (Con): My Lords, from my point of view, my noble friend Lord Callanan chose to talk very selectively about the record of the Conservative Party and the coalition Government in relation to tobacco control. I think he should bear in mind that Conservatives—myself, my noble friend Lord Young of Cookham—worked hard from the Opposition Benches in another place, and succeeded in securing the ban on smoking in public places. When we came into the coalition Government together, we implemented the ban on sales through vending machines and a progressive ban on displays in shops. I also initiated the consultation on standardised packaging, following discussions with Nicola Roxon, who was then Health Minister in Australia, which my successors have taken forward. The product of all that is that we have not only secured continuing reductions in the overall prevalence of smoking—albeit I could wish this rate was faster—but we secured, I think three years ago, recognition that we had among the toughest tobacco-control regimes anywhere in the world. That is right and we should strive to make that the case.

I know it would not be the effect of the Motion in the name of my noble friend Lord Callanan, but were it passed it would indicate your Lordships' desire to withdraw the regulations if they could. That would be an entirely retrograde step. I will not go through all the ways in which the tobacco products directive helps to strengthen the tobacco control regime other than in relation to e-cigarettes, but it certainly does.

I will isolate one important point which has not yet been mentioned. Much of what we have done in recent years, from my point of view and that of my colleagues—Anne Milton when she was Public Health Minister, and I believe it was among Anna Soubry's and Jane Ellison's objectives subsequently—was to focus on reducing the initiation of smoking among young people. We have some 200,000 young people a year initiating smoking. That is what we have to bring down. We want to arrive at the point where the initiation of smoking is minimised. As part of that, we have to look frankly and critically at how electronic cigarettes and vaping can contribute to the reduction of smoking, through access to smoking cessation services. It is absolutely right and I do not have any brief against e-cigarettes in that respect. But, to pick up the final point made by the noble Lord, Lord Faulkner of Worcester, we have to understand what the social and behavioural impacts of large numbers of people continuing to smoke e-cigarettes in the long term look like. I am not sure that promoting it through advertising is necessarily the right way to go.

We should enable smokers to access e-cigarettes and vaping, and do everything we can through the public health budget. Noble Lords will know—I will go into it on another day when more time allows—that my objective in creating a separate public health budget with local authorities was to maximise and protect our preventive activity, not to see it subsequently reduced. I deplore that fact because we were making considerable progress with smoking cessation services, as we should.

But we also have to ensure, in addition to the use of e-cigarettes in a way that reduces smoking, that we do not create a new mechanism which might entrench in young people an expectation that they should initiate any kind of smoking, be it through vaping and using e-cigarettes or, even worse, through smoking tobacco. For that reason I agree entirely with many other speakers that it would be undesirable to support my noble friend's Motion, and I hope that the Minister will agree that we should reject it.

Lord Rennard (LD): My Lords, the noble Lord, Lord Lansley, is to be greatly congratulated on his tremendous record of achievement in this area, and his advice this evening should be followed very carefully. I must declare my interest as a former director of Action on Smoking and Health. There is a consensus in the debate that using e-cigarettes is much safer than smoking. Together with other clean nicotine products, they have an important role to play in cutting tobacco consumption and improving public health, but I do not agree with the e-cigarette trade body brief which has been circulated. It claims that nicotine is not itself dangerous. As the noble Baroness, Lady Hollins, pointed out so effectively, we have to recognise that nicotine is a known toxin that is poisonous when swallowed and is also addictive.

I do not want to see e-cigarettes subject to more regulation than is necessary, but I do want to see them subject to all the appropriate regulation necessary to support public health objectives. We know that the best chance of success for people seeking to quit smoking is to use smoking cessation services as well as alternative nicotine products in order to help reduce withdrawal symptoms. The regulatory regime required for e-cigarettes and related products must be one that supports their use by smokers trying to quit. It is also right to discourage their use by children and young people who have never smoked. Both these objectives are supported by the regulations being introduced.

I agree with the many noble Lords who have said that we need a public information campaign to reassure smokers that electronic cigarettes are less harmful than normal smoking but, as the Motion in the name of the noble Lord, Lord Hunt, points out, there have been major cuts to the media campaigns to persuade smokers to quit. That is very regrettable because such campaigns can be highly cost effective in supporting quitting. We know that alternative nicotine products for smokers have most public benefit when they are used together with expert behavioural support. That is one reason why we need to make sure that such products can be available on prescription for people seeking help to quit tobacco products. Our approach to e-cigarettes, therefore, must be to treat them not as an exciting new social drug or as a cash cow for e-cigarette companies, many of which are owned by the tobacco industry, but as a potentially important means of improving public health and reducing the toll of death and disease caused by smoking.

The regulations under discussion are not perfect, but they include important steps in tobacco control that must not be lost and must be part of a tobacco control strategy that must be properly resourced to produce real public health dividends.

Earl Cathcart (Con): My Lords, I find these regulations bizarre as far as vaping goes. They defy both logic and the evidence. Brussels believes that vaping could provide a gateway to smoking and that these tough new laws are necessary to protect non-smokers, particularly children, from using e-cigarettes. The evidence does not support that view. The Office for National Statistics has stated:

“E-cigarettes are almost exclusively used by smokers and ex-smokers. Almost none of those who had never smoked cigarettes were e-cigarette users”.

Cancer Research UK found that smokers who vape are 60% more likely to quit than those who use willpower or over-the-counter nicotine replacement products. Its statistics demonstrate that vaping is used almost entirely—99%—by current and former smokers, more than 60% of whom say that the sole reason for vaping is to stop using traditional tobacco. Interestingly, only 0.2% of non-smokers aged under 18 have tried vaping and continued use is negligible. So the evidence does not support Brussels’s reasons for these regulations.

Public Health England has stated:

“There is a need to publicise the current best estimate that using EC is around 95% safer than smoking”.

Professor John Britton, of the Royal College of Physicians, says:

“If all the smokers in Britain stopped smoking cigarettes and started smoking e-cigarettes we would save five million deaths in people who are alive today. It’s a massive potential public health prize”.

8.30 pm

Noble Lords would think that Brussels would want to encourage vaping but no, that would be too logical. Brussels is banning advertising of e-cigarettes, but this is cack-handed for two reasons. First, if we can advertise nicotine patches, why not e-cigarettes, which are just another way in which to absorb nicotine into the body? As the noble Baroness, Lady Hollins, said, advertising can be done on buses—I did not know that—so why cannot it be done in newspapers, on television and so on? Secondly, given that e-cigarettes are 95% less harmful than tobacco, how are tobacco smokers to find out about vaping and thus improve their health by giving up tobacco? Brussels wants e-cigarettes to carry health warnings but what on earth will they say? Perhaps I may suggest: “If you smoke tobacco, try vaping as it is 95% less risky than tobacco”, but I do not think that that is what Brussels has in mind.

These regulations will also restrict the nicotine strengths of e-cigarettes to 2%. It is this proposal that really irritates me. I started smoking before I was a teenager and built up to 50 cigarettes a day. I tried every trick in the book to kick the habit but nothing seemed to work, as the noble Lord, Lord Campbell-Savours, found. I knew that smoking would kill me and that I would be gathered by the grim reaper before time, but I just could not stop. I could not kick the habit. Then, two summers ago, a taxi driver suggested that I try e-cigarettes. They had worked for him but he insisted that I use the strongest nicotine strength available because if I did not do so, I would not get the necessary nicotine hit and I would be back on fags in no time. I took his advice about using the strongest nicotine—2.4%—and I have not looked

back. I have not had a puff of tobacco since two summers ago. E-cigarettes work and help people to stop smoking.

I still use the 2.4% strength, and I find that vaping gives me between 75% and 80% of the satisfaction that tobacco smoking did, but I can live with that. What worries me is that when I run out of my supply of 2.4% nicotine and have to reduce to 2% nicotine, as per these regulations, I will not receive the necessary nicotine hit and I might return to tobacco. There are hundreds of thousands of vapers like me who use nicotine strengths above 2% and, like me, they rely on that higher strength to prevent them returning to tobacco. Also, the higher nicotine strengths are critical in helping smokers with the initial transition from tobacco to vaping. Imposing a limit of 2% would mean that many vapers might return to using tobacco or might buy stronger nicotine illegally on the black market.

These regulations directly affect me, my health and my well-being. I could not understand why Brussels wanted to penalise the vaping industry and vaping users but after hearing my noble friend Lord Callanan’s contribution on the pharmaceutical and tobacco industry having got at Brussels, all is now clear. I am sorry that we are considering only a regret Motion. If I could vote against these regulations, I would.

Lord Forsyth of Drumlean: My Lords, first I congratulate my noble friend Lord Callanan on the very excellent case that he put. I shall not proceed by repeating any of the arguments. I have looked at the regulations, but some people who have spoken in the debate clearly have not.

If someone wanted to sabotage a product, add to the costs of producing that product, limit the scope for competition with that product, and drive out of business small producers, it is hard to see how a more effective job could be done than in respect of the regulations that apply to electronic cigarettes. As far as noble Lords who argued that this is all a plot by the tobacco companies are concerned, one way of ensuring that all of this ends up in the hands of large businesses will be by pursuing exactly these regulations—by limiting choice and, of course, by creating a black market, which will be accessed through the internet, as we have seen occur over and over again in respect of medicinal products.

There seems to be no logic in the regulations. We have already touched on why some advertising is allowed but not others. I find it extraordinary that a Government should want to ban advertising when the evidence that we had from ASH—the noble Lord referred to that—states:

“Perceptions of harm from electronic cigarettes have grown with only 15% of the public accurately believing in 2016 that electronic cigarettes are a lot less harmful than smoking”.

If most people do not realise the benefits of it, what on earth is the logic of preventing people advertising it? How does the noble Baroness, Lady Walmsley, explain that she wants a public information campaign? How can we have a public information campaign without advertising the benefits of electronic cigarettes? Therefore, why is she against the advertising of electronic cigarettes? There is no logic in that.

I hope that noble Lords do not mind me mentioning the fact that my son is 37 years old. He has smoked cigarettes since he was 16, to the best of my knowledge, and probably earlier. He smoked very heavily, but three Christmases ago—I should declare an interest—I bought him an electronic cigarette. As a result, he has reduced the levels of nicotine and of all the things that we have tried—blackmail, bullying, nicotine patches, and everything under the sun—it has worked. The figures show that one-third of the 2.8 million adults who are vaping in this country are ex-smokers. The arguments being put for the public health benefits are overwhelming.

It pains me to say this, but this is a classic example of gold-plating of European regulations by the UK health department. The point is that, because the regulations are gold-plated, there is nothing we can do about them. They are EU regulations and we are required to implement them. I wonder what on earth was going on in the Department of Health that made it do this.

When we see something absurd happening, we should ask, “Cui bono?”. Who benefits from this? Certainly the Government benefit from it because people who are continuing to smoke cigarettes will pay a very considerable amount in tax to the Exchequer. I do not know how much a packet of cigarettes costs, as I have never smoked my life, but I am told it is about £9 for 20 cigarettes. People who start vaping will not spend that in a week. Families on low incomes—and many of the people who smoke heavily are among the lowest-income families—will benefit from something which enables them to deal with the addiction that they have to nicotine and remove themselves from it. Who benefits from this? Certainly not the people who are among the poorest in our country who are smokers. The Exchequer benefits—the Treasury benefits—if people are still smoking cigarettes because it gets its tax on the cigarettes, which is very considerable. Of course, the pharmaceutical companies, which sell the nicotine patches, benefit. The tobacco companies benefit because people are not switching away.

So what on earth are the Government doing, promoting the interests of the tobacco companies and the large pharmaceuticals—because that is the effect of this? The detail in the regulations is unbelievable. They even spell out which typeface—Helvetica—appears on the warnings, and whether it should be bold or italic. That is North Korean stuff: it is utterly absurd regulation. We may laugh at it, but, as the noble Lord, Lord Campbell-Savours, pointed out, it means that small businesses up and down the country will have to comply with these regulations, work out what they mean, change all their literature and everything else, and, as a result, be driven out of business.

We are in a bit of a quandary here, because there is much in these regulations that is quite desirable. When we have left the European Union, we will be in a position where we can hold our Ministers to account, hold votes and actually make these things happen. I had not realised that this is a very clever operation by the Department of Health. This is what you do: you have some absurd regulations, which you know you are not going to get through the House of Commons. So you persuade Brussels to include them in an EU directive;

and heigh-ho, they have to sail through both Houses, because there is nothing we can do. We all take part in this pantomime, where we explain all the reasons why they should be changed, knowing full well that there is very little we can do about it until we leave the European Union.

So I congratulate my noble friend on his efforts and hope that, when the Government are free to do so, they will rethink these absurd regulations, which will undoubtedly cost lives. They are a classic example of how big business is able to use Brussels, together with lobbying organisations, to the disadvantage—and, in this case, life-threatening disadvantage—of the citizens of this country.

Baroness Walmsley: May I correct something that the noble Lord, Lord Forsyth, said? He suggested that there was an inconsistency in my remarks. I point out to him that my regret Motion regrets the advertising ban. If there were no advertising ban, it would be perfectly possible to have a public information campaign.

Baroness Young of Old Scone: My Lords, after the excursion by the noble Lord, Lord Forsyth, into Europe bashing, may I bring the House back to the subject in hand, which is these regulations?

The noble Lord, Lord Rennard, hit the nail on the head. Why are the major tobacco companies all piling into these products and their manufacture, distribution and promotion globally? It is not because, in a spirit of public protection, they want to see smokers take up these products rather than the main part of their activities, which will continue to be the pushing of tobacco globally.

We have to ask ourselves why there is a need for regulation in this area. The reality is that electronic cigarettes are effective in reducing, in the case of smokers, their reliance on tobacco, but this needs to be associated with a wider tobacco control strategy and some good, targeted, mass promotion—not of individual products in the vaping field but with the concept that, if you are a smoker, vaping may be one of the things, among others, that can help you. That must include psychological support as well as simply a change of product. I hope, too, that the Government will ponder on further increases in the price of tobacco; at the end of the day, that is the most effective way of reducing demand. Perhaps we can hear from the Minister what the Government are planning to do to ensure that there is public promotion of vaping as an alternative for smokers, access to good-quality, evidence-based stop smoking services and changes in costs.

We should not delude ourselves that tobacco manufacturers are getting into vaping products simply to allow people who are smoking currently to reduce their risk. They are getting into it because that, in their view, is the double whammy: an alternative product that can run alongside their very damaging products, which will continue, and a little bit of what in the environment movement used to be called “greenwashing”—I do not know what one would call it in the public health movement—in order to make their image more acceptable publicly. Therefore, I would not support the amendment of the noble Lord, Lord Callanan.

8.45 pm

Viscount Ridley: My Lords, I will be extremely brief, because we need to press on to what the Minister will say. However, it is very important to point out that this is smack in the tradition of harm reduction, which was pioneered in this country with needle exchanges for HIV addicts. We did not go round saying, "That's a bad policy because needles are dangerous things". We said, "Let's look at the relative risks". We now know that there is a motorway out of smoking by vaping, and on the other carriageway there are virtually no cars at all. We have heard the data from my noble friend Lord Cathcart.

One final very quick suggestion is: if we want to get public information out there, why do we not insist that cigarette packets, which already carry a warning label, carry a label which says, "Have you tried vaping instead? There is very good evidence that it is much safer"? That would be factual and targeted at smokers. It would be beneficial, save lives and cost nothing.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, before this debate started I had feared that it would be a bit like Groundhog Day in relation to what happened in the Grand Committee Room earlier. However, it has been a fascinating and excellent debate. I thank the noble Lords, Lord Callanan and Lord Hunt, and the noble Baroness, Lady Walmsley, for tabling their various Motions and amendments. This has been a very good debate.

I start from the premise that all my instincts are always against regulation. In my view, there is normally a presumption against regulation. I should also make it absolutely clear that there is no doubt that vaping is far better for you than smoking. If, as a result of these regulations, more people were to carry on smoking, we would indeed have shot ourselves in the foot. To pick up the analogy that my noble friend Lord Ridley used about needle exchanges, the point is that they should at least be clean needles. I agree with his argument but we need some regulation to ensure that vaping is not abused, if I can put it that way.

I wish to make a small number of important points which have been raised by noble Lords. First, we have fought long and hard to denormalise smoking behaviours, and Members of this House have been at the forefront of that. It is right to take a precautionary approach to managing any risk that e-cigarettes renormalise smoking behaviours, particularly by restricting children's exposure to e-cigarette marketing and imagery. Glamourising these products, with adverts reminiscent of those from the tobacco industry many years ago, can only make them more attractive to children. Recent research by the Cambridge behaviour research unit also suggests that exposure to e-cigarette adverts influences children's perception of smoking tobacco. It reduces their belief in the harm of occasional smoking. This has the potential to undermine some of the great progress we have made over the last six decades in controlling the smoking of tobacco.

I know that there are calls for a return to self-regulation, but just last week we saw the Advertising Standards Authority rule on a glamorous advert. I do not think

that props are allowed in this House, but this is a four-page advert on the front and back of the *Evening Standard*. On the front, there is a very attractive young woman looking out over London while smoking a cigarette. On the back, there is a James Bond lookalike jumping out of a helicopter. That is not aimed at people who are smoking but at young people who might then think about smoking. Figures have been put about showing that there is no evidence that young people are influenced by this kind of advertising. However, that is not the case everywhere. The US is seeing an upward trend in children who have never smoked cigarettes using e-cigarettes, and data from Poland show that 30% of children surveyed use e-cigarettes. The Government have therefore taken a precautionary approach to any possible risk of the renormalisation of smoking behaviours.

Some 96% of smokers are already aware of e-cigarettes, so I am clear that promotion is not about raising consumer awareness, which already accounts for 96% of that market. While businesses' ability to communicate about their products may have been curtailed in the interests of protecting children, they have not been banned outright. The regulations will not prohibit information being provided to customers either online or in physical retail outlets. Nor will they ban independent reviews of these products or discussion in e-forums. Some advertising will be allowed, such as point-of-sale, billboards and leaflets. Essentially, these are the information routes that were used when e-cigarette sales and use were growing the fastest. My noble friend made a point about billboards, buses and the like. The reason for the distinction between outlets is to try to minimise the impact on young people. That is what lies behind the differentiation between advertising media.

Secondly, the regulations provide minimum product standards and reporting of ingredients and emissions. This should reassure smokers who are looking to quit that e-cigarettes are safe and high quality, and give the Government and health professionals such as GPs confidence in recommending them to smokers. The product standards in the regulations are a result of balancing user needs and risk of accidental exposure to children. Of the reported poisoning incidents, running at some 250 a year, one-third relate to young children under the age of four. The regulations require child-resistant packaging, and the 20 milligrams per millilitre limit for nicotine, combined with the size restrictions on tanks, ensures a maximum exposure of 40 milligrams of nicotine, which is below the level of 50 milligrams that the European Chemical Agency assesses would cause acute toxic effects for toddlers. ASH recently published data indicating that only 9% of vapers report using e-liquid containing 19 milligrams per millilitre or more of nicotine. I know that my noble friend Lord Cathcart is a heavy user of this particular substance, but he is among only 9%. Moreover, the changes in technology will make it increasingly possible for users to get high levels of nicotine uptake for any given strength. Producers can of course get a higher strength approved by the MHRA.

My third main argument in favour of these regulations is that the UK's approach to the regulation of e-cigarettes has, and will remain, pragmatic and evidence-based. We have one of the most liberal approaches to e-cigarette

regulation in the world. We have implemented domestic age-of-sale legislation, preventing sale to under-18s, but we have not banned flavours in e-liquids or cross-border distance sales, nor have we restricted vaping in public places. I remind noble Lords that the latter two measures have been introduced in around two-thirds of all other EU member states and are also common in other parts of the world. I am not sure whether the noble Lord, Lord Forsyth, is right when he talks about gold-plating in this context.

Lord Forsyth of Drumlean: I am contemplating the Minister's argument about children being exposed to dangerous quantities of nicotine—which obviously one wants to avoid—and how there is therefore a need to reduce the packaging. Is he planning to do the same for other household products such as domestic bleach and dishwasher liquid? We cannot approach that kind of problem through regulation: surely it is about encouraging parents to behave responsibly.

Lord Prior of Brampton: There are of course many products which do have tamper-proof packaging and we cannot debate all the ones the noble Lord mentioned. It seems to me entirely reasonable that this particular product should be tamper-proof. If a child were to swallow nicotine in these kinds of volumes it would have a very serious impact. It is entirely reasonable to have tamper-proof packaging.

The Government have asked the MHRA, local authorities and others involved in the enforcement of these regulations to develop a compliance regime together with the businesses which are currently in this industry. We will take a pragmatic approach to implementing the new notification system. Notification fees are low—£150 per product and £60 annually as a top-up—and are set to recover costs only. The MHRA has also developed guidance that minimises the burden on business.

E-cigarettes are not harmless. Nicotine is both toxic and addictive and there are unanswered questions about the effects of longer-term use. It is better to vape than to smoke but it is far better to do neither. These regulations reduce the risk of harm to children and protect against the renormalisation of tobacco use. They provide assurance on relative safety for users and legal certainty for businesses that wish to sell these products across the EU. I also underline that the regulations have the full support of the four nations of the UK, as well as many of those in the health community that have been involved in tobacco reduction, including ASH, Cancer Research UK and the British Medical Association. The Royal College of Physicians agrees in its report on the need for regulation of e-cigarettes to protect the public, and states that although e-cigarettes are estimated to be in the order of 95% less harmful than smoked tobacco, they are not harmless.

Moving forward, the Government are committed to a full review of the functioning of the regulations, including—

Lord Campbell-Savours: Is there a danger that a black market will develop?

Lord Prior of Brampton: It is possible. There is always a possibility when there is a regulation that a black market will develop, and for the very high-strength

products, which had to be regulated by the MHRA—the ones above 20 milligrams—there is a risk that there will be a black market. I think I recall that the noble Lord said earlier that a black market had already developed in this product. We are trying to bring some minimum quality standards, at least, into this market so that people who are thinking of moving from smoking to using e-cigarettes can have confidence that the product they use is regulated to a minimum standard.

I remind noble Lords that new and important tobacco control measures are also contained in these regulations. I have not talked about them specifically because they are slightly off the main point of this debate. The regulations will be reviewed within five years of entering into force. I also commit, here and now, to commissioning Public Health England to update its evidence report on e-cigarettes annually until the end of this Parliament and to include within its quit-smoking campaigns consistent messaging about the safety of e-cigarettes.

Clearly, there are strong arguments on both sides of the debate. As I said, I am not an instinctive regulator by any means but I feel that these regulations are proportionate. They do not go over the top, are entirely sensible and are backed by the RCP and all the major charities in this area. I hope that my noble friend Lord Callanan will not wish to push this to a vote, but of course that is entirely his decision.

Lord Hunt of Kings Heath: My Lords, I thank the Minister for his wind-up, which I think was very fair. I agree with him that this has been an excellent debate and various views have been put forward. I understand why some noble Lords have concerns about e-cigarettes, particularly in relation to young people. I understand that there are still some uncertainties. I accept that there is a need for some regulation in relation to e-cigarettes.

The Royal College of Physicians produced an excellent and dispassionate report but in the end it concluded that, while not absolutely safe,

“the hazard to health arising from long-term vapour inhalation from the e-cigarettes available today is unlikely to exceed 5% of the harm from smoking tobacco”.

That is a pretty powerful statistic. The royal college supports the regulations—I understand that. We have been told by the noble Baroness, Lady O’Cathain, that 2.8 million people currently use e-cigarettes. We know that often it is the poorest people in society whom many of the traditional approaches to giving up smoking have not touched. Equally, we know that there is a problem with smokers who think that e-cigarettes may be much more harmful than they actually are.

The noble Lord, Lord Prior, rightly said that smokers are aware of e-cigarettes: I take that point. However, there is this worrying statistic that many smokers feel that e-cigarettes are very harmful—almost as harmful as smoking cigarettes. That worries me. I worry that the regulations may make that worse. This is where the absence of cohesive, strongly financed public health programmes comes in. That is why I believe that my amendment finds a delicate way through the morass that we have been debating today and why I wish to test the opinion of the House.

9 pm

Division on Lord Hunt of Kings Heath's amendment.

Contents 57; Not-Contents 91.

Amendment disagreed.

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9.11 pm

Lord Callanan: My Lords, first I thank all noble Lords who have contributed to the debate this evening. It has been a fascinating and instructive debate. If nothing else, it has given me the opportunity to go into the Content Lobby for the first time in my parliamentary career in this House. I am normally quite a loyal government Back-Bencher. It has been an interesting debate. I do not agree with many of the conclusions given by the Minister that these regulations are proportionate and not over the top. They are totally disproportionate and totally over the top.

Let me clear up a couple of confusions that have arisen. First, I have no problem with the vast majority of these regulations. All of the regulations relating to the regulation of normal tobacco products I completely support. It is only the sections on e-cigarettes which I think are wrong. The clue is in the name. E-cigarettes are not tobacco products. They should not be in this directive in the first place. I argued this when it was originally proposed in Brussels. Of course, given the nature of regulations, it is not possible to amend them just to take out the electronic cigarette part without regretting the whole thing. In response to people who have made points about the main parts of the regulations, I agree. I support them, and as far as I know all of my colleagues who supported me also support those bits of the regulations.

Secondly, a number of arguments have been made about the big tobacco companies. I am entirely convinced that the big tobacco companies would support these regulations as they are for the simple reason that at the moment the e-cigarette vaping market is dominated by small and medium-sized enterprises. The costs of regulation that are going to be imposed by this directive are considerable. The big pharmaceutical companies and the big tobacco companies will be able to bear the costs of that regulation. They will buy up, as they are indeed starting to do, a lot of the little companies, and they will be able to bear the costs of regulation.

It was a great revelation to me when I first arrived in the European Parliament. I had naively assumed that business would be opposed to regulation. Actually, most big business thinks that regulation is a great thing. The chairman of a big pharmaceutical company once told me that it enables it to get rid of what he called "free riders", in other words, small companies that were taking his market share, but did not have big corporate compliance departments and big lobbying and PR operations. I am entirely convinced that approving this regulation is to the benefit of big pharmaceutical

and tobacco companies. Given all that, and given the indications from many Members of this House that they will not support the remainder of my Motion, I beg leave to withdraw it.

Motion withdrawn.

Tobacco and Related Products Regulations 2016

Motion to Regret

9.14 pm

Moved by Baroness Walmsley

That, in the light of the prohibition of commercial advertising of vaping devices in the Tobacco and Related Products Regulations 2016 and the proven public health benefit to former smokers of switching to vaping devices, confirmed by the advice from the Royal College of Physicians that vaping is 95 per cent less harmful than smoking tobacco, and that half of all tobacco smokers die from smoking-related causes, this House regrets that the advertising ban would hinder e-cigarettes from being promoted as a way of assisting smokers to stop smoking tobacco, and that concerns regarding the restriction of the nicotine concentration of the vapour have not been properly addressed (SI 2016/507).

Baroness Walmsley: My Lords, the buses are running very late this evening, and I have made my views about these regulations very clear. Since this is a non-fatal regret Motion, I see no reason to waste the time of the House by voting upon it. I beg leave to withdraw the Motion.

Motion withdrawn.

Bus Services Bill [HL] Committee (2nd Day) (Continued)

9.15 pm

Amendment 59

Moved by Earl Attlee

59: Clause 4, page 19, line 46, after “postponed)” insert “or cancelled”

Earl Attlee (Con): My Lords, I shall also speak to my Amendment 60. My two amendments would make a rather significant change to new Section 123I of the Transport Act 2000: they would prevent a franchising authority from revisiting a failed franchise proposal for a period of five years.

One of the things that any business dreads is uncertainty. Consider the current situation in the UK: it adversely affects investment plans, recruitment decisions and the conduct of everyday activities. Bus operators are understandably concerned that through the measures in the Bill they could find their businesses under threat and, in the worst-case scenario, eliminated.

I will avoid rehearsing the arguments against franchising. My amendments seek to ensure that if a franchise proposal fails, for whatever reason, or if the franchising authority decides not to progress its plans—again, for whatever reason—the franchising authority must wait for five years before revisiting the issue and seeking to bring forward a new scheme. I am not necessarily wedded to the five-year period but the point I am making is that there must be a sensible gap before the process can start again, and five years seemed as appropriate a period as any other, particularly when the kind of investment decisions and long-term planning that transport providers make is taken into account. Most authorities do not change their political complexion very regularly but, in those areas that do, it is important that bus operators’ commercial decisions are not adversely affected.

The amendments would give some certainty to bus operators, and would allow them to continue to develop and improve their services, invest in new technology, innovate and react to changing and growing passenger needs. While quality contracts have been possible for the best part of 16 years, the process for bringing forward a franchise will be less onerous, and we know that these powers could be used as soon as they are brought into operation. So the threat would be very real and would be a constant dark cloud hovering above operators’ heads, even if a proposal had just been found to be unviable.

It may also be that authorities in scope might secretly welcome the amendments. The burden on local authorities grows and they are under huge pressure to deliver an enormous range of local services, from bin collection to care for the elderly to keeping the street lights on, with ever-dwindling financial resources. Having spent considerable time, energy and money on a franchise scheme that in the end was not progressed, authorities may value a legal reason that they can offer for why they cannot revisit the issue despite pressure to do so. I beg to move.

Lord Bradley (Lab): I rise to speak to Amendment 61A in my name and to Amendment 66 in my name and that of my noble friend Lord Berkeley. On Amendment 61A, although the franchising authority should seek to enforce breaches of registration requirements by reference to the traffic commissioner, there are circumstances where that will not provide a swift, effective remedy. The right to request a court to exercise its discretion to grant an injunction is a more appropriate and proportionate measure for use in urgent cases to prevent serious breaches of the registration requirements.

The amendment is based on a similar provision in the Town and Country Planning Act 1990. A reference to the traffic commissioner would result in an investigation, followed by the possible imposition of sanctions, including a financial penalty and compensation. However, the process might require weeks to complete, during which an operator could continue to run services in breach of the registration requirements. The ability to apply for injunctive relief would allow the franchising authority to safeguard the franchise scheme in critical circumstances. It is anticipated that it would be used only in rare and specific circumstances, but it would give the franchise extra protection.

[LORD BRADLEY]

The purpose of Amendment 66 is to ensure that the franchising authority should not be obliged to issue a service permit where it would have an adverse effect on the financial and economic viability of the wider bus franchising scheme. It should not have to provide one if, for example, it would adversely affect tram, light rail or heavy rail services within the area. The service permit regime in the Bill is the way in which, first, cross-boundary services can be provided—in other words, services that go in and out of a franchised area—and, secondly, services can be provided where no service has been provided for in the franchise contract. The franchising authority has to grant permission for such permits, but the Bill prevents operators using these provisions to cherry pick and, in doing so, to undermine the wider franchise by enabling the franchise authority to refuse a permit where it would have an adverse effect on any service provided in the franchise.

Amendment 66 would extend the safeguard explicitly to include consideration of any impacts on the wider economic and financial viability of the bus franchise scheme. It would also enable consideration of wider public transport services. There would otherwise be a loophole whereby an operator could undermine other forms of public transport by, for example, running a bus service in parallel with and in competition with a bus rapid transit system or a light rail system, both of which currently operate within the Greater Manchester footprint. This could undermine the wider integrated public transport network, of which the bus franchise forms a part, by undermining its economic position and its fully integrated nature. I look forward to hearing the Minister's views on these points.

Baroness Randerson (LD): My Lords, my Amendment 67 raises in relation to bus users the same issue of principle that was raised earlier. Before I briefly explain in detail, may I take this opportunity to thank the Minister for the assurances he gave earlier today? We are very grateful to him for the progress we have made on this issue.

In the case of franchising, before an authority publishes or withdraws a franchising notice, the Bill specifies that, quite reasonably, it has to consult

“persons operating local services in the area to which the scheme relates”.

According to the Bill, it also has to consult,

“other persons whom, in their opinion, it would be appropriate to consult”.

What is wrong with saying that it is right to consult bus users? It is obviously right to consult bus operators and it is clearly right to consult bus users. Greater prominence and guarantees simply must be given to the views of bus users, whether they choose to make their views known either locally, through small and informal groups, or nationally—for example, through Transport Focus. I urge the Minister to encompass this amendment with the other amendments which relate to bus users.

Lord Berkeley (Lab): My Lords, I will be brief. I support the amendments in the names of my noble friend Lord Bradley and the noble Baroness in this grouping. The noble Earl, Lord Attlee, has a point about why franchises should be postponed or cancelled.

It brings to mind the situation in which a franchise is advertised and several companies respond, spending quite a lot of money in the process. If it is then cancelled for no particular reason, they could probably reasonably ask for their tendering costs to be reimbursed, although that will probably never happen. However, it behoves the franchising authority to produce a franchising document against which companies will bid, and if nobody bids, it will not have achieved anything. Therefore it is not all one-way. My gut feeling is that if it makes a mess of it and then issues it again within six months or so, that is much too short a time, but on the other hand five years is too long. The noble Earl, Lord Attlee, made some good points in his amendments, but I would reduce the time to two years or so, which is a more reasonable time in which to do this.

Baroness Jones of Whitchurch (Lab): My Lords, I will first speak to Amendments 59 and 60 in the name of the noble Earl, Lord Attlee, which specify that any decision to postpone or cancel a franchising scheme cannot be revisited for five years.

There are many legitimate reasons why these decisions are postponed, and we believe that there is a danger that this amendment would have the converse effect of forcing imperfect schemes to proceed, to avoid the five-year moratorium. On the other hand, we believe that there are enough checks and balances in the Bill to allow decision-makers to reflect and rethink their proposals, so a ban for five years on revisiting the option is unnecessary and we would not support it.

Amendment 66 in the name of my noble friend Lord Bradley seems to provide a safety net for franchise providers to ensure that service permits which are issued do not undermine the viability of franchise schemes as a whole. This seems sensible, so we support the amendment.

Finally, we support the concept in Amendment 67 that any franchise service permit issued should first be subject to consultation, not only with the service providers but with the service users. This theme has run through a number of our amendments and we support it in this context. I therefore hope the noble Lord will agree with the sense of that amendment.

The Parliamentary Under-Secretary of State, Department for Transport and Home Office (Lord Ahmad of Wimbledon)

(Con): My Lords, I thank all noble Lords who have taken part in this debate. I will take each amendment in turn, beginning with Amendments 59 and 60.

Amendment 59 would enable franchising authorities to cancel the date on which local service contracts may first be entered into for a franchising area or sub-area. I admit to being unclear as to the purpose of this amendment and would welcome further clarification from my noble friend. The amendment that my noble friend proposes is to the section in the Bill which enables franchising authorities to postpone the date on which local service contracts can first be entered into, for example to deal with a situation in which the procurement exercise takes longer than anticipated.

9.30 pm

The Bill already provides for revocation of a franchising scheme where the franchising authority thinks that local services are likely to be better if the scheme did

not apply, where the continued operation of the scheme is likely to cause financial difficulties for the authority or where the burdens of continuing the scheme outweigh the benefits of doing so. If the ability to revoke a franchising scheme and move back to the deregulated model of bus service delivery is what my noble friend is concerned about, then I can reassure him that the Bill already provides for this.

Amendment 60 would prohibit a franchising authority from reconsidering a franchising scheme for five years from the point at which it decides to cancel a scheme. Moving to a model of franchising is an important decision and one which will have an impact on bus operators, local passengers and the local authority itself. We have developed the Bill with this in mind and included a number of processes which franchising authorities must follow before they can introduce a franchising scheme. The processes are designed to ensure that the proposed scheme is assessed, the relevant parts of the assessment audited and that stakeholders have a chance to respond to a consultation on a proposed scheme before any decision to move to a model of franchising is taken.

I agree that any decision to revoke a scheme is important. I also fully recognise the disruption it would cause to local passengers and the uncertainty caused to bus operators in the area if a scheme were to be revoked only to be followed, a short time later, by the introduction of another scheme. However, I have concerns about the amendment as drafted, particularly as it has been drafted in relation to the section in the Bill which relates to postponing the time at which local service contracts can be entered into. I will consider, however, how best to ensure that the Bill achieves the objective of the amendment.

Amendment 61A, tabled by the noble Lord, Lord Bradley, provides that a franchising authority may apply to the court for an injunction to prevent a person from continuing to operate a service in a franchising area if it is not operating under a local service contract, is not an interim service and is not provided under a service permit. I agree entirely that there must be suitable mechanisms in place to enable authorities to take action against bus operators which should not be operating in franchised areas. That is why we have included provisions in the Bill to enable traffic commissioners to impose sanctions in relation to such operators. These provisions enable traffic commissioners to impose financial penalties and attach conditions to operators' licences preventing them from running services in certain areas in future.

I recognise the issue the noble Lord raises regarding occasional or event services where the time for a traffic commissioner to act may be limited. However, the traffic commissioners' powers are wide-ranging and include an ability to impose fines on operators. This is not an issue that I am aware has been raised widely by local transport authorities. If it is likely to be a particular issue in Manchester or any other local area, I would encourage the relevant local transport authorities to discuss with the Office of the Traffic Commissioner whether it would be possible to expedite decisions in particular circumstances.

The noble Lord, Lord Bradley, also raised the issue that bus services operating under service permits could undermine rail services. I note his point about the ambition to deliver integrated bus, tram and rail services. However, I remain concerned that passengers should be given a choice as to how they travel, as it may be, for example, that a bus service is a cheaper option than the tram or train alternative. I hope this discussion has reassured the noble Lord that the Bill as drafted includes sufficient mechanisms to deal with operators which are not authorised to operate in a franchised area.

The noble Lord, Lord Bradley, and the noble Baroness, Lady Randerson, also proposed amendments to the service permit provisions in the Bill. The noble Lord, Lord Bradley, proposes Amendment 66, which would prevent franchising authorities from granting applications for service permits unless they are satisfied that the service proposed would not have an adverse effect on the authority's ability to afford the franchise scheme. The intention of the service permit provisions is not to enable bus operators with service permits to compete with franchised services on the road. I agree entirely that it would be unreasonable for a franchising authority to be required to grant a service permit to a bus operator who was proposing to run a service that would have an adverse effect on a franchised service. That is why we specifically stated in the Bill that service permits should be granted only where the proposed service will benefit local people and where it will not have an adverse effect on any local service provided under a local service contract. As such, I think that the Bill already achieves many of the aims of the noble Lord's amendments.

Amendment 67, tabled by the noble Baroness, Lady Randerson, would further reinforce the need for authorities operating a franchising scheme fully to consult passengers on the conditions that may be attached to the operation of certain services running in a franchised area under a service permit. The Bill enables franchising authorities also to attach conditions to service permits, which could include, for example, a condition that required the operator to accept certain tickets or display certain information on services. Before such conditions could be imposed, the franchising authority would have to consult on a notice which set out those conditions and publish that notice. I agree entirely that passengers should have an opportunity to comment on the proposed conditions, as it is possible that they could make services more or less attractive to local people. I will therefore consider how best to ensure that the Bill achieves the objective of the amendment.

I hope that my comments have reassured noble Lords that I understand many of their concerns and that they will therefore choose not to press their amendments.

Earl Attlee: My Lords, I am grateful for all contributions from noble Lords. I said that I was not wedded to the five-year period, but noble Lords may have drafted their comments before they had heard what I had to say. Amendment 59 might be defective, but it was intended as a precursor to Amendment 60. I can understand the concerns of the noble Baroness, Lady Jones, but the five-year period—or whatever

[EARL ATTLEE]

period it was—would encourage local authorities considering franchising to make sure that they got it right first time rather than have a half-hearted attempt at it.

I am grateful for the positive response of the Minister both to my amendments and to those from other noble Lords. I beg leave to withdraw the amendment, subject to the usual caveats.

Amendment 59 withdrawn.

Amendment 60 not moved.

Amendment 61

Moved by Lord Ahmad of Wimbledon

61: Clause 4, page 20, line 46, at end insert—

“(7) The effective time, in relation to a local service contract, is the beginning of the day on which a local service may first be provided under the contract (see sections 123K(4) and 123L).”

Amendment 61 agreed.

Amendment 61A not moved.

Amendments 62 to 65

Moved by Lord Ahmad of Wimbledon

62: Clause 4, page 21, line 16, leave out from “until” to end and insert “—

(a) the expiry of the period that, under the scheme, must expire between the making of the contract and the provision of the local service under the contract (see section 123H(2)(d) and (3)(c)), or

(b) such later time as may be specified in the contract.

() Subsection (4) is subject to section 123L.”

63: Clause 4, page 21, leave out lines 17 to 22

64: Clause 4, page 21, line 37, leave out from beginning to “if” and insert “A local service contract may specify as the time when a local service may first be provided under the contract a time before the expiry of such period as is described in section 123K(4)(a), and that service may be provided from that time,”

65: Clause 4, page 22, line 21, at end insert—

“(6A) The references in subsections (1) to (6) to the franchising authority or authorities in relation to a franchising scheme include a reference to a franchising authority who are not operating the scheme but would do so under a proposed variation.”

Amendments 62 to 65 agreed.

Amendments 66 to 68 not moved.

Amendment 69

Moved by Lord Bradley

69: Clause 4, page 30, line 18, after “time” insert “and within such timescales”

Lord Bradley: My Lords, I shall be brief on this amendment, which pertains to new Section 123X, which is headed:

“Local service contracts: application of TUPE”.

The explanation for the amendment is that it should be possible to ensure that responses to requests for information under this section are provided within a specified timeframe. To ensure that the overall process

is achievable in a timely way, the amendment would ensure that an authority could set a timeframe for the provision of such information. It would also reduce the scope for gaming or playing for time to frustrate the development of a franchising scheme. Information under this section of the Bill is essential for the effective introduction of franchising. I would be grateful for the Minister's views on the timescale appropriate for the provision of this essential information on TUPE arrangements. I beg to move.

Lord Kennedy of Southwark (Lab): My Lords, I will be very brief in saying that we fully support the amendment from my noble friend Lord Bradley. As he said, it aims to ensure that responses are received in a specified time and to reduce the scope to drag things out to play for time. He has the full support of these Benches.

Lord Ahmad of Wimbledon: My Lords, I thank the noble Lord for tabling his amendment, and I appreciate his intentions in bringing it forward. It is important that information on employees is provided in a timely way, so that informed decisions can be taken by the franchising authority.

However, I am not sure whether there is a need for this amendment because subsection (7) sets out the provisions that may be made by regulations made by the Secretary of State. Clause 123X(7)(c), into which this text would be inserted, already makes it clear that the regulations may prescribe the time at which information is to be provided. This would, in effect, set out the timescale within which information must be provided.

Noble Lords will be aware of the policy scoping notes that I circulated on 16 June. These notes summarise our intentions for the use of the regulation-making powers in the Bill. Let me assure noble Lords that on page 22 of that document we confirm our intention that the regulations to which this amendment would apply,

“will also set out the time periods within which operators must comply”,

with the requests made for employee information. Therefore, while appreciating the intent behind this amendment, I trust that with the clarification and reassurance that I have provided to the noble Lord that this matter is already addressed in the Bill and in our plans for secondary legislation, he will be minded to withdraw his amendment.

Lord Bradley: I am grateful to the Minister for his comments. I will look carefully at the sections he has identified to reaffirm the assurances he has given. In the meantime, I beg leave to withdraw my amendment.

Amendment 69 withdrawn.

Clause 4, as amended, agreed.

Clause 5: Power to obtain information about local services

Amendment 69A

Moved by Lord Berkeley

69A: Clause 5, page 32, line 1, after “them” insert “, in a timely manner,”

Lord Berkeley: My Lords, I shall speak also to Amendments 72A, 72B, 73 and 73A. I do not think I need to detain the Committee very long on this because it is the same issue of timescale that my noble friend Lord Bradley spoke to on Amendment 69. It would be good to hear some comfort from the Minister that all these issues could be addressed and responded to in a suitable timescale, and it would be good to see some of these amendments, if not all of them, in the Bill.

My only other comment is on Amendment 70, in the name of my noble friend Lady Jones of Whitchurch. Information about environmental impact and air quality data is essential, not only linking them to vehicle emissions but also to the surrounding air quality, which we have spoken about in Committee before, as well as to the safety records of bus operators. That is an essential part of providing the evidence that they are of quality and intend to maintain that quality, if and when they run the franchise. I beg to move.

Lord Bradley: I rise to speak briefly to Amendment 73. I will not repeat the arguments I made for the previous amendment, but this amendment suggests an upper limit of 30 days, which is reasonable and justifiable in the context of the Bill. I look forward to the Minister's further comments on that proposal.

9.45 pm

Earl Attlee: My Lords, I have tabled Amendments 71 and 72 in this group. Amendment 71 is fairly simple but none the less deals with an important matter. Its purpose is to ensure that local authorities which have acquired what will doubtless be highly sensitive company information for the purposes of preparing a franchise scheme may use that information only for the sole purpose for which it was provided. At Second Reading I expressed my concerns about the provision of this type of information to local authorities. I am not convinced that it is right that bus operators should be under a legal obligation to provide what could be highly sensitive information about such things as revenue received from the running of a particular service, employment, staff details and so on. It is quite a list.

I am certain that it is important that, having been given the information, local authorities be restricted from using it for any purpose other than that for which it was intended. They should not be able to use it willy-nilly. They should not be able to dip in and out or, even more important, to pass that information on to a third party. In that case, who knows where the information would end up? It is not inconceivable that it could end up in the hands of a competitor, and that simply cannot be allowed to happen. This is a serious issue and my amendment is intended to give some assurance to bus operators that, having provided the information, it will be protected and used for one purpose only.

The purpose of Amendment 72 is to require local authorities to pay local bus operators for the information that they must provide to assist in the assessment of a franchise scheme. This follows up on a point I made at Second Reading. I find it unacceptable that bus operators should be under a legal obligation to provide what could be highly sensitive information absolutely free of charge. Information of the type sought is part of

the good will of the company, and anyone in business knows that good will is built up over many years and is hard fought for. Operators work extremely hard to develop their services and to provide the best possible journey experience for their passengers. That is what they do and it is why they are in business: to provide a decent product that people want and that they will buy. It is the same with a bus service. So to expect operators to hand over all the operating details to the very organisation that is looking to take the business off them—thank you very much—seems quite odd. It simply would not happen in any other business transaction.

Lord Berkeley: The noble Earl is asking that bidders be paid by the franchising authority for submitting information in preparing a bid. Is that what happens with London buses? Does TfL pay bidders in order for them to produce a decent bid? I am asking the question because I do not know the answer.

Earl Attlee: The noble Lord will know that London bus operations have been regulated for some time, so the issue does not arise in London. It is a new situation.

Under any other circumstances this practice would be prohibited under the provisions of the Competition Act, so why is it okay in this case?

I remind the Committee that when the passenger transport executives sold their bus operations after deregulation in the mid-1980s, such data were a huge factor in the price they sold those businesses for in the private sector. That slightly answers the point of the noble Lord, Lord Berkeley. However, 30 years on, such data appear to have no value and local authorities can get back for nothing what they originally sold for rather a lot of money, with operators providing the means to determine their own execution.

My amendment does not put a monetary value on the data simply because they will be different in each case; I am suggesting that operators and the authority should come to an agreement on their worth. I am under no illusion—such agreement is not likely to be easy and may not actually be achievable at all. In that vein, I hope that my noble friend the Minister does not regard this as a wrecking amendment. That is certainly not my intention and I will not be seeking to test the views of noble Lords on this point at any stage. However, I hope that he will be able to give some words of comfort to bus operators. Intellectual property must surely have a value, as does good will.

Baroness Randerson: My Lords, I rise to speak to Amendment 74 tabled in my name. Before I address it specifically, I will say that we are supportive of Amendment 70. It deals with air quality data, which I have addressed on several occasions in discussions on previous amendments. However, we would certainly not be supportive of the noble Earl's Amendment 72. For a start, it is about information that any reasonably good operator will have at their fingertips. We are not asking operators to do a great deal of work to find these data; they are all easily available. Secondly, the noble Earl states that this is a reasonable request but this information is publicly available as regards the

[BARONESS RANDERSON]

railways, for example, and there is no reason why we should have this level of information about the railways but not about bus services.

Earl Attlee: Does the noble Baroness agree that if, without the benefit of the legislation, one operator shared this information with another operator, it would be in serious difficulties with the competition authorities?

Baroness Randerson: That is a separate issue. The issue here is enabling local authorities to make a reasonable judgment in order to produce a good franchising scheme. I accept that there are separate issues to be addressed in relation to competition.

I turn to Amendment 74, on the power to obtain information about local services and franchising, and the handling of that information. This is purely a probing amendment designed to investigate the unevenness within the Bill. I have referred to the uneven approach to the three types of schemes and simply wish to point out to the Minister that on page 58 of the Bill appear identical words to those in my amendment, which set out the circumstances in which information could be disclosed in the case of enhanced partnerships. However, in the case of franchising, on page 33 there are no such caveats or restrictions on the use of the information. I am interested to find out from the Minister the legal reason behind this—or is it just chance that there is a long list of things that one can and cannot do with that information in the case of enhanced partnerships, but which are not included in the list on franchising?

Baroness Jones of Whitchurch: My Lords, I shall speak to Amendment 70, which requires bus operators to publish data. A number of noble Lords have commented on this already. Data on the environmental impact of operators' fleets, including the impact on air quality, the level of CO₂ emissions and their safety record, should be available to local authorities and passenger organisations alike. It would be our intention that this information could be independently verified. These amendments build on our earlier debates on the need for buses to play their part in making our towns and cities healthier places to live and work. We believe that the bus operators have an obligation to deliver higher environmental standards and meet the requirements of low-emission buses. To be held to account for these commitments, the data have to be available to those who can best judge operators' performance. The same arguments apply to safety standards, so that all passengers can be assured that their provider is working towards zero tolerance on safety failures.

I, too, disagree with Amendments 71 and 72 in the name of the noble Earl, Lord Attlee. Amendment 71 aims to restrict the information provided to a franchising authority. We accept that some information needs to be identified as commercially sensitive but we do not accept that most of the information listed falls into that category. We need to be clear what is commercially sensitive and what is not. However, in most other comparable public services, the sorts of information we are talking about would be made public and shared. It would go beyond just giving it on a private basis to the local authority, and would be made more public. That is what we would expect in this instance.

Meanwhile, Amendment 72 requires bus companies to be paid for providing that core service information which, of course, would be crucial to a franchising bid, such as journeys taken, passenger numbers and fares. The point has already been made that operators will already have this information, so there is no additional cost involved. We contend that local authorities should have the right to this information and it would be standard practice to provide this service information in other contract bids.

We also believe that there should be more open sharing of data so that passengers and communities can have a greater input into the types of services they would like, and can have that input on an informed basis. I therefore hope that noble Lords will support the principles of openness set out in our amendment and oppose those attempts to have a more closed and secretive regime.

Lord Ahmad of Wimbledon: My Lords, there are a number of amendments in this group—I will take them in turn—which relate to enabling franchising authorities to request information from local bus operators in connection with their franchising functions.

My noble friend Lord Attlee made some important points on Amendment 71 in relation to the purpose for which authorities may use information. The powers given to franchising authorities in this clause are designed to ensure that they can obtain the information they need to take informed decisions about franchising schemes. We want the elected mayors and local transport authorities who take these decisions to have an appropriate understanding of the local bus market and robust information to inform their views of potential benefits, costs and risks.

Franchising authorities are able to request relevant information in connection with their functions only in relation to franchising schemes. They are not able to request the information for any other purpose under this section and would not be able to use this section to require information in the context of developing an enhanced or advanced partnership or an advanced ticketing scheme.

I can see that the industry might have concerns if this power were used regularly by authorities which were repeatedly contemplating high-level options—perhaps even without the agreement of elected members, or if the information, once obtained, was used for a different purpose. I also recognise that there are some potentially significant commercial risks for operators in providing this information.

It may be helpful if I clarify that the Bill ensures that franchising authorities are not obliged to publish information if they could refuse to disclose such information under freedom of information or environmental information legislation. There is nothing to prevent a bus operator informing a franchising authority of any concerns it may have about the impact of releasing certain information on its commercial interests. Let me assure the House that I expect all franchising authorities to consider such concerns before deciding how to use the information provided. I hope that reassures my noble friend that I have sympathy with the spirit of his amendment. I do, however, have some concerns about how the change he proposes would work in practice.

First, the amendment would prevent the use of information in a franchising context after a scheme has been developed or made, such as at the procurement stage, which could have a material impact on the ability to implement a franchising scheme in practice. Secondly, the amendment could prevent appropriate information being included in the published consultation document or provided to third parties, such as the auditor of the scheme, who has an integral role in the process. I would therefore like to reflect on the helpful contribution from my noble friend on this issue and take time to consider how his points could best be addressed.

Amendment 72 in my noble friend's name would require franchising authorities to pay a fee to local bus service operators from which they have required information in connection with their franchising functions. I know that my noble friend spoke very eloquently on this subject at Second Reading, and I understand that he is concerned about the commercially sensitive nature of the data, and value of those data. I also know that bus operators across the country have put years of hard work into developing their businesses, and have built up strong reputations and good will with customers and local people. I sympathise with the concerns that my noble friend expresses on behalf of the bus industry, but I need to balance those concerns against a desire to see well-informed decisions being made.

10 pm

I am therefore concerned that this amendment will act as a block to authorities getting the information they need to make those informed decisions, which I think acts against the interests of all parties. I hope that this discussion has persuaded my noble friend that, though I am very cognisant of the issues and sensitivities raised by the requirement to provide information, the provisions in the Bill are designed to make the franchising decision-making process as robust as possible.

Moving on, I agree with the spirit of Amendments 69A, 72A, 72B, 73 and 73A. It is not in the interests of passengers or other stakeholders for the development of a franchising scheme, for example, to take any longer than necessary. Extended uncertainty is also likely to hold commercial operators back from innovating or making significant investments in their existing services.

Amendment 73 specifies a 30-day timescale within which a bus operator is expected to have taken all reasonable steps to provide the information requested. However, the amendment does not place any obligation on an operator to take action within the 30-day period proposed. Rather, it requires the franchising authority to notify the traffic commissioner if it appears to them that an operator has not taken reasonable steps to provide information within that period.

I also remain to be convinced that 30 days is an appropriate timescale to specify in the legislation. There may be some circumstances where a more rapid response may be necessary and others where a longer timescale is needed. I do, however, appreciate the purpose of these amendments and wish to consider further how the issues might best be addressed. I hope that this reassures noble Lords that I am sympathetic

to the views expressed through the amendments and will be considering carefully the valuable contributions they have made.

The noble Baroness, Lady Jones, proposes Amendment 70, to require bus operators to provide information to franchising authorities about the environmental impact of bus services and their safety records. The Bill includes provision to allow franchising authorities to request information from bus operators about their services, to enable the authority to develop a robust assessment of their franchising scheme. The Bill lists types of information that can be requested, including information relating to revenue and patronage. The Bill also enables further categories of information to be specified in regulations, and I know that officials are working closely with local authorities and the bus industry to determine the nature of further categories of information that could be usefully specified.

Let me assure the noble Baroness that I agree entirely that the environmental impact of bus services and the safety of the public are issues that the franchising authority is likely to consider, and may look to address through its franchising proposal. However, some of the information that the amendment would enable franchising authorities to require will already be held by local authorities, such as the environmental impact of buses on the local area, and I am concerned about additional burdens being placed on bus operators. Therefore I would welcome further discussion on this topic, to determine how best we can achieve the objectives set out in the amendment.

The noble Baroness, Lady Randerson, proposed Amendment 74, to ensure that franchising authorities are not prevented from releasing information acquired from bus operators if that information is required for certain purposes, including for the purposes of criminal or civil proceedings. As she herself said, this is a probing amendment. In earlier Committee debates, she highlighted the differences in drafting between sections of the Bill. It may be helpful if I say a little more to explain the reasons behind this.

Once franchising is introduced in an area, there will be competition for contracts rather than competition on the road. Enhanced partnerships are a different scenario, with bus operators continuing to compete with each other on the road, albeit within the partnership framework. That is why different approaches are taken to the protection of information in the franchising and enhanced partnership sections of the Bill. Information acquired from operators in connection with enhanced partnerships must not be released if the authority could refuse to disclose it in response to a Freedom of Information Act request by relying on certain exemptions, particularly the exemption relating to commercial interests.

The aim is to protect bus operators' commercial interests, as they will be competing with each other on the road. It would therefore be unfair for such information to make its way into the public domain where it could be used by a competitor. However, the enhanced partnership provisions make it clear that authorities are not prevented from disclosing certain information—for example, for the purposes of civil or criminal proceedings. The Bill simply makes it clear that the obligation to publish certain documents and information, such as the assessment of the franchising scheme, does not

[LORD AHMAD OF WIMBLEDON]
require franchising authorities to publish information that they could refuse to disclose in response to a request under the Freedom of Information Act, so I think the Bill already addresses many of the noble Baroness's concerns and the objective behind her amendment.

I thank all noble Lords for their contributions to this debate. I hope that the detail I have outlined has addressed most of the concerns which noble Lords have raised and therefore that the noble Lord will be willing to withdraw the amendment.

Earl Attlee: My Lords, I am grateful to the Minister for his response to my Amendment 71, which he obviously understands. I admit that Amendment 72 was slightly tongue in cheek. I said that I would never press it to a vote. However, it is important that the Committee understands that operators will be giving valuable commercial information to the authority.

Lord Berkeley: My Lords, I am grateful to the Minister for his reply to Amendment 69A and the other amendments in my name. I recall that he said that he would write to my noble friend Lord Bradley in connection with Amendment 69. Given that Amendments 69A, 72A, 72B, 73 and 74 all have time-related issues, I wonder whether he could extend his letter to cover those as well. On that basis, I beg leave to withdraw the amendment.

Amendment 69A withdrawn.

Amendments 70 to 74 not moved.

Clause 5 agreed.

Clause 6 agreed.

Schedule 2: Further amendments: franchising schemes

Amendments 75 and 76

Moved by Lord Ahmad of Wimbledon

75: Schedule 2, page 79, line 3, leave out "123K(5)" and insert "123J(7)"

76: Schedule 2, page 79, line 27, at end insert—
"Local Transport Act 2008 (c. 26)

24 The Local Transport Act 2008 is amended as follows.

25 Omit sections 22 to 25 (QCS boards in England).

26 Omit section 27 (appeals against making of quality contract schemes in England).

27 Omit section 33 (continuation of quality contract schemes for areas in England).

28 Omit section 36 (appeals where proposed continuation of scheme considered non-exempt)."

Amendments 75 and 76 agreed.

Schedule 2, as amended, agreed.

Clause 7: Advanced ticketing schemes

Amendment 77

Moved by Baroness Randerson

77: Clause 7, page 33, line 14, leave out "may" and insert "must"

Baroness Randerson: My Lords, I will be brief as I am very conscious of the hour. This amendment is another of those which seeks to replace "may" with "must", this time in relation to advanced ticketing as part of franchise schemes.

Research by Greener Journeys shows that smart ticketing across all services would improve bus journey times by 10% at a time when congestion is a very serious problem on our roads. Some 90% of buses on our roads nowadays have smart ticket readers, so there is very little practical reason why schemes such as this should not be part of franchising. We want to encourage advanced ticketing in all arrangements for the provision of bus services. I believe it is a reasonable expectation that it should be required above all in franchising services.

The Bill makes some very admirable attempts at future-proofing in certain respects, for example, in relation to information. We live in a time when I can order a theatre ticket online and take my phone along to the theatre as proof that I have bought the ticket. My Oyster card is rapidly being overtaken by the ability to use a credit card or a smartphone. Tickets for flights, trains or whatever you mention are rapidly being converted to smart applications. In that respect, the Bill is downright unimaginative and unambitious because it does not maximise the potential that is growing, literally by the month, for advance ticketing schemes. On that basis, I urge the Minister to give serious consideration to the amendment. I beg to move.

Lord Berkeley: My Lords, I shall be even briefer. I fully support Amendment 77. The noble Baroness, Lady Randerson, is absolutely right. We have talked about ticketing before and the word "shall" should go in there. It is an excellent amendment.

Amendment 78 would require the ticketing system to be extended to demand-responsive transport and flexible bus services, assuming that the operators agree. I am sure they will but, as the noble Baroness said, if we do not put something like this in, they could argue that it should never be and we will be left for the next 30 years without a flexible bus ticket that you can interchange. That is why I tabled this amendment.

Lord Ahmad of Wimbledon: My Lords, I thank both noble Lords for their contributions. As noble Lords have heard me say many times, this is an enabling Bill. It will make powers available that local authorities may adopt to improve bus services in their area. Noble Lords will know that this Bill also forms part of our approach to devolution, giving local authorities the tools for local decision-making on these important issues. I believe and, indeed, expect that local authorities will give full consideration to these new powers and adopt them where they can show that they will make a clear improvement to bus services.

Based on these contributions, I do not think it is necessary to amend the Bill as proposed. As it stands, the Bill provides the carrot in the form of practical powers while local interests provide the stick. I would argue that this is the right balance for local decision-making. I am also confident that local authorities will implement advanced ticketing schemes where they conclude that such schemes would both be in the

interests of the public and contribute to the implementation of their local transport policies. I assure all noble Lords that we have taken ticketing seriously across the whole of the Bill, not just by making changes to the existing ticketing provisions but also through the powers available under two new types of partnership and franchising schemes. I fully expect to see some significant developments across the country in the next few years, in part enabled by this Bill.

Ultimately, however, I believe that decisions about new local ticketing arrangements should be taken locally. On that basis, and given the undertaking I have given, I hope the noble Baroness is minded to withdraw her amendment.

I thank the noble Lord, Lord Berkeley, for tabling Amendment 78. I know he has a close personal connection to Cornwall, where community transport delivered under Section 22 of the Transport Act has done much to improve connectivity for rural communities. I understand that the aim of this amendment is to extend the proposed powers to make advanced ticketing schemes, so that such schemes may also cover tickets for journeys on services operated by educational and other bodies, and on vehicles used under a community bus permit, where operators of such services agree to be part of such a scheme. This is an issue I would like to consider further. I can see some merit in bringing community bus services operated under Section 22 of the Transport Act 1985 into advanced ticketing schemes. It could generate additional income for operators of such services and help integrate community transport into the wider network. Noble Lords will note, however, that services operated under Sections 19 and 22 of the Transport Act are not classified as local services and, as such, are exempt from the franchising and partnership provisions of the Bill. It is right that these services remain outside the scope of franchises and partnerships, as they are particularly focused on the needs of the local community.

Services operated under Section 19 of the Transport Act 1985 are those operated by bodies concerned with education, religion, social welfare and other activities of benefit to the community. Therefore, apart from the issue of extending the scope of ticketing schemes, the noble Lord's amendment would require a change to existing legislation, given that vehicles used under a Section 19 permit cannot carry members of the general public. Any change to the way services are provided under Section 19 would require consultation and careful consideration.

The amendment of the noble Lord, Lord Berkeley, has some merit in enabling community transport to be part of a ticketing scheme; it raises important issues regarding services operated by educational and other bodies; and edges towards the area of total transport, in which the Government have a growing interest. As such I would like to consider it further.

I turn briefly to government Amendments 79 to 82 and Clause 7. These amendments concern the procedures for varying or revoking an advanced ticketing scheme, so that the consultation requirements for variation and revocation mirror those for making a scheme.

This corrects the drafting of the Bill—I hope that the noble Lord, Lord Kennedy will not suddenly rush to his feet and ask me to give way at this late hour—but I assure the noble Lord that it does not change the policy intention. It was always the Government's intention that variation and revocation of an advanced ticketing scheme should be subject to these procedures, and as such I beg to move the amendments in my name.

Baroness Randerson: My Lords, as ever, I appreciate the understanding of the Minister, but I hope that he will give serious consideration to a more even approach towards advanced ticketing throughout the Bill. On that basis I beg leave to withdraw the amendment.

Amendment 77 withdrawn.

Amendment 78 not moved.

Amendments 79 to 82

Moved by Lord Ahmad of Wimbledon

79: Clause 7, page 34, line 38, after “make” insert “or vary”

80: Clause 7, page 35, line 34, after “authorities” insert “to whose area or combined area the scheme relates”

81: Clause 7, page 35, line 34, at end insert—

“(6A) If the proposed variation would result in the scheme relating to all or part of the area of another local transport authority, the reference in subsection (6) to the authority or authorities includes that other authority.”

82: Clause 7, page 35, leave out lines 35 to 46 and insert—

“(7) The variation or revocation is subject to the same procedure as the making of the scheme and in the application of that procedure—

- (a) a reference in sections 134C(1) to (9) and 134D and subsections (1) to (5) to making a scheme is to be treated as a reference to varying or revoking a scheme,
- (b) a reference in those provisions to the proposed scheme is to be treated as a reference to the scheme as proposed to be varied or to the proposed revocation of the scheme, and
- (c) a reference in those provisions to the date on which a scheme comes into operation is to be treated as a reference to the date on which the scheme as varied comes into operation or the date on which the scheme comes to an end.”

Amendments 79 to 82 agreed.

Clause 7, as amended, agreed.

Clause 8 agreed.

Schedule 3 agreed.

Clause 9: Enhanced partnership plans and schemes

Amendment 83 not moved.

House resumed.

House adjourned at 10.17 pm.

Grand Committee

Monday 4 July 2016

Children and Social Work Bill [HL] *Committee (2nd Day)*

3.30 pm

Relevant document: 1st Report from the Delegated Powers Committee

The Deputy Chairman of Committees (Lord Geddes)

(Con): My Lords, as is my duty on these occasions, I must advise the Grand Committee that if there is a Division in the Chamber while we are sitting, the Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes.

Clause 1: Corporate parenting principles

Amendment 29

Moved by Lord Warner

29: Clause 1, page 2, line 4, at end insert—

“() In discharging its responsibilities under subsection (1), the responsible local authority must—

- (a) ensure that all partner bodies responsible for health, housing, police, employment, education and training services are aware of the needs of children and young people for whom they are responsible; and
- (b) advise the individual children and young people concerned of the availability of services offered by partner bodies which meet their needs and assist them in securing such services.”

Lord Warner (Non-Aff): My Lords, first, I want to put Amendment 29 in context. I see it as part of a package relating to Clause 1. In our previous debate on Clause 1, there was a large measure of agreement that the corporate parenting principles needed to be kept tightly drawn and manageable in length. There was also a sense, however, that some important aspects, such as mental health, needed to be specifically incorporated into those principles. We also discussed at some length the importance of requiring the co-operation of other key partners in supporting the corporate parent in living up to those principles. I am sure that on this latter issue we will come back with amendments on Report to place a clear duty on key partner agencies and services to co-operate with the responsible local authority corporate parent.

I wish to raise a point on this, on which the Minister left me, and possibly other Members of the Committee, rather confused. Let me seek clarification from the Minister on what he said about other agencies co-operating with local authorities on the delivery of services linked to the corporate parenting principles. At one point he suggested that this was covered in Clause 10. As I said then, it is not. Then there was some suggestion that what was meant was Section 10 of the Children Act 1989. With a great deal of help from the Library, to which I give thanks, I have checked: it is not there in the 1989 Act. Then I asked the Library to show me the current

version of the 1989 Act, as amended subsequently. It is not in the amended version of Section 10. I am struggling to find it elsewhere in any of the legislation. My request to the Minister, therefore, is that he write to me and other Members of the Committee as soon as possible—certainly well before Report—citing the text of the legislation that requires other agencies, and which of those agencies, to co-operate with the responsible local authority in delivering corporate parenting principles. Without that legislative clarity, I am sure many of us will want to press an appropriate amendment on this issue on Report.

I now return to my Amendment 29, which is linked to this issue. Alongside the corporate parenting principles and the co-operation and involvement of other relevant agencies, a third important element is, I suggest, required to make it all work in practice for the young people concerned. That is an obligation to help those young people get the services they need, which is where Amendment 29 comes in.

The amendment does two things. First, it requires the local authority corporate parent to ensure that all the relevant services are aware of the needs of children and young people in care or leaving care. We know that many of these services, some of which were cited in our previous discussion, are not aware of the special needs of those in care or leaving care. History suggests that we should strengthen the obligation on local authorities to bring home to the other agencies the special needs of those for whom they are corporate parents. Because of the unfortunate timetabling of the Bill, I had little time to prepare the amendment. I know that some services have been omitted from it, but this can easily be rectified.

The second part of the amendment places an obligation on the corporate parent to make sure the children and young people for whom it is responsible know about the services available to help them make their way in the world. It also obliges the corporate parent to help these young people secure those services. I regard this second aspect as very important indeed. Public services can be very complex; they can be very siloed—as was said in our last discussion—and pretty inaccessible. Many of us, as experienced and knowledgeable adults, often struggle to penetrate public sector bureaucracies, so why should we expect these young people to do it without help? It is not good enough to await young people coming forward and asking for help, which they often do not even know about. I recognise that I may not have got the wording quite right and this amendment would need to be aligned with the other amendments to Clause 1 that I have mentioned. However, I hope the Minister will see merit in this amendment and will be willing to make an amendment of this kind to the Bill and possibly discuss it with some of us beforehand. I beg to move.

The Earl of Listowel (CB): My Lords, I rise briefly to support this amendment. I do so because it reminds me of my experience of being acquainted with a young woman who left care some time ago. She did get access to mental health support and saw a therapist over a quite considerable period. She is thriving; she is doing well and supporting young people leaving care.

[THE EARL OF LISTOWEL]

When she spoke to me about her experience, she highlighted how important it was for her to have that access to a counsellor. So if this amendment helps her with that, I would definitely like to support it. We will hear from the Minister about the Children Act duties and I hope that will comfort the noble Lord, Lord Warner.

This woman has a younger brother in care and she is concerned about the access that he is getting to therapy. This is a real issue for many young people in care and care leavers, so I am looking for as much reassurance from the Minister as possible in his response.

Lord Ramsbotham (CB): My Lords, I, too, rise to support the noble Lord, Lord Warner, in his amendment and particularly his plea that we should have some meeting to clarify the various amendments that have been tabled. In the next group, I shall refer to some of these amendments and it strikes me again that this is something that ought to be tied up between the Bill team and those of us who are taking part because otherwise we are in danger of having a thoroughly ill-constituted Bill to send forward to the other place.

Lord Beecham (Lab): My Lords, I also support the noble Lord's amendment. He said that other bodies might be involved and I would draw particular attention to the position of the justice system in this context. Some of the young people involved will already have been involved in the justice system or may subsequently go into the justice system and, of course, have to emerge from it. It is important that there should be adequate liaison between the local authority and its services and those who have responsibility in the justice system, whether that is a custodial institution or another service. When the noble Lord returns to this—perhaps at a later stage—he might want to consider including that in the ambit of his amendment.

Baroness Pinnock (LD): I support what the noble Lord, Lord Warner, proposes in this amendment. Before I make the next remarks, I draw Members' attention to my interests in the register as a member of Kirklees Council. My concern with the amendment, and others we will discuss in the course of this Committee, is the number of proposals that add to the responsibilities of local authorities. As anybody who is associated with local government will be aware, additional responsibilities nearly always require additional spending. I just wanted to draw the attention of Members of this Committee to what is happening to the budget for children's services in Kirklees Council, which is no doubt repeated across local government. Kirklees Council is a large metropolitan borough serving 420,000 residents, which puts the figures I shall now cite in context. The budget that the council intends to spend on children's services, which excludes what it spends on schools, was £71.6 million for last year and is £70 million for this year. For next year, the proposed budget is £53.4 million. Despite every effort by members of the council and officers in Kirklees—we have done all we can to protect spending on children's services—the reduction over the next couple of years will be £18.2 million. As Members of the Committee will quickly calculate, that is a reduction

of 25%. Within that reduction, there is a reduction of 10%—more than £3 million—in services specifically for looked-after children.

Will the Minister take into account the dire consequences of the Bill adding to local authorities' responsibilities? Of course, it is not that local authorities have no wish to have better services for care leavers and looked-after children, but there is a big reduction in the amount that can be spent on them. Consequently, any additional responsibilities will be very difficult to fund.

Baroness Howarth of Breckland (CB): My Lords, I have great sympathy with what the noble Baroness, Lady Pinnock, said. We all work with local authorities that have extraordinary constraints on finances. However, I support the amendment of the noble Lord, Lord Warner, because it can make things easier rather than more difficult. I need to support it as it relates to what I said both at Second Reading and previously in Committee about the two things that are important.

First, any amendments must be tightly drawn. I am really concerned about the next batch of amendments because they could add considerably to local authorities' responsibilities. Many people agreed that if you are a director of children's services, you do not want to have to wade through yet more legislation. We are looking for less legislation but legislation that is clearer and more tightly drawn, to be freed up to get on with the job of looking after children.

The other important item is that we make clear that this is the responsibility of wider services. The noble Lord, Lord Warner, acknowledged that his was not a comprehensive list of those people who could do more to benefit these young people. I know that some of the amendments may be out of the frame. Some of the issues I raised last time in relation to financial services need more refinement. However, if we had these two things—tightly drawn legislation and a wider range of services with the responsibility—it would not add to the responsibilities of local authorities but streamline their work and ensure that others took their part. I declare an interest as a vice-president of the LGA.

The Lord Bishop of Durham: My Lords, I also support this amendment. I apologise for not being here for day one but at Second Reading I explained that I would not be able to be present last week. At Second Reading, there were a number of clauses—this is one of them—where I was concerned that the work of independent fostering agencies, adoption agencies and the voluntary sector as a whole, which provides increasing support to children in care and leaving care, was hardly noticed. We need to keep on top of that. We should not restrict its growth but we should ensure that it is joined up with what is required of statutory authorities and that quality remains high. In supporting the amendment, I hope consideration will be given to that area of work as well in any future redrafting.

The Earl of Listowel: Very briefly, I recognise the concerns expressed by the noble Baroness. So much money might be saved if the right agencies worked with local authorities. It is hugely expensive to keep a

child in a children's home. If that child could be kept in a foster placement because there was adequate early intervention from health, for instance, the local authority could save a lot of money. There is room for negotiation—perhaps health could pay half the cost and the local authority could pay half the cost of an intervention, or there could be some other variation. But it could save local authorities huge amounts of money if the right intervention was made and the right agency worked in partnership with them.

3.45 pm

Lord McNally (LD): My Lords, I can see that the Minister is straining at the leash to answer this amendment. I make only two points, partly from my experience as chair of the Youth Justice Board for England and Wales and partly as a member of the committee of inquiry chaired by the noble Lord, Lord Laming, into looked-after children in the criminal justice system.

What attracts me to this amendment is that it approaches a very real problem from two directions, both in a constructive way. What has struck me over the past few years in considering the problems of looked-after children and the response of various bodies to their needs is that there is still a silo mentality in the operation of some of those bodies, as well as a chronic lack of exchange of information. Those dealing with a child at any point in its journey through the system should have the most comprehensive picture possible of that child's vulnerabilities and needs. In the best of practices, that happens but, all too often, it does not happen.

On the other side of the same penny, the amendment proposed by the noble Lord, Lord Warner, deals with the lack of awareness of the children themselves, and those who care for them, of their full range of entitlements. Having a responsibility to make children, or those with responsibility for them, aware of those entitlements, can do nothing but good in getting them the care they need at any particular point in their lives.

Lord Watson of Invergowrie (Lab): I thank noble Lords who have contributed to this short debate. I am happy to signify my support for the amendment in the name of the noble Lord, Lord Warner, which is a common-sense amendment. Let me just express the hope at the outset that the Minister will find it in him to make a clean sweep of all our contributions—we shall see.

In moving Amendment 4 in Committee last week, I mentioned some of the arguments in favour of broadening the scope of the corporate parenting principles outlined in Clause 1. It is logical to adopt as comprehensive an approach as possible to corporate parenting and ensure that all those who can improve outcomes for looked-after children and care leavers have a role to play in parenting those children. In his reply on day one, the Minister stressed that the principles applied to all local authorities in England and that they apply to all parts of the local authority and not just to children's services. That is important. He went on to highlight the fact that other bodies—such as central government, the National Health Service or housing organisations—are not corporate parents and therefore do not fall within the remit of

the Bill, or this part of the Bill. He pointed out that NHS clinical commissioning groups had specific responsibilities for looked-after children, who were also specifically mentioned in NHS England's mandate. That was certainly welcome to those who were unaware of it.

This amendment goes rather wider and includes the police but, given the proportion of looked-after children and recently looked-after children who have become involved with the youth justice system, that also has some relevance. That being the case, I hope the Government will accept the amendment proposed by the noble Lord, Lord Warner, which seeks only to formalise the relationship between local authorities and other organisations, not least housing services, which increasingly are not found within the responsibilities of local authorities. What is of paramount importance is that there is joined-up thinking and working, leading to an outcome whereby all agencies, to use that umbrella term, ensure the most productive relationships on behalf of looked-after children.

Section 10 of the Children Act 2004 includes a duty on local authorities to co-operate with "relevant parties". However, if that mechanism were working effectively, noble Lords would not have been contacted by various organisations working with or for looked-after children seeking to have the relationship tightened up to provide better outcomes across all agencies. They clearly believe that more needs to be done and we should listen to them, as they are involved on a day-to-day basis with the children the Bill is designed to help.

The Minister mentioned last week that the Government would look at the lessons that might be learned from Scotland. I hope he will note that there the widest possible range of organisations is given the role of corporate parents. Whatever potential obstacles appeared north of the border were clearly overcome. The Minister also stated:

"I would expect partners such as police and health bodies to consider how they can contribute to supporting care leavers. I also hope that many organisations in the private and voluntary sectors will commit to supporting young people leaving care through the care-leaver covenant".—[*Official Report*, 29/6/16; col. GC 52].

I submit that expecting and hoping sounds more like a recipe for disappointment than anything else. Such sentiments are by no means firm enough and the Minister should look to the Bill as a means of ensuring that those things happen. That is what young people leaving care, as well as those assisting them in doing so, have a right to expect.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, before I respond, I am sure noble Lords will be interested in the documents that my department has published today relating to children in the social care system. The first is a policy paper entitled, *Putting Children First: Delivering Our Vision for Excellent Children's Social Care*. It sets out our programme of reform to children's social care for the next four years. The second is an independent report on children's residential care by Sir Martin Narey, the former chief executive of Barnardo's, who is an independent social care adviser to the Department for Education. Sir Martin paints a positive vision for

[LORD NASH]

the future role of residential care and we are grateful for his report. I am sure noble Lords will be interested in both publications, which we have today emailed to all noble Lords who were present on the first day in Committee. They will be available in the Library of the House.

I am grateful to the noble Lord, Lord Warner, for this amendment. I fully appreciate the intention behind it. However, what he seeks to achieve is already encompassed within the corporate parenting principles and existing legislation, which I will explain.

The fourth corporate parenting principle is designed to ensure that the local authority, as a whole, acts as a corporate parent, and helps looked-after children and care leavers to gain access to the services and support they need, including those provided by other relevant partners—to avoid the silo mentality that the noble Lord, Lord McNally, referred to, and, as the noble Lord, Lord Watson, said, to ensure that all those who can help are involved. On the point made by the noble Lord, Lord Warner, about Section 10, I apologise for the confusion. I am sorry to have created so much homework for him. Perhaps in future he can send me a short note and I could save him some time. After all, that is what officials are for. As the noble Lord, Lord Watson, said, we are talking about the Children Act 2004, and I will write to the noble Lord with the relevant section and an explanation.

On the point made by the noble Lord, Lord Watson, to make this section and duty more effective, for the first time we are bringing in the principle of corporate parenting. I am happy to discuss that with him further and, to take the point made by the noble Lord, Lord Ramsbotham, to hold a meeting to clarify amendments and ensure, as the noble Baroness, Lady Howarth, says, that we get a sensible Bill without imposing too many new duties that are not really necessary on local authorities.

Local authorities are already under a duty under Section 10 of the Children Act 2004 to make arrangements to promote co-operation between the local authority and each of its relevant partners, including health bodies, schools, local policing bodies, probation boards and youth offending teams, as well as the voluntary and community sector. On the point made by the noble Baroness, Lady Pinnock, I know she would always like to have more money, but this does not impose any more responsibilities on local authorities. The intention of the existing duty is to improve the well-being of children in the local area and the corporate parenting principles are matters that the local authority must consider under the existing legislation. They do not add further functions.

Therefore, it seems inconceivable that under the existing legal framework relevant local agencies would not be aware of the needs of looked-after children and care leavers in the area. If that is the case, the issue must be with how well the local authority is putting its existing responsibilities into practice rather than it being a problem with the law. Therefore, I see no need to add to the seven principles in the way the noble Lord suggests.

The approach used in the existing legislation is broadly similar to the way the duty to co-operate works in the Care Act 2014, which the noble Lord, Lord Warner, referred to during the Committee's first sitting. The local offer for care leavers will take us further than ever before in helping to ensure that the needs of care leavers are in the minds of services related to health, housing, education, police and employment. In developing their local offer, local authorities will need to talk to those services about what they intend to bring to the table based on what care leavers have told them they need.

For too long care leavers have told us that they do not always have the information they need about the services they need to access and about what they are entitled to. We expect the local offer to set out in one place the full range of relevant services, any additional facilities or entitlements that are on offer, and information about how to access them.

The care leaver covenant, which I have mentioned previously, provides a truly exciting opportunity to build the offer of services and support from a wide range of agencies and individuals. There is no reason why there should be a limit on this. We would like local communities to be as inventive as possible in finding ways of supporting and helping their children in care and care leavers.

I appreciate the very positive intentions behind the amendment of the noble Lord, Lord Warner. However, I do not think it is necessary, given the requirements of the existing legislation and the enhanced focus on children in care and care leavers which the corporate parenting principles and the covenant will bring about. I therefore ask him to withdraw his amendment.

Lord Warner: My Lords, I listened very carefully to the Minister. Before responding, perhaps I may say that he offered to write to me. When I did not receive a letter, I went to the Library.

With this approach of simply asking local authorities to find different obligations in different bits of legislation, the Minister is undermining the strengths of Clause 1 and the corporate parenting principles. The right reverend Prelate the Bishop of Durham has given me some interesting information about the Children Act, so technology is giving us instant access to some of these bits of information. However, they do not cover some of the issues that were raised in the debate about the corporate parenting principles; they are narrower in scope where the partners are asked to intervene. We have been having a debate about the full range of services and agencies that need to co-operate with the local authority to enable the corporate parenting principles to be delivered to children. The Minister did not really deal with the issue in the second part of my amendment, which is about the local authority taking the initiative and showing children and young people what services are available.

I looked very carefully at Clause 1(1)(d). It is a pretty general proposition about helping young people, and it does not define who the “relevant partners”—the wording in the legislation—are. If the Minister wants to get the best out of this well-intended set of corporate parenting principles, we have to beef up the Bill in

terms of the duty to co-operate placed on the full range of services, and we may need to specify them in the Bill with something along the lines of my Amendment 29. I will certainly come back to this, as I suspect will other Members, on Report. In the meantime—

The Earl of Listowel: Before the noble Lord withdraws his amendment, casting back to the Children Act 2004, one agency that was excluded was the Immigration Service. On the duty for all agencies to work together to secure the welfare of children, I am not sure that the Act was successful by excluding that service. In his letter to the noble Lord, Lord Warner, perhaps the Minister can make clear whether that is the case.

Lord Warner: I beg leave to withdraw the amendment.

Amendment 29 withdrawn.

4 pm

Amendment 30

Moved by Lord Ramsbotham

30: Clause 1, page 2, line 11, at end insert—

“() A local authority in England must, in carrying out functions in relation to the children and young people mentioned in subsection (2)—

- (a) undertake a screening of the children and young people's speech, language and communication needs;
- (b) to ensure those working with the children and young people are trained in awareness of speech, language and communication needs;
- (c) ensure appropriate support is provided for those children and young people with speech, language and communication needs.”

Lord Ramsbotham: My Lords, in moving Amendment 30 I shall also speak to Amendments 32, 44, 57, 63, 65, 67 and 69, which continue the discussion on Clause 1 and refer to the local offers covered in Clauses 2 and 3. I must declare an interest as co-chair of the All-Party Group on Speech and Language Difficulties, which three years ago published a report on the link between social disadvantage and speech, language and communication needs, or SLCN. I am conscious of the caveats about local authority resources made by the noble Baroness, Lady Pinnock, and my noble friend Lady Howarth of Breckland but I believe it is better to set out the total of what is required and then decide what cannot be done, rather than leave anything which is not in the Bill.

The inability of children to communicate is the scourge of the 21st century, fuelled by the use of the social media and a whole host of electronic gadgets to which too many of them devote far too much time. Someone has described the language that young people use to speak to each other, if they do so at all, as binary grunts. At Second Reading both I and the noble Baroness, Lady Walmsley, pointed that unless their SLCNs were assessed and treated, the children who are the subject of the Bill would be prevented from understanding or engaging with any of the changes proposed in it. The noble Baroness also made this point to the Grand Committee last Wednesday. To explain

my case, and in acknowledging the risk of boring the Committee, perhaps I may repeat how I came to appreciate the fundamental importance of this issue.

In 1997, as Chief Inspector of Prisons, I visited Polmont, the young offender institution in Scotland, while researching for a thematic review that was being conducted of the treatment of and conditions for young people in prison. As its excellent governor and I walked round the institution, he suddenly said that if he had by some mischance to get rid of all his staff the last one out of the gate would be his speech and language therapist. Not having come across such a person on the staff of any young offender institution in England I asked why, to which he replied that too many young people could not communicate either with each other or with staff and that, until and unless they could, it was impossible to discover what problems they had and plan what help they needed. His speech and language therapist assessed every young person on reception and advised the discipline, education and healthcare staff on which identified SLCNs should be included in individual sentence plans.

To cut a long story short, I have been campaigning unsuccessfully for a speech and language therapist to be on the staff of every young offender institution ever since. Proof of their value was provided by the governors of the two institutions in which therapists were funded for two years as a pilot by the Helen Hamlyn Trust. Each said to me within a month of their therapist's arrival that they could not think how they had managed without them. The all-party group has campaigned for every child in the country to have their speech, language and communication ability assessed by the age of two by a health visitor trained by a speech and language therapist to identify potential problem areas, so that individual SLCNs can be treated before a child starts primary school, with the aim of enabling them to engage with their teachers and therefore with education. We would therefore like to see regular SLCN reassessment throughout a child's school career, including pre-employment assessment on leaving, to ensure that they are able to communicate during each stage of their schooling. I have seen outstanding work during secondary schooling in Walsall, for example, that picked up problems that had been missed during the primary phase, saving children from possible truancy and/or exclusion.

Amendment 30 includes three requirements of local authorities: that they ensure, first, that the SLCN of every child and young person subject to the provisions of the Bill is assessed by someone such as a health visitor who, secondly, has been trained to identify potential problems; and, thirdly, that they ensure that appropriate support is then provided to treat identified needs. More widely, every child should have what is now called an education health and care plan, which are currently made only for those with special educational needs. For most children, the default plan will be the normal educational system. Recent legislation has laid down that home local authorities have responsibility for ensuring that such plans apply to those in custody as well, as the Minister will remember.

As for an assessment tool, I recommend that developed by the Royal College of Speech and Language Therapists for use by the Youth Justice Board in its AssetPlus

[LORD RAMSBOTHAM]

programme, which provides an excellent model that could be followed with advantage. Amendment 32 requires that the Secretary of State include those three requirements in any guidance that is sent to local authorities. Amendment 44 includes the provision of speech, language and communication support in all local offers. Amendment 57 requires personal advisers of former relevant children to be trained in SLCN awareness, and Amendment 63 includes SLCN in the subjects to be assessed and included in pathway plans made by local authorities for such children.

The aim of Amendment 65 is slightly different, in that it is tabled in the same spirit as the amendments I tabled to Clause 1. As many noble Lords have said in relation to other duties required of local authorities, there should be no ambiguity about their duty to inform relevant children of their right to request advice and support. The word “must” says it all. The background to this amendment is that prison staff working with care leavers in custody have reported considerable difficulty in identifying local authority leaving-care managers, particularly for home local authorities nowhere near their prison. Some local authorities go so far as to record care leavers as not in education, employment or training, and therefore outside their responsibility. The aim of my amendment is to ensure that local authorities establish links with prisons and other justice agencies, in which children and young people for whom they are responsible are held, and institute effective joint working methods. This seems entirely in line with the Government’s care leaver strategy and by linking regional and NOMS care leavers’ champions, should ensure that there is a framework on which planning and support for relevant children can be based.

Bearing in mind the high proportion of care leavers with SLCNs, Amendment 67 seeks to ensure that both advice and support are given to former relevant children in a language that they understand, which must include the avoidance of bureaucratic gobbledegook. Amendment 69 may seem like a blinding glimpse of the obvious, but even though they may have been informed of their right to make a request—if Amendment 65 is agreed—many of these children have not the slightest idea of to whom to go to make one, let alone how to make it, even supposing that they can read and write. Civil servants, who may not understand this, must be reminded of their responsibility for providing clear and transparent information, set out in straightforward terms, which will enable care leavers and former care leavers to access what is on offer to them.

My final amendment in this group, Amendment 38, is completely different in concept but is also designed to improve local offers and is based on pathway plans, as outlined in the Children Act 1989. A report by the Children’s Society, *The Cost of Being Care Free*, found that too many people leaving care with no family to support them were falling into debt and financial difficulty, which suggested a lack of sufficient financial education. Again, we are up against inconsistency because the report also found that other than encouraging advice by personal advisers, nearly half of local authorities do not commission additional financial support. The Joseph Rowntree Foundation has drawn attention to

accumulation of debt, threats to their tenancies and their inability to avoid this through careful budgeting being issues of continuing concern to care leavers. Hence Amendment 38 and the proposal that “financial education” be included in the list of supported services included in local offers. I beg to move.

Baroness Bakewell of Hardington Mandeville (LD):

My Lords, I shall speak to Amendments 30, 32, 40, 44, 46, 57 and 63, to which I have added my name. I support the noble Lord, Lord Ramsbotham, who has, I think, given all the detail that the Committee needs. I spoke on this issue at Second Reading.

It is important for government and all who have responsibility for looked-after children to recognise that they could have unidentified or unmet communication needs. This unidentified or unmet need could prevent children and young people understanding and engaging with the changes to their lives that are being proposed and therefore they could struggle to have a meaningful input into those decisions. A lack of identification and consequent intervention for those with communication needs could lead to a range of negative outcomes in relation to their health and well-being, education and training, employment and participation in society. In addition, as shown in the statistics given at Second Reading, it could lead to their involvement in the criminal justice system, as the noble Lord, Lord Ramsbotham, has already told us.

Those of us debating this issue today have good communication skills. Most of us cannot imagine what it is like not only not to understand what is being proposed for our lives but to be totally unable to respond in a way that adequately reflects the turmoil and uncertainty that we feel inside. Looking into the eyes of a child while explaining the processes and outcomes for them may assist those dealing with the child to tell whether the information has been understood. However, it is not a very scientific test, and it will certainly not assist the child or young person to respond if they have communication problems. Access to properly trained speech and language therapists is essential to ensuring that these extremely vulnerable members of our society are able to have a voice. Unless such help is provided, I fear that we will see statistics showing an increase, not a decrease, in the number of care leavers suffering from poor mental health and becoming prevalent in the criminal justice system.

Listening to the voice of the child is paramount. Children have a right to express an opinion on their care. Those providing help for young people about to leave the care system must be able to assess their ability to read and digest the written word, as well as the financial implications for them. As we discussed last week, this is essential in ensuring that they are able to budget and manage their money so that they do not fall into debt or find themselves facing sanctioning from the jobcentre or eviction from their accommodation.

I hesitated to use the word “illiterate” in Amendment 40, as labels, once attached to people, are often very difficult to shake off. Care leavers do not need this added stigma. They need help to overcome their difficulties, with information provided in a format that they can access, whatever that may be.

Personal advisers for care leavers up to the age of 25 should be properly trained in identifying and helping to overcome the communication difficulties of the young people they advise. Without this, there will be a huge gap in the support they are able to provide. Will it be up to local government to ensure that adequate trained support is provided? This should not be a charge on the local council tax payer; it should be properly resourced and funded by central government via the NHS. If the Government are serious about assisting care leavers to make the best of their lives, they will ensure that the funding is made available to cover the costs. I hope the Minister will be able to give us a positive response on this group of amendments.

Baroness Walmsley (LD): My Lords, I have Amendment 35 in this group but I also support the amendments in the names of the noble Lord, Lord Ramsbotham, and my noble friend Lady Bakewell, which refer to speech and language issues, and I have added my name to them. As I said in the debate on an earlier group, these issues are vital and must not be ignored.

My Amendment 35 seeks to ensure that information about the local offer for care leavers is provided in a form that is accessible to all children. We must not assume that all young people leaving care are fully able. There are children leaving care who have sensory impairments, although such young people may stay in care a little longer than others. There are those with physical disabilities that might make it hard for them to use the internet easily. They, too, want to lead independent lives with the right support. There are those with learning disabilities who may be quite capable of living independently with the right support but need someone with an understanding of their problems to interpret the information for them so that they can express their wishes about what they need or want to access.

4.15 pm

Last week, I chaired a meeting for Learning Disability Voices and we heard from a young man called Mark who has learning disabilities and is benefiting from the very specialist care services offered by that section of social services and by a charity called Ace Anglia. He and a young man called Max from Ace, who is an expert in this, told me about the system called Easy Read, which uses simple language and pictures to explain issues those with learning disabilities need to understand. It is offered to hospitals and similar places which need to ensure that all patients understand information that relates to them, whatever their learning disability. That is one example of what I am getting at in the amendment.

Local authorities need to be aware of those services, as well as the availability of audio tapes, Braille, large print and all the other ways to ensure information gets over to all care leavers.

Needless to say, although they are not covered by the amendment, it is also important that young people leaving care who do not yet have a good grasp of English also have a translation in their own language. Quite a few teenagers may have come to this country

as unaccompanied refugee children and not have been here long enough to be fluent in English when they leave care. We need to think about them, too.

My point is that we need to look at the specific needs of the young person as a unique individual when making this crucial information available so that we can be sure that they can all benefit from it.

Lord Farmer (Con): My Lords, I shall speak to Amendment 39 in this group, tabled in my name and those of my noble and learned friend Lord Mackay of Clashfern and the noble Baroness, Lady Tyler. Our amendment remedies a serious omission in the list of the areas of support that councils are required to include in their local offer. It stipulates that information and services that will help young people to develop and maintain healthy and supportive relationships should be available alongside the other five areas of health and well-being, education and training, employment, accommodation, and participation in society.

When parental care fails, for whatever reason, and children and young people are taken into the care of the local authority, it is easy for us as legislators to treat this primarily as a legal problem. Obviously, it is essential that a minor's legal status be clear and established. However, first and foremost, we should be aware that these circumstances typically create a relationship problem because of the profound long-term effects of losing parental attachments and the often taken-for-granted bonds with siblings and others in the extended family.

At birth, every child comes into that little unit, their family, where relationships are, ideally, formed and nurtured. Relationships are foundational to all human societies and what human existence is all about; without them, that existence can feel precarious, fraught with fear and difficulties and even fundamentally unwelcome. This is especially the case when making the transition from dependence into independent adulthood, a difficult and protracted shift for every human being, even when they have the back-up of good enough parents.

Although I welcome the inclusion in Clause 1 of the corporate parenting principle that children should have stability in their home lives and relationships, this is the only place where the word "relationship" is mentioned in relation to care leavers. Others noted this infrequency at Second Reading, such as my noble and learned friend Lord Mackay and the noble Baroness, Lady Tyler, who mentioned a lack in this area. Three-quarters of young people leaving care admit to difficulties due to loneliness and isolation. Almost half found these very difficult to cope with, and those numbers could easily be higher, as admitting to such feelings is still stigmatised in our society.

Information about and provision to assist young people to build relationships should be included in the local offer laid out in the clause because it is highly likely to be another area of lack, given that they have not been able to learn such "habits of the heart" in their birth home. The Government might consider that this is covered by subsection (2)(a), on health and well-being, but we simply cannot take that for granted. Relationships are not yet embedded as a priority for

[LORD FARMER]

public bodies. The best example of that is found in Public Health England, whose mission statement says:

“We protect and improve the nation’s health and wellbeing and reduce health inequalities”.

However, both its annual plan and the public health outcomes framework are relationship-free zones, something that the Tavistock Centre for Couple Relationships and others have been challenging for several years on the grounds that at least three-quarters of the indicators contained in the public health outcomes framework are directly or indirectly influenced by the quality of people’s couple relationships. It is stated rather narrowly, but noble Lords will take the point.

The inability to form and maintain relationships is a root cause behind poor health and well-being. It undermines educational attainment, employment prospects, the ability to maintain a tenancy and have otherwise stable accommodation, societal participation, and all the other itemised aspects of the local offer. This is not just because of the lack of self-esteem, self-confidence and other internal factors that can put lonely and rootless young people at such a disadvantage. Relationships have instrumental value. The deficit in social capital, when a young person has no family members to open their contact books to get them work experience and almost no settings in which they can acquire soft skills, can have devastating effects. Services do exist for young people to help address these relational difficulties. I have talked before about Love4Life in Loughborough, and Oasis College was recently established to ensure excellence in the many organisations that work in this and other related areas. They will not, however, be automatically commissioned without some indication from the Government that they are indispensable to a comprehensive and effective local offer.

I also gave concrete examples at Second Reading of the kind of services that local authorities can provide and commission. Northern Ireland’s model of person-specific personal advisers enables local authorities to draft in people who already get on with and are trusted by the young person leaving care. At present, care leavers are matched up with someone they may never have met before who usually has a couple of dozen or more vulnerable youngsters on their books. There is also a lot of staff churn, which makes a mockery of relationship stability.

I also recommended consideration of the family finding and engagement model in California and other parts of the United States. That name is slightly misleading in our system and not to be confused with the family-finding process to locate good potential adoptive parents. US family finding makes the most of blood connections with extended family and other supportive relationships that children entering or in the care system have already developed with adults, such as teachers, youth workers or the parents of friends. Instead of allowing them to lapse, local authorities treat these relationships as potential lifelong links and draw on this resource to build intentionally a network of support around young people before they leave care. What they are looking for is a small number of adults who are reliable and willing to be involved in the young person’s life and will keep in touch with

them whatever happens, inviting them for Sunday lunch or to spend Christmas Day with them, for example. As I said, a highly suitable personal adviser could emerge from that process. If the Department for Education were able to furnish local authorities with model contracts, this would help them greatly.

I conclude by saying that this is a probing amendment. If my noble friend does not feel that this clause is the right one in which to place the necessary emphasis on relationships, I am open to the legislation being strengthened in this way elsewhere. Otherwise, the legislation will not, I fear, boost vulnerable young people’s life chances as much as might otherwise have been possible.

Baroness Tyler of Enfield (LD): My Lords, I add my support to Amendment 39, to which my name has been added. It says it all that we are discussing this important issue about relationships in a hugely important group with some hugely important amendments but, frankly, the two do not sit very happily together.

At Second Reading and last week I talked about mental and emotional health, including how the love and support of foster parents can make all the difference. That is because of the relationship involved. I also stated that very little notice appears to have been taken in the family test, which was part of the impact assessment accompanying the Bill, of children’s wishes and feelings, particularly about relationships that they value or may want to preserve. It is not an exaggeration to say, as the noble Lord, Lord Farmer, did, that the Bill at the moment is almost devoid of reference to relationships. I am very pleased to see that other noble Lords are trying to ensure that this emphasis comes through more strongly in other amendments in other groups. I fear that that this lack of emphasis on relationships threatens to undermine the admirable intent of a good chunk of the Bill, which is obviously to ensure that we improve outcomes for care leavers.

There is an absolute wealth of research reports, including those from the Centre for Social Justice, concluding that if we do not put strong, healthy relationships at the heart of the care system, we will never see the improvement in life chances that we are all ambitious for. At Second Reading, I talked about the need for ambition—for setting ourselves a higher standard. We simply cannot treat the presence of strong relationships in the lives of children who have been in care and are leaving care as a “nice to have”. That is just not good enough. Strong relationships are of fundamental importance to any young person in their transition to adulthood. Without someone who will provide unconditional love and acceptance, the challenges that the world presents can sometimes seem insurmountable. Such relationships must be a fundamental element of young people’s care-leaving packages. Those young people need to know how to draw on the resources inherent in good-quality relationships; for example, how to handle misunderstandings and perceived slights, and the constant need for compromise—give and take, if you like.

Finally, there are good relationship support services available for young people. Indeed, there is evidence of their effectiveness—they work. They are provided by a broad range of providers, mainly in the voluntary

sector. I draw noble Lords' attention to my declared interest as vice-president of the charity Relate. If local authorities were required to provide information—not the service itself, just information—about relationships and these services, we would begin to see far greater take-up of what is on offer. Those benefits would then go into adult life and adult family relationships.

The Earl of Listowel: My Lords, the noble Lord, Lord Farmer, spoke effectively about the fundamental importance of relationships to us all but particularly to young people whose first relationship is often so flawed and damaging. That made me think of the example that some of our senior politicians currently set about what a good relationship is. One lesson we might learn from current experience is that our political culture needs some reform. We need to think about how we make our culture one where the best rise to the top, and where we have confidence that they are shining examples to us all of how one should behave. I say that with all my own faults and probably hubristically; I apologise for that.

I shall concentrate on two amendments in this group. The first is Amendment 30 from my noble friend Lord Ramsbotham, which is on screening. As a child, I had a speech impediment. I was teased by other boys because of it. I saw a speech therapist, did some exercises and no longer have my speech impediment. I was no longer teased by the other boys and I felt better about myself for that. We know that many young people in care can feel stigmatised, different or abnormal, as was mentioned earlier, so to provide them with these services and enable them to recover—to speak normally, as others do—is particularly important from that aspect.

4.30 pm

On financial matters, briefly, the APPG for children and people in care, of which I am the vice-chair, recently had a meeting where we debated a motion that financial education should be an obligation for looked-after children and we concluded by voting yes—that they should all receive that financial education and there should be that obligation. One interesting point made was that it should perhaps begin at an early age and that, through their relationship with young children, foster carers should be advised and supported in teaching how to manage money. From that also flows the suggestion that we should be concentrating on training for personal advisers, residential childcare workers and foster carers so that they can perhaps deliver the financial education. But that is the detail and I support that amendment.

With regard to the concerns of the noble Baroness, Lady Pinnock, about the funding of local authorities I omitted to say earlier that I could not agree with her more. The Bill should not put any more financial responsibilities on local authorities without providing the finance from central government for them to deliver it. That is absolutely crucial if we want to see improvement in this area.

Personal advisers are referred to in this group but when the amendment of the noble Lord, Lord Warner, was discussed I perhaps missed the discussion about professionalising them. I welcome what the Government

are saying about developing the mentoring role of personal advisers but we will not see the difference we want to make through the Bill in this most important aspect—the personal adviser role—unless they are clearly well-regulated professionals with clear case load numbers. It is just the sort of clarity that we are trying to provide for social workers later in the Bill. If we do not raise the status and professional regulation of these people, we will not be delivering for young people leaving care. I look forward to the Minister's response.

Lord Watson of Invergowrie: My Lords, in speaking to their amendments the noble Lord, Lord Ramsbotham, and other noble Lords have outlined the importance of recognising that looked-after children may have unidentified or unmet communication needs, which could prevent children and young people understanding and engaging with the changes that the Bill proposes. For those with communication needs to fully benefit from the Bill's changes, it is essential that any accompanying regulations and guidance stipulate that, as noble Lords outlined in last week's Committee session, on entry to the care system the initial health assessment that local authorities are responsible for undertaking should include a mandatory screening for speech, language and communication needs.

The document *Putting Children First*, which was mentioned by the noble Lord, Lord Nash, a few minutes ago and which dropped into our email inboxes about lunchtime today may well meet those concerns. It is a weighty document; not perhaps Chilcot-esque but there is quite a bit in there and it has not yet been possible to examine it in detail. I hope that that document, which I am sure is important, has some of the answers that have been asked for within this debate.

Amendment 32 would at least ensure that speech, language and communication needs are covered appropriately. To ensure that this is as effective as possible, it seems obvious and perhaps logical that people working with, supporting and caring for looked-after and previously looked-after children should receive training in awareness and communication needs, including knowing when to refer someone for speech and language therapy. It would surely be a matter of great concern if such referrals were not made due to the inability of the individual who comes into contact with them when they enter care. In the longer term, looked-after and previously looked-after children should have continuing access to speech and language therapy to help them address their communication needs as their lives progress.

I was surprised to learn that at present many children diagnosed as having speech, language and communication needs receive just one hour of direct intervention from a speech therapist each week and that at the age of seven, in all but the most extreme cases, that help often ends due to financial restrictions. Most then receive no further intervention until they enter secondary school three years later. That gap can surely have an extremely damaging effect on children with speech, language and communication needs. If that is so serious among the school population as a whole, how much more serious it is for children who are in care.

The fact that communication needs to be referenced so often in the various amendments we are considering

[LORD WATSON OF INVERGOWRIE]

today, not just in this group, highlights the importance of ensuring that such needs are identified when children and young people enter care and for those already in care to have any such needs identified when they are about to leave it. The importance of providing proper specialist support extends to the need for financial information and to understand relationships. So often, we have heard of young people leaving care being given their own accommodation without any proper planning or experience and with little ability to care for themselves. Debt soon follows, which can lead to accommodation being lost and benefits sanctions contributing to a terrible downward spiral. The difficulties of relationships ought to be another obvious area in which every step is taken to prepare young people as fully as possible for leaving care. Under some of the amendments we will deal with later, we will describe what can happen when people enter relationships without adequate preparation and support.

The amendments span both the corporate parenting principle and the local care offer. They strengthen the Bill and are worthy of our support.

Lord Storey (LD): My Lords, I shall speak briefly to Amendments 30, 32, 38 and 57. I wonder why the issue of personal advisers being trained in speech, language and communication awareness is in this group when we will be discussing their role under a later amendment; however, we are where we are. A number of issues need to be brought together and understood, perhaps after Committee.

I shall give your Lordships a flavour of what I mean. First, let us deal with the point made by the noble Lord, Lord Ramsbotham, who rightly said that poor speech, language and communication limit not only children in care but young people generally. Eighty-eight per cent of unemployed men have speech, language and communication needs. They limit employment opportunities, affect their social and emotional well-being and contribute to literacy, behavioural and other social problems. The noble Lord, Lord Watson, said, "Let's have mandatory screening". What do we do in schools? Are we not screening there all the time? We are continually assessing and testing, so why do we need another form of mandatory screening? We need to ensure that that information gets passed to the relevant people.

I am sorry that my noble friend Lord McNally has been unable to stay. A year ago, I went to award the local youth offending team a dyslexia awareness certificate, which means that they can identify young offenders who have dyslexia problems. I was horrified to learn that no information is passed to that team on the academic, literacy or communication skills of those young offenders. Is that because of data protection issues? If we are to provide the necessary support for those young people in care, that information needs to be made available. If there is a body of information in schools, it needs to be passed on.

On personal advisers, your Lordships probably remember from Second Reading that I went through as many job adverts as I could find for personal advisers. I was concerned that there was no standard requirement; it was all over the place. Nowhere in any of those advertisements did I see any mention of

speech, language and communication skills. The two are linked. If personal advisers are as important as they should be, part of their qualification or awareness must be in this area. How do we make that happen? Currently, there is no legal requirement on what personal advisers do, only suggestions. We need to spend time understanding that so that these people are the best who can be provided.

Finally, the key to this is making sure that the information is available in schools. By the way, this is not just an issue for children in care or care leavers, it is an issue for all children. I am glad that the Government, both in the coalition years and now, are addressing those issues in schools, through the pupil premium. I am a bit concerned—perhaps the Minister in replying could correct me on this—that we say that the pupil premium particularly should go to looked-after children. My experience in many schools is that it just goes into the common pot and the looked-after children, to use the vernacular, do not get a look-in. I want to be sure that perhaps Ofsted, when it is carrying out inspections of schools, makes sure that this pupil premium—where there are looked-after children—is particularly linked to the needs of the looked-after child.

Baroness Howe of Idlicote (CB): My Lords, before I say a word on Amendment 32, it is extremely interesting how, as on the first day in Committee, fascinating bits of information from people's background and knowledge of the whole of this area comes out, all of which is enormously valuable to those who are responsible for these Bills and this Bill in particular.

I support Amendment 32 in the names of the noble Lord, Lord Ramsbotham, and the noble Baroness, Lady Bakewell, because it states that the,

"guidance given by the Secretary of State must stipulate ... the need to screen children ... the need for those who work with ... children ... to receive training in awareness of speech, language and communication needs",

and refers to,

"the need for appropriate support to be provided for those children and young people with speech, language and communication needs".

Above all, I stress that there is a need to update regularly all those people who are in this position and working with these children in need. Although I agree that all children need attention and need us to be aware of how they are developing and of what particular skills that will be essential in their future lives they are lacking, nevertheless, it is those who are in this very important position who need to be updated and know exactly what is happening in this area. I am very much in support of everything that has been said on this group and I look forward to what the Minister will say.

Baroness Evans of Bowes Park (Con): I thank all noble Lords who have contributed to this debate and start by addressing Amendments 30 and 32. Comprehensive legislation in this area is already in place and the local offer and support of personal advisers will strengthen existing arrangements. Under Section 22 of the Children and Families Act 2014, local authorities must identify all the children or young people in their area who have special educational

needs or a disability. If needs are identified, a series of legal obligations will result in the local authority securing the necessary special educational provision. The statutory SEND code of practice sets out the detailed requirements on local authorities in relation to identifying and meeting special educational needs, including speech, language and communication. In addition, I reassure the noble Lord, Lord Ramsbotham, and the noble Lord, Lord Watson, that we expect details of services to meet speech, language and education needs—including how they can be accessed—to be included in the local offer, which every local authority is required to publish in consultation with children, parents and young people.

The department also funds a consortium of more than 40 voluntary and community sector organisations to support practitioners working in the field of speech, language and communication. The department recently extended the contract, awarding a total of £650,000 in 2016-17 to extend and strengthen the evidence base around SLCN, increase awareness of speech, language and communication needs, and build capacity in the sector so that it can indeed provide the support that all noble Lords feel is so important. Virtual school heads, working with designated teachers and special educational needs co-ordinators, should also identify the support that looked-after children need in speech, language and communication. I know that under further groups of amendments today we will discuss in more detail the role of virtual school heads.

4.45 pm

Existing regulations and standards also ensure that foster carers and carers in residential homes can meet the needs of the young people for whom they care. On these amendments, and Amendment 63, I reassure noble Lords that the care and pathway planning process already addresses speech and communication needs. Pathway plans must include an assessment of the needs of care leavers with a view to determining what assistance, if any, it would be appropriate for them to provide. This will include those needs relating to speech, language and communication. As we have said already in debates on these clauses, we will publish guidance regarding this legislation to set out in detail how local authorities might apply the new corporate parenting principles. The content of the guidance will, of course, be a matter for full deliberation and consultation, but I fully expect it to cover this very important area.

On Amendment 57, personal advisers have an important role to play. They are the key professionals responsible for identifying and co-ordinating provision of services, including those to support any speech, language and communication needs. Personal advisers' responsibilities to inform care leavers of the services that they may access is already covered in existing legal duties and functions, and by Clause 3 of the Bill. Our review of the personal adviser role will address some of the issues that the noble Lord, Lord Storey, raised, as it will consider what further guidance or stipulation is necessary.

On Amendments 35 and 46, under the Equality Act, local authorities are already required to ensure that the services they offer and information they produce are readily accessible to care leavers with disabilities.

They cannot put anyone with a disability at a disadvantage. We will ensure that the departmental guidance that will accompany this legislation is clear on this point. The guidance will make sure that local authorities take reasonable steps to ensure that care leavers can understand and access the support and services available to them in the local offer, expressed in a way that is clear and easy to understand. The noble Baroness, Lady Walmsley, gave some examples in other areas, such as health, where innovative approaches are being used by local services to ensure that they are accessible to all. We certainly want to encourage local authorities to share best practice and consider using different types of technology. The local office for SEND must be kept under review and, when local authorities receive suggestions and comments, they must say what they have done with them. While I agree, of course, that the services local authorities provide should be of high quality, imposing a requirement to score services is not the best way in which to achieve that. Local authorities already have evaluation, management and records systems in place, and are subject to inspection by Ofsted. They will also be placed under a duty to consult care leavers before publishing or updating their local offer. That consultation will include seeking feedback about the services that are provided.

With regard to Amendments 44, 65, 67 and 69, I hope noble Lords are reassured by what I have said. Existing duties, Clause 3, and accompanying guidance will ensure that care leavers are informed about the support they can get, in a way that they understand, and helped to access the services they need.

I turn to Amendments 38 and 40, and the very important matter of support for young people leaving care in managing their finances, as highlighted by, among others, the noble Lord, Lord Ramsbotham, and the noble Baroness, Lady Bakewell. Noble Lords will be aware that many local authorities already provide support in this regard. Indeed, one key aspect of a young person's pathway plan is to help the care leaver to develop,

"the practical and other skills necessary for independent living", which, of course, includes budgeting and financial awareness.

Clause 2 sets out the main subject areas which we believe the local offer should cover to assist care leavers in preparing for adulthood and independent living. It is a non-exhaustive list, and the local authority will have the flexibility to include other subject areas that it thinks should be part of its local offer. As we discussed in Committee last Wednesday, our intention is to provide guidance on what a local area might include in its local offer. My noble friend and I fully agree that care leavers should be helped to develop financial skills and understanding of how to manage their finances effectively to help them to achieve independence and avoid running into financial difficulties. As noted, our intention is to include further information on this in the guidance.

Finally, I turn to Amendment 39. I reassure my noble friend Lord Farmer and the noble Baroness, Lady Tyler, that the whole thrust of what we seek to achieve through the Bill is the reinforcement of the importance of relationships and helping children and young people to recover from their pre-care experiences

[BARONESS EVANS OF BOWES PARK]

to make a successful transition to independence. The importance of relationships is central to the corporate parenting principles. As noble Lords will know, good corporate parents already support care leavers in developing relationships in a range of practical ways that have wider benefits. For example, Stoke-on-Trent City Council has set up an independent housing company, the House Project, which is run by, with and for care leavers.

Clause 2 already prescribes the broad areas that the local offer should include. We will publish guidance for local authorities and I would fully expect it to say that they should include in their offers information about relationship education among the services available for care leavers. Our forthcoming care leavers strategy will set out our plans to ensure that care leavers are better supported to develop and sustain the social networks that support them in their transition to adulthood and beyond.

Clause 3 will enable care leavers to maintain their relationship with their personal adviser, whom they often see as a linchpin in their lives, until the age of 25. One function of the personal adviser is to co-ordinate the provision of services and to take reasonable steps to ensure that the young person makes use of them. They will also, through the pathway planning process, identify ways in which the care leaver can develop and maintain positive attachments.

My noble friend Lord Farmer talked about family-finding services. Building on success in the United States, the Family Rights Group is now testing this approach in a number of local authorities. This is exactly the sort of approach that we want to test more widely as part of our forthcoming care leavers strategy. I hope that the noble Lord will feel reassured enough to withdraw his amendment.

The Earl of Listowel: My Lords, perhaps I may ask a quick question about SEN thresholds. I understand that recent legislation has raised the threshold for an SEN statement, the idea being that schools will have better capacity to meet the lower-level issues. I had a fairly low-level speech impediment and I am not sure that I would have qualified for a statement. I should like to be told whether that threshold has been raised and whether we are getting evidence that schools are able to meet the lower levels which are no longer being stated. Perhaps the Minister would write to me or we could just have a conversation about it afterwards.

Baroness Evans of Bowes Park: I will do that.

Lord Ramsbotham: My Lords, I am grateful to the Minister for that reply, as I am to all those who have taken part in the debate on this group. I must admit that I am always nervous when I hear the phrase “comprehensive legislation is in place” because it reminds me that we are serving under what has been called the “management complex”. It may be all very well for people in Whitehall to lay things down and think that it is comprehensive, but a word that came up over and over again at Second Reading, as it is doing during Committee, is “consistency”. It is not a matter of laying stuff down; it is a matter of seeing that it is delivered consistently everywhere.

What worries me about much of this—about Section 22 and SEN and so on—is that it is all very well as seen from here but it will not be good enough unless it is reflected on the ground. I have taken note of what the Minister has said and I will come back on Report with some examples of inconsistency—that is, where it is not happening on the ground. It is very important that officials realise that rather than merely issue the instructions.

I am very pleased that the noble Lord, Lord Farmer, mentioned relationships. In young offender institutions where speech, language and communication therapists were introduced, the first thing that was noticed was an improvement in relationships. With that improvement, the whole atmosphere and the way that things were conducted in the institution improved. Somebody described it by saying that they were communicating with each other using the mouth rather than the fist. That was a pretty good basic description.

Had my noble friend Lord Northbourne been here, he would yet again express the concern he expressed to me that we hear an awful lot about corporate parenting but there is nothing about parenting skills themselves in this Bill. Those are hugely important, and at the basis of all the social work we are talking about. I am surprised that there is no mention of that in the Bill. I very much hope that may be rectified in government amendments that will install in the Bill some of the things the Government have assured us are in place. In the meantime, I beg leave to withdraw my amendment.

Amendment 30 withdrawn.

Amendments 31 to 32 not moved.

Clause 1 agreed.

Amendments 33 and 34 not moved.

Clause 2: Local offer for care leavers

Amendments 35 to 40 not moved.

Amendment 41

Moved by Baroness Wheeler

41: Clause 2, page 2, line 41, at end insert—

“(2A) A local authority in England must conduct an assessment of the services required to meet the needs of care leavers in relation to—

- (a) health and well-being;
- (b) education and training;
- (c) employment;
- (d) accommodation;
- (e) participation in society.

(2B) The results of the assessment must be published online.

(2C) A local authority in England must provide services that meet the needs identified in the assessment carried out under subsection (2A) and which also meet the national minimum standard.”

Baroness Wheeler (Lab): My Lords, our Amendments 41, 42 and 45 to Clause 2 and Amendment 54 to Clause 3 aim to make the local authority offer to care leavers a firm, proactive commitment to support rather than the you-approach-us emphasis currently in the Bill. We strongly agree with the Alliance for

Children in Care and Care Leavers that the Bill does not go far enough to make a real difference to young people's lives and that strengthening the local offer to all care leavers up to the age of 25 is a key opportunity to transform the standard of support that care leavers can expect. Our Amendments 47 and 74A deal with this important entitlement issue.

Noble Lords underlined the need to ensure the high standards of support for children in care and care leavers, as well as the best opportunities and access to the services that can help reduce the inequalities they face and set them on a positive path to the future. Amendment 41 places a statutory duty on the local authority to carry out an assessment of the services to meet care leavers' health, well-being, education, training, job, housing and social participation needs, backed up by the duty to provide those services.

Together with other noble Lords, we stressed the need for a national minimum standard of care for the quality and extent of services which should be offered to care leavers. Amendments 41 and 43 emphasise this. The Bill currently requires local authorities simply to publish a list of the services they provide. This will not address the need for proactive support for care leavers or ensure that they have the information and advice underlined in previous amendments. What is needed is a national offer to serve both as a framework and as an undertaking about the availability of services across the country.

As part of these considerations on the importance of minimum service standards, I briefly for the record draw on the experience and findings of a recent major project, *New Belongings*, in which I was privileged to take part. It was a three-year project funded by the Department for Education and overseen by the Care Leavers' Foundation. It involved both elected and staff leadership, practitioners from local authorities and care leavers. Its vision was to work with local authorities to improve outcomes for care leavers by using the care leavers' experience and wisdom to shape and make decisions about the services that should be provided.

The project's second phase ended in April. The finishing touches are currently being made to its final report, and it is being independently evaluated. Some 28 local authorities in England took part, covering 90% of all care leavers aged 19 to 21. They worked mostly in clusters, which was invaluable in developing local plans and in sharing and learning from each other. Key requisites and criteria from the outset were that the project had the personal and active support of the chief executive and the council leader. That was crucial. They signed up to the care leavers' charter and undertook to work with local businesses to offer opportunities and support to care leavers.

Local authorities listening actively to care leavers through regular surveys and engagement through a care leavers' forum was also at the heart of the project. Care leavers need to be central to decisions about services—decisions about them as individuals and about overall services to care leavers. This ability to listen, the quality of engagement with the care leavers' forum and the real commitment of senior council leadership to corporate parenting were, together with the effectiveness

of personal advisers, the three main factors contributing to improved outcomes for care leavers in the majority of the project clusters.

5 pm

As part of the project, I visited the London Borough of Lewisham and subsequently hosted a discussion group of care leavers, senior social care staff and council members from the borough in the House last week. From that type of engagement, I emphasise that you can tell the quality of engagement with the care leavers' forum by the discussions and conversations that take place. The local authority knows its forum members, keeps in touch and respects their views and inputs. The care leavers feel involved. Care leavers' forums and regular surveys give the structure and voice to the consultation with care leavers that is required to take place under Clause 2(6). Our Amendment 45 would require the consultation responses to be published online, reinforcing the importance of the care leaver's voice and helping to ensure transparency and accountability in how the local offer is developed and agreed.

My reason for drawing the Minister's attention to the project was the hope that he could assure me that the department is actively looking at the project and its key relevance, particularly to the early clauses of the Bill. I hope that its report will be published this month. Can he undertake, on care leavers' forums in particular, to come back to the House with a considered view on how they can ensure that local authorities set them up and make full use of their wisdom and experience to develop care leaver services? The project was also asked by the department to define a gold standard in services for care leavers. That has now been published on the *New Belongings* website and I hope the Minister will look at it in considering the need for minimum standards of service.

I mentioned Lewisham but participating local authorities in the project covered, for example, other London areas, Yorkshire, the north-west, the Midlands and south-west. Key changes in practice in Trafford and Leeds featured strongly, as we would expect, but progress was reported on a wide range of services against project criteria across all 28 councils. For example, there was Bournemouth's offer of extended support for PAs to out-of-office hours. Staffordshire's establishment of care leaver ambassadors, using young people with recent experience of care and leaving care to mentor care leavers, was particularly effective for education mentoring. I thought that Durham's provision for every senior manager to mentor a care leaver was very valuable; it also developed a housing protocol for each care leaver as part of its pathway plan. There was no direct financial support to LAs in this project, only practical support for project activities. The project view was very supportive of the need for national minimum standards and guidance on services to be provided by councils.

Our other amendments in this group are Amendment 47 to Clause 2 and Amendment 74A to Clause 3. They would create a clear principle that all care leavers are entitled to advice and support up to the age of 25. The case for this was well rehearsed by noble Lords at Second Reading. The extension of

[BARONESS WHEELER]

support through the Bill as drafted comes with significant caveats, with the onus on the young person to contact the local authority having lost touch with services. Amendment 47 would ensure that the onus is on the corporate parent to reach out to those who may need support and ensure that they are aware of their entitlements. Post 21 is often the age when the problems for care leavers start to pile up. We do not want them to wait until crisis point or fail to get in touch because they do not want to admit that things are going wrong.

Our Amendment 74A would provide for a new Clause 3 to extend a range of duties as set out in Section 23C of the Children Act; in particular, to extend personal adviser support for care leavers up to the age of 25. Care leavers currently have the right to support from a personal adviser and pathway plan up to age 21, or 25 for those who told the local authority that they plan to return to education. The Bill extends this access up to 25 year-olds but again places the onus on the request for support coming from the young person. However, we know that the young people most in need of support often lose touch quickly with services and will not know their entitlements or where to go for help. Our amendment places a duty on councils to stay in touch with care leavers, to re-establish contact where they lose touch, to offer assistance with emergency welfare needs in certain circumstances and to appoint a PA and keep the pathway plan under regular review. This amendment is supported by my noble friend Lord Wills, who will speak on the importance of councils having adequate data on service outcomes for care leavers, and by the noble Earl, Lord Listowel.

I re-emphasise the key role and effectiveness of PAs, particularly the quality of their relationship with care leavers which underpins real change in practice. Talk to care leavers and they will stress this—and just how important the stability of PA support and better access to them is—rather than, as one care leaver said to me, just being able to “grab time with them”, as so often happens. I beg to move.

Baroness Massey of Darwen (Lab): My Lords, I will speak to Amendment 98A in this group in my name. This is about the universal credit standard allowance for single claimants under the age of 25, for care leavers and lone parents. It ties in with much of what my noble friend has just said.

I thank the Family Rights Group for its advice on this amendment, which is rather complex, but clear. Under the current system of income support and income-based jobseeker's allowance, the rate of personal allowance payable to a claimant depends on the claimant's age and whether the claimant has children. Those under 25 year-olds who are not parents receive a lower rate of personal allowance than those aged over 25. A lone parent aged 18 or over will receive the same higher rate of personal allowance that those aged over 25 are entitled to. Lone parents receive a sum of £73.10 per week, which equates to £316.77 a month.

Under universal credit, the Government have introduced different rates of standard allowance for single claimants regardless of whether they are a parent, depending on whether the claimant is aged under or

over 25. Therefore, in universal credit, the standard allowance for a single parent under 25 years of age is £251.77 per month, almost £65 less per month or nearly £780 less over the course of a year than lone parents of that age receive under the current regime.

Many young parents under the age of 25 who are care leavers are entirely reliant on welfare benefits and tax credits to support themselves and their children. The reduced rate of universal credit is likely to push this group of parents, who are already vulnerable, into severe financial hardship and debt. That may result in their having to move home, away from the formal support networks and services that are an integral part of their own pathway plans as well as the plans in place to support them in caring safely for their children. If their ability to meet their children's needs is compromised, that risks children being denied the chance of being raised by their parents, thus impacting on the child and the parent's right to respect for family life. It could also increase the number of children in care, which would not be in the best interests of children and would lead to a considerably greater cost to the Government.

The payment of a lower personal allowance undermines those provisions that aim to support care leavers, including those provided for in the Bill. It undermines the Government's commitment under the leaving care strategy to ensure,

“that care leavers are adequately supported financially in their transition from care to adulthood to enable young people leaving care to have the same opportunities to fulfil their potential as their peers”.

These are important considerations and I hope that the Government will look on them favourably and give some explanation as to the discrepancies.

The Earl of Listowel: I will speak to Amendment 47 in this group. Many noble Lords will recognise that adolescence is a difficult time for many young people. Anna Freud, the founder of the Anna Freud Institute, wrote three times on adolescence. Her final paper was entitled *Adolescence as a Developmental Disturbance*. Adolescence—the transition from childhood to adulthood—can often be a difficult time, but if one is a child in care, has experienced trauma before entering care and then may well have experienced further trauma on entering care—the process of being taken into care is traumatic in itself—one may find oneself with a protracted adolescence. Anna Freud describes the process of adolescence as the detachment of a child from their parent and the gradual process of moving to become an independent adult individual. I paraphrase, but that is roughly how she would describe adolescence.

The important thing to keep in mind here is that adolescence is about the detachment from the parent. The child has a close attachment to the parent; adolescence sunders that relationship. When we talk about continuing support of such young people up to the age of 25 by local authorities, it is very important to recognise that the developmental drive for those young people is to push themselves away from their corporate parent, the local authority, particularly because of their early experience. Just like any other good parent, the corporate parent, the local authority, has to make very clear to their child or young person: “We are here for you.

You may not like us—you may hate us or despise us; that is normal for adolescents—but we are still here for you, we still care for you and we still want to see you and support you. We are here for you when you need us”. That is what I hope the amendment covers. It puts more of an onus than the Bill currently does on local authorities to say to those young people: “We want to support you. This is the offer we have for you”, and, for instance, to send Christmas cards and postcards, to do everything in their power to keep in touch and to treat them, in this regard, just as they would younger people aged under 21.

I recall Ashley Williamson, a care leaver I have known for a while. He did not get back into contact with his personal adviser until he was perhaps 20. He was just on the edge of losing the right to a personal adviser, but very fortunately he got back in contact. It made a huge difference to his life, because he and his personal adviser clicked. She supported him to get stable housing for himself. Following that, his life improved and he became a very effective lobbyist in Parliament, coming to parliamentary groups to talk about what needs to be done for care leavers and expressing concerns about the sexual abuse and exploitation of young people in care.

We have heard eloquent words about the treatment of young mothers, in particular, coming out of care. I remind your Lordships that young people and teenagers in care are far more likely to become pregnant than those in the general population. Very sadly, the number of children taken away from young people who have grown up in care is also far higher as a proportion than in the general population. If anything can be done to ensure that the financial environment for those families is as beneficial and supportive as possible, that would be a very good thing, as I hope your Lordships will agree. We need to do all we can to support these families. We know from the statistics that they are highly vulnerable, so the measures described here are very welcome and I hope the Minister can give a positive response.

Lord Wills (Lab): My Lords, briefly, I support Amendment 74A, to which I have added my name. I draw your Lordships’ attention to my entry in the register of interests about my involvement in a voluntary project for care leavers. I support everything that my noble friend said in support of this group of amendments. As she suggested, I want to put forward a set of arguments in favour of Amendment 74A, which is about the need to acquire better data about outcomes for care leavers.

As I said at Second Reading, delivering the Bill’s undoubted good intentions will be challenging. In particular, it is crucial that the individual circumstances of each young person must be considered if real progress is to be made. As the noble Earl, Lord Listowel, said, these young people face all the challenges that all young people face, but the particular challenges from their specific circumstances are especially demanding. Therefore, their problems are unusually difficult and complex and they require tailored help to meet them. If we are to do so, we must overcome all the problems that public services have traditionally found in personalising delivery to the individual.

Adequate data on outcomes will be crucial if we are to use the Bill’s framework to devise effective strategies, but it is simply unavailable at the moment. For example, as I said at Second Reading, it is known that 5% of care leavers are in higher education at the age of 19; we do not know how many of those will graduate; nor do we know how many care leavers enter higher education in later life, although we know that many of them do so when they feel more ready to take advantage of that opportunity. Such data will be crucial if we are to assess the effectiveness of support for those young people. Requiring local authorities to keep in touch with their care leavers until they are at least 25 will, among all its other virtues, enable better data to be compiled about outcomes for them, which is a vital building block for the success of the Bill in the long term. For that reason, and for all the others that we have already heard, I hope the Government will consider the amendment sympathetically.

5.15 pm

Baroness Pinnock: My Lords, I have listened carefully to the strong case made by the noble Baroness, Lady Wheeler, for the amendments and agree with much, if not all, of what she said. I repeat, however, that they would place additional duties, and therefore inevitably extra costs, on local authorities. That must be recognised. Can the Minister give the Committee before the end of this stage an estimate of the additional costs imposed on local authorities by the Bill? In response to my earlier point, the Minister claimed that I was asking for additional funding. Actually, I was making a plea for cuts not to be made. A 25% cut in children’s services spending is bound to have a significant impact on what local authorities can do for children in care and care leavers. I make a plea for having not so large a cut in local government funding.

Lord Wills: The noble Baroness will understand how sympathetic I am, sitting on this side of the Committee. We have now officially ditched austerity as part of the Tory leadership campaign, so circumstances are clearly different. However, I am also conscious that we are living in very difficult times and there is not likely to be much more money. She makes understandable pleas, but does she accept that a lot of this funding will prevent spending being incurred later? If we cannot support those most vulnerable young people at the most difficult times of their lives, they will run into problems and, sooner or later, that will involve more spending by the state when it would be tragic to have to do so. When she pleads for funding, I ask her to accept that this funding has a prophylactic effect, so the extra demand on resources may not be as severe as she suggests.

Baroness Pinnock: When I spoke at Second Reading, I made a plea for the Government to consider shifting money to early intervention and prevention so that we would not have to address issues of looked-after children and care leavers. The idea would be to put effort and funding into family support at an early stage so that children can remain safely with their families and not have to enter the care system. That would be the best outcome for the child and for the state, which is funding children in care. The thrust of my argument is

[BARONESS PINNOCK]

that this is all focused on looked-after children and care leavers. I urge the Government to put the focus on family intervention and prevention of family issues that lead to children going into the care system. The difficulty with that is that we know across the country that children's centres, which are the focus for early intervention and prevention, are closing. Only at the end of last week, Hampshire County Council made a decision to close all but 11 of its 53 children's centres. That is the thrust of my argument. I would much rather that we did not have to debate support for care leavers because we had prevented all those children going into care.

Baroness Scott of Bybrook (Con): My Lords, I urge the Minister not to make this provision too prescriptive. Good local authorities like flexibility and support. What is important here is the outcome for young people. Yes, I understand about early intervention and prevention work, which is very important, but the reality is that we will still have children in our care, for many reasons. The importance of the Bill is that it gives local authorities the flexibility to give that support in the way that is right for that young person. The noble Earl was quite right in saying that some young people get to the age of 16 and the last person on earth that they want to speak to again is their PA or social worker. We need the flexibility to use family friends or members to whom they may be close and to give them support to support that young people. They may be volunteers or mentors, but we need that flexibility to look at different ways of doing it.

As for money, it is important that every local authority makes every member of that local authority understand the importance of being a corporate parent. In Wiltshire, where I am the leader, every single member of that council has to sign up to agree that they are a corporate parent and have a day's induction to understand what that really means. When it comes to budgets and prioritising budgets, the whole council then really understands the importance of that position. It is important to have flexibility and not be too prescriptive—and that we can look at each young person as an individual, as we would our own children, and give them the support that they need into the future.

Lord Nash: My Lords, I shall speak to the group that includes Amendments 41, 43, 45, 47, 51, retabled as Amendment 74A, Amendment 54 and the proposed new clause in Amendment 98A. I thank all noble Lords who have spoken to them. All these amendments are concerned with the continuing support that care leavers receive.

First, I address Amendments 41, 43 and 45. Clause 2 requires local authorities to publish information about the services that they offer to care leavers, based on an understanding of their individual needs, as well as other services that they offer to help care leavers to prepare for adulthood. In preparing those local offers, local authorities must consult care leavers and relevant representative groups of care leavers, including children in care councils.

The noble Baroness, Lady Wheeler, talked about what the local offer should cover. The clause already includes a duty to publish information about services

relating to health and well-being, education and training, employment, accommodation and participation in society. That is a non-exclusive list; the local authority may include other matters as it sees fit. Given the work that local authorities will already be undertaking, an additional requirement to assess the services required to meet the needs of care leavers would be overly prescriptive. Rather, these matters will be detailed in the guidance that my department will produce to inform the practical application of the corporate parenting principles, to which I have already referred several times during this debate.

With regard to the national minimum standard proposed in these amendments, the Government's intention in legislating for the local offer is to raise the bar for services provided to care leavers. We want local authorities to aim much higher than a minimum standard when it comes to what they offer. We want to enable comparisons of the offer between local authorities so that there is upward pressure for them to do more. Ultimately, Ofsted will be the arbiters of how good a local offer is.

The noble Baroness, Lady Wheeler, referred to New Belongings. We eagerly await the evaluation results of the New Belongings programme at its dissemination event this Friday. That will inform our thinking. The care leavers strategy will support programmes that empower care leavers to drive change locally, such as New Belongings. I will come back to the noble Baroness on the care leavers fora and the other points that she made. In light of this, I hope noble Lords are sufficiently reassured not to move their amendments.

I now address Amendments 47, 51—retabled as Amendment 74A—and 54, which all concern the support that care leavers receive up to the age of 25. No care leaver will be left to fend for themselves when they reach 21. Through Clause 3, a care leaver aged up to 25 will know of their right to request support, including access to a personal adviser. If a particular service provided under the local offer is appropriate and meets a particular need, of course the young person should be able to access it. That is the purpose of the local offer, and personal advisers are responsible for identifying and co-ordinating the provision of services for the care leaver.

However, mandating a personal adviser for every care leaver, regardless of their wishes, and a requirement to provide such services would be disproportionate. To do so raises several obvious practical issues. Some care leavers want independence at the earliest opportunity and to sever any ties with their corporate parent. Some move away from the area and become hard to trace. Even those still known to the local authority will be in very different circumstances, with different needs and aspirations. Some will value the help of a personal adviser and some will look for guidance and support elsewhere, as my noble friend Lady Scott of Bybrook said. Often, this will reflect how well the relationship with the personal adviser has worked, how helpful they have been or might be, and their relationships with others.

If we were to impose the support of a personal adviser on every care leaver, there is a real risk that that would divert support from care-leaving teams

away from those who really need it. Rather than impose a personal adviser service, it is better to make the personal adviser service optional for those who want it so that resources can be effectively targeted—as is done successfully in Trafford. However, we want to make sure that all those who want the support of a personal adviser can access it.

There are two important issues here. The first is whether and how care leavers are made aware of the offer of support from a personal adviser. I suggest that the obvious place for that is the local offer. The second is whether a care leaver who has lost contact with their personal adviser should be able to resume this if and when they feel the need to do so at a later date. The noble Earl, Lord Listowel, referred to an example of this. I can certainly confirm that that would be possible through the existing legislation and Clause 3 for care leavers up to the age of 25. The guidance we are producing will encourage local authorities to carry out this new entitlement clearly, proactively and positively so that care leavers are encouraged to take it up.

We need to set an expectation that local authorities should attempt to remind care leavers of their entitlement to this support so that a young person refusing support at age 22 does not feel that they should be barred from accessing it later. I accept that this is an important point. I should like to reflect further on this in discussion with local authorities and over the next few months before we return on Report.

Lord Wills: I understand the force of what the Minister is saying and the Committee will be grateful for his offer to keep looking at these points. Could he also take into account my point about data and the importance of keeping some sort of better check on what happens at least until the age of 25? What he has said so far does not really address that point. Perhaps he could reflect on that and come back to us either with a letter or on Report.

5.30 pm

Lord Nash: I was about to say something about data which I hope will satisfy the noble Lord. If it does not, I shall be very happy to discuss it with him further. Local authorities are required to provide data on care leavers aged 19, 20 and 21. From October this year, we will also publish data on care leavers aged 17 and 18. We are also now able to link with datasets held by the MoJ and HMRC, which will allow us to track care leavers' longer-term outcomes. However, I shall be happy to discuss this further with the noble Lord.

The noble Baroness, Lady Pinnock, asked about funding. We do not believe that Clauses 1 and 2 represent new burdens on local authorities. However, as I have already said, we recognise that extending personal advisers to all care leavers up to the age of 25 will have financial consequences, and we have made a commitment to provide new burden funding to meet these extra costs. Our initial estimates are based on our experience in Trafford, which is a very high-performing local authority, and we will publish the figures shortly.

My understanding is that Amendment 98A, in the name of the noble Baroness, Lady Massey of Darwen, would extend the higher rate of universal credit to single-parent care leavers. The benefits system recognises

the special needs of care leavers. However, in the current system there is considerable complexity around the rates for young people, with some differences between benefits. The structure of age-related rates in universal credit is much simpler than the benefits it replaces, with just four rates of the standard allowance compared with, for example, 15 in employment and support allowance. These age-related standard allowance rates are now established in universal credit.

Making changes such as those set out in this amendment would replicate some of the complexity that we are seeking to remove. Rather than handing out money to young people and expecting them to fend for themselves, universal credit seeks to support vulnerable young people and parents to stabilise their lives and find work. For this reason, the DWP extended second-chance learning from age 19 to 21. This allows care leavers to claim income support and housing benefit if returning to full-time, non-advanced education to make up for missed qualifications. In addition, single-parent care leavers who are working will be able to access help with 85% of their childcare costs up to the cap.

With that information, I hope I have reassured noble Lords that care leavers will receive and be able to access the support they need, and I hope that the noble Baroness will feel able to withdraw her amendment.

The Earl of Listowel: My Lords, I am grateful for the Minister's response and particularly for what he said about keeping an open mind and thinking further about the degree of the burden on local authorities from keeping in touch with and being proactive towards young people up to the age of 25. What he said about guidance on being proactive was very welcome. Are there currently issues regarding those up to the age of 21? Under the current duty, do local authorities express concern that the duty sometimes causes them to expend resources unnecessarily? Do young people feel a bit harassed by the current system? Otherwise, I am not clear why one should treat those over the age of 21 any differently from those under 21. If there are no current issues, I am not sure why it should be an issue to transfer the provision to under-25s. However, I am sure that that can be answered in subsequent discussions and, as I said, I am grateful to the Minister for his response.

Lord Ramsbotham: I noticed that the Minister has kindly arranged a meeting with Mr Brokenshire, the Minister in the Home Office responsible for immigration. Will the provisions in Clause 2 apply to unaccompanied asylum-seeking children until the moment they lose the right to remain and have to leave, with them then appealing?

Lord Nash: The answer to that is yes.

Baroness Wheeler: My Lords, I thank the Minister for his response and for undertaking to look at the New Belongings project. He is right: there is a dissemination event for the project on Friday. It is very widely subscribed, I look forward to it and I am sure that a number of noble Lords and others here will be attending.

[BARONESS WHEELER]

I am disappointed that the Government do not consider the need for a statement of minimum standards. Many local authorities do not have the support or resources to work out what is needed, so national standards and national guidance are very important. I understand what the Minister says about raising the bar and aiming high, but the reality is that many authorities struggle to reach the bar at all. This goes back to the issue of consistency of approach and avoiding variations in standards across the country that the noble Lord, Lord Ramsbotham, and others have referred to.

The introduction of the local offer arrangements in themselves do not necessarily lead to a step change in improvements. Detailed consideration needs to be given to how they will operate in practice, what impact they will have and how we can ensure that the offer is there for all and not just for some, depending on where they live. Minimum standards for services and the important issue of extending offers to care leavers up to the age of 25 are important, and I am grateful that the Minister said that he would look at this again. I shall read his comments very carefully but we will certainly return to these matters on Report.

Amendment 41 withdrawn.

Amendment 42 had been withdrawn from the Marshalled List.

Amendments 43 to 46 not moved.

Clause 2 agreed.

Amendments 47 to 50 not moved.

Amendment 51 had been retabled as Amendment 74A.

Clause 3: Advice and support on request

Amendment 52

Moved by Lord Wills

52: Clause 3, page 3, line 42, leave out “on request”

Lord Wills: My Lords, all the amendments in my name in this group aim to fulfil the ambitions of the Bill by extending support for care leavers. The reasons for most of them were extensively debated at Second Reading, when widespread concern was expressed about the onus being placed on young people to request a personal adviser, and I do not intend to rehearse those arguments now. They seem self-evident. If the Bill is to deliver on its objective of better support for care leavers, the duties under Clause 3 should not be dependent in this way. In response to those concerns, the Minister said at Second Reading:

“This is an extremely good point which I would like to go away and reflect on”.—[*Official Report*, 14/6/16; col. 1204.]

I hope that he has now done so and will feel able to accept these amendments, which address that point.

I also speak briefly to Amendments 60, 72 and 74 in my name. Amendment 60 provides that all care leavers with a personal adviser should have a full needs assessment to ensure that they receive all the support they need. A young person may seek help from their local authority for a small problem, which can easily be resolved, but

may also have more complex problems that only a full needs assessment will identify, so it is important that their needs continue to be monitored throughout their pathway plan and they retain their personal adviser even if the care leaver is referred to external services for their needs to be met. The amendment would secure that.

Amendment 72 is a probing amendment. As the role of the personal adviser is so critical to the content of Part 1—we have already heard noble Lords discuss this at some length and the noble Earl, Lord Listowel, earlier talked about the need for them to deliver services of an appropriately professional standard—it is clearly important that there should be clarity about what exactly that role is. The amendment is designed to encourage the Government to make clear whether they have any plans to change the role of the personal adviser and, if so, what they might be.

Finally, Amendment 74 would extend the duty on virtual school heads to care leavers. The creation of this role is a potentially valuable innovation, but those who have left care before their 18th birthday are not covered. Moreover, the role excludes a focus on care leavers over the age of 18, while local authorities have continuing duties to support care leavers in education up to the age of 25. There is clearly a need for better joint working between local authorities and further and higher education providers. The amendment would extend the role to cover further education and higher education providers. I hope that the Government will look sympathetically on all those amendments.

Lord Watson of Invergowrie: My Lords, the Bill as drafted places responsibility on the young person to request advice and support. No one in this Room or reading the Bill would be in any doubt that we are talking about vulnerable young people, so the question has to be asked: what support will be offered so that young people know about all their entitlements; and what systems will be in place to help a child make that request, remembering that many of these children will have literacy difficulties? It is one thing for a young person to turn down advice and support that they have been offered. There are two ways of looking at that if it happens. One is that the individual does not lack a certain amount of confidence, which is a good thing. The other is that they may not have thought the thing through or may lack the requisite amount of common sense, turning away from what is clearly valuable and important information.

Confidence is a big issue for many children who are leaving—or young people who have recently left—care. That lack of confidence is simply because of their life experiences up to that point. They are moving into a world of their own, taking many important steps in a way not experienced by children fortunate enough to live within a family, who have that family as a safety net after they have left home, should things not go entirely to plan. A young person leaving care may not have been informed that they can ask for advice and support. Even if they have been informed and have had that support, it could depend on how that was done. The young person may not always grasp what is available to them.

The question must be asked: why take that risk? Why leave it up to the young person? Much better surely that the duty falls directly on the local authority, not the person himself or herself. We have to have a sense, as we debate issues like this, that we have a duty of care in terms of framing legislation that affords the maximum amount of support to young people. I think Amendments 52 and 53, to which I am speaking at the moment, do that. I mentioned earlier—as did the Minister—that his department has today published the policy paper entitled, *Putting Children First: Our Vision for Children's Social Care*. If that means anything at all, I suggest the Minister should live up to it by accepting Amendments 52 and 53 and making sure that the onus is firmly on the local authority to be proactive rather than reactive.

Lord Warner: My Lords, I briefly support Amendments 52, 53 and 54. These have echoes of the debate we had on my Amendment 29, in which I argued—with support from other Members of the Committee—that the onus should be on the local authority to take the initiative in offering help. I ask the Minister to think about the circumstances in which many of us are placed as parents, where the Government are trying to get the principles of corporate parenting as close as they can to the responsibilities of parents looking after children who are not part of the responsibility of a local authority. We as parents—I can speak from personal experience—do not watch our children walking over a cliff and wait for them to request us to do something. If we see that they do not understand something or they are going to take some ill-advised action, we do not wait for them to ask us: we intervene. We try to intervene in a sensitive manner but we do try to intervene to give them the information they require to make better decisions. Why are the Government asking a group of people who, on their own acknowledgement, are vulnerable, who often find it difficult to interact with public bureaucracies, to make a well-informed request for help? Indeed, if they are capable of making that well-informed request for help, there is a large chance that they do not need it in the first place. What the Minister has set up looks like a gesture, but the “on request” totally minimises the effectiveness of that gesture. I ask the Minister to reconsider the Government’s position on this, in the light of the moderate way that the noble Lord, Lord Wills, and others have argued for the amendments.

Baroness Howarth of Breckland: My Lords, I add one sentence because I clearly heard the Minister say that there would be young people who would not need personal advisers or would not wish to have this sort of help. I understand that absolutely, but all the amendments are suggesting is that we move out “on request” so that the local authority has to take responsibility to ensure that information is given so that a refusal could be made. If we do not ensure that the young people have the knowledge of what is available, they can walk into difficulties.

5.45 pm

I met numerous young people through the All-Party Parliamentary Group for Children, who came to talk to us about the difficulties they faced and how they

came through them. They did so because they were given information that helped them to make an appropriate choice about their future. Some of them made that choice with some difficulty, even wishing not to go down the path where they ended up getting into a variety of trouble. Yet at the end of the day, because the offer was made to them over and over again, they were able to accept the advice and move on. That does not mean that a young person who has the ability and does not want a personal adviser should not be able to say, “No, I don’t want that. I can get on perfectly well”—just as some 18 year-olds leave an ordinary home and survive in society. However, we must persist with young people who face such difficulties and give them help.

Lord Storey: My Lords, I came to this Committee looking at the amendment thinking “No”. Young people themselves should be able to say “No”. Actually, listening to noble Lords, I now think it is absolutely right. These are the most vulnerable young people. For them to try and cut through the bureaucratic enjoyments of social services does not come easily. The onus should be on us to provide that support. This shows the value of a Committee, does it not? You listen to arguments and might change your mind.

The Earl of Listowel: I support Amendments 52, 53 and 74A. I was most grateful for the Minister’s encouraging reply on the previous group, which is relevant to this discussion, and for his sympathetic stance towards this. The current discussions about the pressures on local authorities, and the huge and diverse burdens they carry, might be one further reason why the onus should be put more firmly on them in primary legislation. Also, I am a little puzzled why one would wish to treat over-21 year-olds any differently to under-21 year-olds. My puzzlement is that if we are agreed that we should in this Bill make sure that over-21 year-olds receive the same entitlements that under-21 year-olds leaving care have had up till now, why should we not treat them in exactly the same way? I would appreciate some help with that question. If we can, and there is no legal impediment to do so, would we not want to give them exactly the same offer as that for under-21 year-olds?

On the personal adviser role, which was also discussed, I recognise absolutely the wisdom of the noble Baroness, Lady Scott, in talking about some flexibility in how that role is provided. One of the great successes in policy in this area in recent years has been the introduction by the coalition Government of Staying Put. More and more young people are now choosing to stay with their foster carers past the age of 18. We heard eloquently from the noble Lord, Lord Farmer, about the importance of relationships and the continuity of them. Thanks to Staying Put and the Government’s work, more and more children are choosing to stay, from a position where in the past we were not able to encourage them to do that or make it possible. Enabling foster parents to become their young person’s personal adviser may be a very good and appropriate thing. This is someone they already have a relationship with.

My concern is that there also needs to be rigidity in certain ways. My concern about the whole issue of children found in social care is that we have allowed

[THE EARL OF LISTOWEL]

too much flexibility in the social work profession. Until very recently, it was not a requirement that social workers should have a degree to practise what they do. Indeed, later parts of the Bill address this very fact of the overflexibility and a lack of specification of what social workers should do. This personal adviser role is important as well. Reports from right-wing think tanks such as the Centre for Social Justice highlighted the failure to have a consistent personal adviser workforce. There needs to be both flexibility and rigidity in the system. I suggest that there can be assessments and processes to decide whether it is appropriate to devolve responsibility to a foster carer or some extended family, or whether to keep it with a personal adviser. However, we need some rigidity.

It is very much an Anglo-Saxon approach to have a flexible workforce and it has many advantages to it, while the continentals face great challenges because they have a rather rigid way of approaching their workforce. I would argue that for vulnerable children, there have been advantages in the continentals' rigid approach. It is well documented that they have far higher requirements for social workers. In staff at children's homes, they have pedagogues who normally have a degree-level qualification and have had very substantial training, which I would argue is very appropriate to working in residential care. I recognise the noble Baroness's concerns but I share the concerns around the Committee that the personal adviser role needs to be more clearly spelt out and specified. I hope that the Minister can help us with that in his response.

Baroness Massey of Darwen: My Lords, I want to say a word about personal advisers. The first thing we have to look at is who these children are and what their needs are. I have heard recently in the All-Party Parliamentary Group for Children and in the European Union sub-committee which is discussing a report on unaccompanied asylum seekers just how vulnerable these children are—and how, in that vulnerability, they may find it difficult to make decisions and have the confidence to choose or request a personal adviser. Their relationships have suffered so much by their experiences that they may not trust anybody. We need to look at the children first. They may of course not wish to have a personal adviser, while some of them may not know exactly what they want so might try out various support systems before they decide. Personal advisers should not be available on request but should be there automatically for those children who are so vulnerable.

Lord Nash: My Lords, I thank the noble Lords, Lord Wills, Lord Watson and Lord Hunt, for tabling this group of amendments. Let me begin with those amendments tabled by the noble Lord, Lord Wills, which would replace “former relevant child” with “care leaver” throughout Clause 3. I understand that the noble Lord's intention is to apply provisions to all care leavers. I offer reassurance that the issue is already addressed in existing legislation. Different groups of care leavers and looked-after children are defined in legislation and I will set out how Clause 3 applies to them.

“Eligible children” are looked-after children aged 16 to 17 who are subject to the care planning process and the regular review that this brings. They are entitled to receive advice and support from a local authority personal adviser. “Relevant children” are aged 16 to 17 and have ceased to be looked after. They too are entitled to receive support and advice from a personal adviser. “Former relevant children” currently receive support from a local authority personal adviser up to the age of 21. If they pursue education or training they can retain that support until they are 25. Clause 3 will now address the gap and provide a personal adviser to all “former relevant children” up to the age of 25, where they want one. Whether they are in education will no longer be a qualifying factor.

In Amendment 52 the noble Lords, Lord Watson and Lord Hunt, propose that personal adviser support should be provided whether requested or not. I have already spoken at some length on an earlier group about the practical issues involved in providing support up to age 25 even if care leavers no longer want a service. I will therefore not repeat the arguments.

The noble Lord, Lord Wills, referred to my reflecting on certain matters in relation to the role of personal advisers. I was going to come to this later in group 6, in relation to the amendment tabled by the noble Lord, Lord Warner, but I will deal with it now.

We want to learn from those areas where the personal adviser service is provided effectively and make sure that that becomes the standard of support that care leavers across the country can expect. We also need to make sure that the purpose of the role is clear, that the right people are recruited to take on the role and that they have the right opportunities to learn and develop so that they can better respond to new challenges that care leavers face. That is why we are reviewing the personal adviser role. The first phase of that review is already under way. My officials are carrying out a series of eight deep-dive reviews to local authorities. They are meeting with leaving care managers, personal advisers and care leavers so they can better understand: first, what support personal advisers currently provide; secondly, which issues care leavers most need support on; and, thirdly, how personal advisers provide the mentoring and befriending support which can be so critical to care leavers' well-being and which we know they value so highly.

The second phase of the review will build on and be informed by the first phase, but will focus on wider issues such as: whether we have done enough to articulate the key purpose of the personal adviser role, as currently articulated in secondary legislation in the Care Planning, Placement and Case Review (England) Regulations 2010; how we can best raise the status of the role; and what opportunities exist for personal advisers to access continuing professional development. In conducting this review, I would like to offer reassurance that we will consult all relevant parties. I will also ensure that noble Lords have the opportunity to comment and contribute.

On Amendment 60, I can provide reassurance that local authorities will continue to develop and review pathway plans. As corporate parents, they will do this irrespective of other partners and the support that they bring. Local authority-appointed personal advisers

will work with the care leavers to review plans on a regular basis. Local authorities are already required by law to manage these obligations as the corporate parent. Amendment 72 is unnecessary, as the functions of the personal adviser role are set out not in statute but in secondary legislation—the Care Leavers (England) Regulations 2010 and the Care Planning, Placement and Case Review (England) Regulations 2010. If any changes are made to the functions of personal advisers, an amending statutory instrument would need to be laid before Parliament, which would provide an opportunity, through the negative resolution procedure, to make any objections if needed.

To turn to Amendment 74, let me clarify why the Bill extends the role of the virtual school head to children who leave care through adoption, child arrangements or special guardianship orders but not to older children. In practice, virtual school heads and designated teachers do not suddenly turn a blind eye to the children in care whom they have been looking out for and supporting just because they have reached the age of 18. The arrangements in place will continue up to the time they leave school unless, of course, their circumstances have changed. In many local authorities, the virtual head plays a role in relation to care leavers. For example, in Hertfordshire, the virtual school head has included within it the post of a personal adviser for students at university. For care leavers, the main support in relation to education is from the personal adviser.

For older care leavers, a range of alternative support is already in place. Pathway plans for care leavers should include information about support for education and career aspirations. Care leavers are also a priority for the 16 to 19 bursary, worth £1,200 annually, and they receive a one-off bursary of £2,000 if they progress to higher education. I hope that this provides noble Lords with sufficient reassurance not to press their amendments.

Lord Watson of Invergowrie: The Minister rather peremptorily dismissed the arguments advanced by other noble Lords and me on Amendments 52 and 53. He said that he had answered them in respect of some other amendment, but he uttered the words so quickly that I could not identify what he was talking about. Is he quite content that what he is proposing—he talked of practicalities—means that no young person who would benefit from the information and support that he or she needs will slip through the net simply because they either did not know or did not understand that they could ask for that information? Would it not be far better to ensure that people who do not need the information have it rather than that those who need the information do not have it?

Lord Nash: I do not think that we are arguing about anything here. It seems to me obvious that, to take the point made by the noble Lord, Lord Warner, we cannot just leave young people to ask for help; they have to know about it. The minimal expectations in the local offer from the local authority have to be absolutely clear, including, in my view, that children should have some financial education training and some domestic skills and that they should know what they are entitled to once they leave care.

That should be absolutely clearly spelt out in the local offer. As has been said, it seems to me that although a child or young person has rejected the need for a personal adviser at the age of 21, by the age of 23 they may well have changed their mind. They should be regularly reminded by the local authority of this right. I do not argue with that and we will set out our expectations of local authorities in relation to the local offer and what they will do to make care leavers aware of their rights and entitlements not just once but regularly until they are 25.

6 pm

Lord Warner: The Minister seems to be praying me in aid as somehow opposed to the amendment advocated by the noble Lords, Lord Wills and Lord Watson. I am not; I was supporting what they are saying. I am sorry if I was not clear but I want to put it beyond peradventure to the Minister that I support their amendment to delete “on request”.

Lord Nash: I fully understand that; I am sorry if I created some confusion.

Lord Wills: My Lords, I am extremely grateful to everyone who has taken part in what I thought was a useful short discussion on all the amendments. On the one which has taken up the most time, the question of reversing the onus of requesting continuation of support in this way, I will read and reflect carefully on what the Minister said. I understand that the Bill is full of good intentions and I know that he is personally. I worry, however, that, as other noble Lords have said much more powerfully than I, we are still placing an unrealistic burden on very vulnerable young people who do not suddenly stop being vulnerable when they pass a particular age. At least until 25, many of them will be in very difficult circumstances and not all of them will be capable of making these informed, rational decisions, as the Minister said, however accurately informed they are of their entitlements. I will look at the *Hansard* record of what he said, but, given the widespread support for a change to this part of the Bill, we may return to it at Report.

My only other comment is about the role of the virtual school head. I thought I heard the Minister say that in many cases, they do not just turn a blind eye but go on being involved. That is precisely the point: it is in many cases, not necessarily in all. Again, I am not altogether reassured by what he said but will read what he said in *Hansard* and reflect, but we may return to it on Report. In the meantime, I beg leave to withdraw the amendment.

Amendment 52 withdrawn.

Amendments 53 to 61 not moved.

Amendment 61A

Moved by Baroness Armstrong of Hill Top

61A: Clause 3, page 4, line 18, after “needs,” insert “including his or her needs as a young parent where applicable,”

Baroness Armstrong of Hill Top (Lab): My Lords, those of you who have heard me speak on previous Bills will know that this is something that I keep coming back to. It comes out of working with kinship carers and learning of some of their experiences, but is particularly about the needs of care leavers as young parents. One tragedy is that far too many young women who have been in the care system become young parents themselves. I and other colleagues here tried to do something about that when we were in government. We introduced various programmes that did an enormous amount both to reduce the number of teenage pregnancies and to care for and support young people significantly when that happened.

We know the reality from the social justice commission: that about one in 10 girls leaving care aged between 16 and 21 are either single parents when they leave or very quickly afterwards become single parents. I ended up specialising in adolescent girls when I was working in Newcastle all those moons ago—most of them will now be grandmothers, or great-grandmothers. I remember one young woman in particular, who had been in care all the time since she was a baby. By the time she had a baby herself, I had finished, but she rang me absolutely delighted to tell me that she was now pregnant. She was 16, and everybody knew that she would have enormous difficulty in caring for that child. But she needed something to love—it was as awful and plain as that. Now I work with women with complex needs, many of whom have come through the care system and certainly come through abuse, and so on. Many of them have child after child, who are taken into care. Nobody works with them because they have removed the child, so they go and get pregnant again and that child ends up in care. We simply should not see this.

It goes back to what I talked about the other day in Committee: that we need to do much more work with parents when the child is taken into care. These amendments are essentially about recognising that those leaving care—many of them are still children—and who are pregnant or have a young child demand a specific responsibility on our part, even if they have left care. I remind the Minister that the staying-on provisions do not relate to children who have technically just gone home to their parents or who are in residential care, but they are still children leaving care. As I say, they do not get the additional time or support that we were all so pleased about in the staying-on relationships, which essentially relate to children in foster care.

All these amendments really say is that this is a specific category to which the Government will have to pay attention. It can become a vicious circle if we are not careful. We know that they will need additional support in parenting, although that is not to say that some of them will not in the long term make good parents. As the Minister who introduced the family nurse partnership, I know that even the most vulnerable teenage parents can, with the right sort of support, become good parents. The amendments address the fact that, if you are a child who has spent significant periods in care, you will need extra support. That is sort of self-evident but it is not taken into account in the Bill, and I ask the Minister to take specific account of it.

I have not tabled an amendment on this aspect, but these clauses also deal with adoption support being extended to special guardians who are raising looked-after children. I am really pleased about that but why have the Government not extended that support to special guardians per se? Kinship carers in particular often step in to make sure that the kids do not go into care or become looked-after children. As I have said—too many times, I feel—kinship carers frequently do that not because they have sought to become a carer but because they do not want their daughter's or sister's children to go into the system. They end up having quite good outcomes even though they are impoverished, frequently.

I meet kinship carers in the north-east—because we have a higher proportion of kinship carers than in most regions of the country—who have gone through things that you and I would absolutely not want to do to look after the children. They get no support at all. They are not going to get the mental health support for the children or the other support that the children frequently need because they are special guardians, but their child has not technically been in care or looked after. It tells you how old I am when I keep saying “in care” instead of “looked after”, does it not, but because that is not the case, they are not going to get that additional support. I have not put an amendment down about it at this stage but I will come back to it. I want to make sure that the Government think about these sorts of things a little more. In the Bill, we are in the business—I hope—of trying to make sure that we create less vulnerability and less cost to the public purse. I believe that in the long term, addressing these amendments and my question will assist that objective.

Baroness Massey of Darwen: My Lords, I support my noble friend Lady Armstrong, particularly on Amendment 61A, but also in what she said about kinship care. I know that the outcomes of children in kinship care are better, in health and academically, than other forms of care. I also know that there are vicious circles which, unless there is intervention, go on being vicious circles generation after generation. The Family Rights Group report on the young parents project has out significant things about young people who are young parents and care leavers. We know that these young parents have multiple challenges—there is also a figure that one in 10 care leavers aged 16 to 21 have a child taken into care—but they are alienated by negative experience of state services. They are judged by their youth and background and have suffered abuse often,

“being in care, mental health problems, exclusion from school and/or involvement in youth justice”,

and so on. The support given often ignores their roles as parents or helps them to safely raise and keep a child. They often have less developed support networks, as compared to older parents, and fewer established systems in place as they move into adulthood. Despite their vulnerability, the particular needs and circumstances of young parents who are care leavers—whose children are not subject to child protection inquiries—are not sufficiently identified. They need a clear pathway plan, which includes all that a pathway plan should include, and certain sorts of information should be drawn upon in formulating these pathway plans.

My Amendments 98AA and 98AB are long and fairly self-evident. They repeat many concerns already expressed about the importance of pathway plans or assessments of need. One other thing that is important in pathway plans is the co-ordination of plans, and of assessments in relation to them, along with the setting up of advice, assistance and support. Again, I would state that these young people are extremely vulnerable, as my noble friend said, and need all the support that we can give. She also said that giving support early can avoid pain to them and also cost to the state, if we avoid these vicious circles that we all know exist.

6.15 pm

The Earl of Listowel: My Lords, I am sure the Grand Committee is very grateful to the noble Baroness for tabling these important amendments and bringing this issue back to us. I pay tribute to her and her colleagues for introducing the teenage pregnancy strategy while they were in government. After many years, it brought down the level of teenage pregnancies. It is not equivalent to that of the continent but at least it is moving in that direction. It has been a most important success.

Listening to the noble Baroness, I was reminded of a 24 year-old woman who, some time ago, attended the all-party parliamentary group for young people. The group was discussing mental health and she bewailed the fact that she had not been able to access mental health services. She had two young children whom she was really struggling with. I very much welcomed the earlier amendment from the noble Baroness, Lady Tyler, to extend mental health support to the age of 25. At the APPG the 24 year-old bewailed the fact that, even if that was changed, she would be too old to benefit from it by the time it came into effect.

Last year the Maternal Mental Health Alliance launched a very important report into perinatal mental health, identifying the extent of perinatal mental health issues and the cost to the nation of failing to meet them. This group of young women is particularly at risk of perinatal mental health issues. The charity Best Beginnings does much work in this area and published a video that looked at a young woman as she was suffering from postnatal depression. It covered her experience of having a poor relationship with her mother because of her boyfriend, who did not understand her situation, and a GP who just did not have time to talk to her. She suffered a gradual spiral into depression and lost any patience with her children. She was not a young woman in care but one could easily see the same situation arising for such a person. She desperately needed help but she did not know how to ask for it. I hope that the amendments will make us think more about what we can do to reach out to these young women and ensure that they get the right help.

There is increasing support for women during pregnancy. The Government have invested more in perinatal mental health, and in particular there are models of what I call “caseload midwifery”—one-to-one midwifery, where the midwife makes a relationship with the parents early in the pregnancy, maintains that relationship and ideally is there at the birth. That model of service could be very helpful to these young mothers.

There has been a lot of recent research into neurodevelopment. Some of it has looked at the neurodevelopmental plasticity of infants, and it has been found that adolescents go through a further major neurodevelopmental change. There is also evidence that women show some plasticity in their neurodevelopment in childbirth because of the powerful relationship with their infant. However, there is a great risk that becoming a mother at an early stage will be too much of an experience for some women to manage. Their early experiences in infancy may prevent them being able to mother their children adequately, but there is also the opportunity for it to be a key turning point in their lives, where they learn to love and be loved for the first time. We need to be there for them as far as we can to make sure that that is the outcome—that it is a turning point in their lives and a positive experience for them and their child. Therefore, I am very grateful to the noble Baroness for moving her amendment and I look forward to the Minister’s response.

The Lord Bishop of Durham: My Lords, I feel that I could already write the Minister’s response by saying that of course these needs are already met in Clause 3(5)(a) or (b), as the subsection refers to meeting “his or her needs”. However, when, year after year, report after report notes that these needs are not dealt with, surely we reach the point where they need to be specified—hence I support the noble Baroness’s amendments. The needs of these young parents have so consistently not been adequately met that we now need to specify them so that they are.

I would also comment that, on occasions, young men may also find becoming a parent a positive turning point. There is a need to support young men who are looked after and become parents who recognise that they have now come to a point of responsibility and they would like to step up to it. They also need support. I invite the Minister’s comments on that.

Lord Warner: My Lords, I, too, support Amendments 61A and 71A in particular and draw the Minister’s attention to a Select Committee report produced by your Lordships’ House on post-legislative scrutiny of adoption legislation. Somewhere in the Department for Education archives, there will no doubt be copies of that report and the oral evidence given to the committee. The noble Baroness, Lady Howarth, was on it, and, I think, the noble Baroness, Lady Armstrong.

Among those who gave oral evidence was a remarkable judge, Nicholas Crichton, from one of the London family courts. He was so fed up with a procession of the same young women coming before the family court and having their children taken away. The women would reappear 12, 15 or 18 months later and would continue through their 20s with the same judges in the same court taking away their children and putting them into care. He got so fed up with that that he found some charitable funding to produce some support for the young mothers to whom it was happening because he was trying to stop this escalator of producing more children to be taken into local authority care.

That judge was doing the job that we could argue is the responsibility of the local authority because the great majority of these young women had been in

[LORD WARNER]

care. We had a bizarre situation where an energetic and innovative judge was trying to do the job of a local authority that was not able to provide these kinds of services to young women who had been in care and who had repeat pregnancies. I would ask the Minister to look at that before he rejects fully these amendments, because there is a lot to be said, in the public interest as well as the interests of these young women, for moving down this path.

Baroness Hughes of Stretford (Lab): My Lords, I apologise for being unavoidably unable to come to the first day of Committee. I should like to add some comments in support of Amendments 61A and 71A. We should see these amendments as being very much about early intervention and prevention. The Bill, welcome though it is, is a little light on early intervention and prevention. The amendments point to situations from the point of view of the babies born to young people who have been in care. Unless there is specific early intervention with a great deal of support provided, we may not be preventing those babies at some point coming into care or being subject to serious difficulties.

I say that for two reasons. We know from the statistics that, generally, babies of young parents—right across the board, not just those who been in care—do not fare as well on any number of developmental indicators, despite the ability of some individual young parents to be outstanding. Those babies suffer a series of stresses from that situation that impair their development, in many instances irrevocably. The vulnerabilities suffered by a young parent who has been in care can only add further stress and difficulty to that situation. It is really important from the point of view of early intervention and prevention for children born to young people who have been in care that there is a specific focus that points the statutory services to make sure that they intervene early and prevent adverse consequences further down the line to another generation of children. I hope the Minister will take these amendments seriously.

Baroness Pincock: My Lords, we have had a very interesting and informative debate on this subject. I do not wish to add anything because everything I might say has already largely been said. All I would say is that this is focused on the principle that I and others raised at Second Reading and earlier today: the fundamental importance of early intervention and prevention if we are to break the cycle of children going into care and the consequent implications for the rest of their lives, and for the costs on local authorities and the state. Everything we know points to the fact that a focus on funding for early intervention and prevention does more than address the issues once children and young people are in the care system. I very much welcome this informative debate and thoroughly support the amendments.

Lord Hunt of Kings Heath (Lab): My Lords, this has been a persuasive debate. We have already had the evidence that my noble friend Lady Armstrong described from the social justice commission, which is all too depressingly clear on the plight of care leavers who

become young carers. My noble friend Lady Massey referred to the Family Rights Group, which produced an excellent briefing detailing some of the challenges that young parents covered by these amendments have to face. I was particularly struck by the evidence that young parents often feel judged by their youth and background rather than their parenting abilities, and particularly that, where support has been provided to them, it has often been done in their capacity as young people leaving care and has rather ignored their roles as parents. This will be a very telling point when we come to the Minister's arguments.

The amendments seem comprehensive. Amendment 61A would insert into the assessment of the needs of a former relevant child a reference to young parents, while Amendment 71A expands helpfully on the definition of young parents. Amendment 98AA would insert into the Bill a requirement for pathway plans to be provided for,

"looked after children and care leavers who are young parents", and Amendment 98AB would amend the Care Leavers (England) Regulations 2010 to incorporate support for young parents, so my noble friend has tabled a comprehensive package of amendments.

Rather like the right reverend prelate, the Minister may say that young parents are implicitly covered in the Bill. However, to come back to the point raised in the evidence we received from the Family Rights Group, is not one of the problems here that in these legislative terms care leavers are thought of as care leavers rather than as young parents? It seems that although the Minister may say that the provisions can be seen to apply to young parents, the fact is that sometimes there is a need to be explicit. There is sometimes an advantage in putting a specific requirement into the Bill. The point I put to the Ministers is that the case has been made today for such an explicit provision, and I am sure that we will need to return to this.

Baroness Evans of Bowes Park: I am grateful to all noble Lords for their contributions to this debate. Although I see the intention behind these amendments and the important issues that noble Lords have raised, we are not persuaded that they require prescription in primary legislation. I am reminded of the comments of the noble Baroness, Lady Howarth, earlier today and in our previous session that we should not overburden the Bill with matters best addressed by other means, particularly guidance.

As we have discussed at length, local authorities will appoint a personal adviser to those care leavers who want one, up to their 25th birthday. This brings with it the responsibility for the corporate parent to assess a young person's needs and to prepare a pathway plan. This means that a wider group of care leavers will have their needs identified and responded to for a longer period, including those needs linked to parenthood.

6.30 pm

Guidance associated with the Children Act 1989 already covers in detail the matter of assessment of needs through pathway plans for children in care and care leavers. This includes the needs of those care leavers who are either parents or about to become

parents. That guidance makes it clear that considering family and social relationships is a key aspect of assessment as part of pathway planning. It also requires there to be full consideration of how all relationships form part of a care leaver's transition to adulthood. This would include where the young person was a parent or was to become one. Local authorities must keep pathway plans under review to reflect changing circumstances and needs. One of the specific factors that might lead to a review is, as the noble Lord, Lord Hunt, said, the parenting capacity of a care leaver—as the guidance explains.

The Children Act 1989 guidance on transition to adulthood also states that local authorities should set out how they will support specific groups of care leavers such as lone parents. However, we need to ensure that, as well as there being clear guidance, care leavers and other young parents are able to access the services they need. To this end, the number of health visitors has increased by almost 50% since May 2010. Health visitors deliver the Healthy Child Programme, a universal service for all families. As part of the HCP, health visitors will identify where families need additional support. It states clearly that one of the risk factors for experiencing additional problems is where one or both parents grew up in care.

For disadvantaged teenage mothers, family nurse partnerships, which the noble Baroness, Lady Armstrong, highlighted, also offer an evidence-based, intense programme of supported visits. The FNP supports many teenage mothers who have a care background. In October 2015, robust new evidence was published on the FNP programme's effectiveness in improving short-term outcomes in England. The FNP national unit is using this evidence to adapt and strengthen the programme so that it provides more flexibility, supporting nurses to tailor the intervention to client needs in order to help local authorities develop a service that meets the particular requirements of vulnerable families in their local area. As the noble Baroness, Lady Massey, said, for the minority who have multiple children taken into care, programmes such as Pause provide new approaches that recognise the complex challenges that these women face.

On the points of the noble Baronesses, Lady Armstrong and Lady Massey, around kinship carers, they will be aware that my noble friend the Minister agreed last week to meet the Kinship Care Alliance to discuss these broad issues. That meeting is currently being set up. I will be able to say more later about the guidance and support available to kinship carers in my response to group 11.

The noble Baroness, Lady Armstrong, asked whether children in care who are accommodated in children's homes would be able to stay on, like those with foster parents. Today we announced that the department accepts Sir Martin Narey's recommendation to develop a Staying Close model for those in children's homes post-18 years. Work on that will be beginning.

I will take back to the department the comments of the noble Lord, Lord Warner, and ask them to be looked into—if they have not already been.

On the comments of the right reverend Prelate the Bishop of Durham about young men, we recognise that programmes to support young fathers are

underdeveloped. Having a child can be a catalyst for young fathers to turn their lives around. I will ask my colleagues in the Department of Health and back at my department to provide an update on services available to young fathers and will write to the right reverend Prelate. I will take back the points made by the noble Baroness, Lady Hughes, in relation to early intervention.

We believe that the amendments of the noble Baroness, Lady Massey, are unnecessary as they duplicate existing provision contained within the Children Act 1989, seeking to re-insert them in this Bill. Although we understand the intention, we believe this change is unnecessary.

I hope that noble Lords will see that the particular needs of young parents and of parents will be fully covered within the corporate parenting guidance and that the Government are undertaking a programme of work to support these vulnerable young people. With that, I hope that the noble Baroness will feel able to withdraw her amendment.

The Earl of Listowel: My Lords, I thank the noble Baroness for her careful and thoughtful response, but I have a couple of questions for her. With regard to health visitors, I acknowledge the immense investment that the Government have made in the regeneration of the profession. However, is she aware that until recently central government has been funding health visitors and many more have successfully been recruited, but that has recently moved to local government responsibility. There has been concern that some local authorities may choose not to fund the service or to fund it less. One issue is how frequently health visitors can visit. I should like an assurance from the Minister that so far the news of that transition to local government funding is that health visiting services are continuing as they have before. She can write to me but I would appreciate reassurance on that point. There might be room for improved guidance in this area. There is clearly a struggle in prioritising how health visitor services should be used in this climate and how many visits can be made to families. I would appreciate an assurance that the guidance is explicit that a young care leaver should have at least four visits—I think the standard may be three or two at the moment. Something like that might be helpful.

Although I welcome the family nurse partnership model and the benefits that it brings through having a professional team around the family and not just the health visitor on her own, I believe that that is a fairly short intervention. Perhaps the Minister can let me know how long it lasts. Given the issues of continuity of care for this group of young people, I would appreciate more information about the duration of the family nurse partnership model and what provision is made to ensure a smooth transition to other services. Reassurance on that matter would be welcome.

Baroness Evans of Bowes Park: I am happy to write to the noble Earl with more detail and will circulate the letter to other Peers who have been here today.

Baroness Armstrong of Hill Top: My Lords, I thank the Minister for her reply. She talked about the intent of the amendments being covered in guidance. I will withdraw the amendment at this stage but, in doing so,

[BARONESS ARMSTRONG OF HILL TOP]

I would like to be confident that the Minister will ensure that the House is able to consider the guidance before Third Reading.

Amendment 61A withdrawn.

Amendments 62 to 72 not moved.

Amendment 73

Moved by Lord Warner

73: Clause 3, page 5, line 16, at end insert—

“() In making available personal advisers under this Act, the Secretary of State must make regulations to provide—

- (a) performance standards and training for personal advisers;
- (b) arrangements for vetting as to their suitability before taking up posts; and
- (c) a publicly available register of approved personal advisers.”

Lord Warner: My Lords, this is a probing amendment on an issue of great concern to me: safeguarding young people from predatory adults. Clause 3 is the first place in the Bill where I could find the term “personal advisers”, so I have grafted the amendment on to the clause to seek support in principle for the idea that personal adviser is the kind of job that could conceivably attract people with predatory intentions towards vulnerable young people.

Many of those young people over the age of 21 may themselves, despite their chronological age, be rather immature and vulnerable, so reaching the magic age of 21 does not necessarily produce a lack of vulnerability. That is why I drafted the amendment, which requires the Secretary of State to make regulations on three matters relating to personal advisers, irrespective of age. The Minister has to some extent tried to deal with that in his previous answers about a review and the rather mysterious deep dives that seem to be taking place in the Department for Education. However, I am not sure that we should miss this opportunity in legislation to put safeguards relating to personal advisers in the Bill: first, a provision for performance standards and training for personal advisers to be set out in regulations; secondly, arrangements for vetting them as to suitability before they take up posts; and, thirdly, a publicly available register of approved personal advisers. Those are the minimum safeguards that are required before we proceed with the introduction on a national basis of personal advisers, whatever reviews the DfE may be carrying out.

I shall say a few words about my personal experience, which causes me to feel so strongly about this amendment. First, some of the experiences I had as a director of social services brought home to me the vulnerability of young people with low self-esteem, a lack of love in their lives and bad experiences at the hands of adults. If a person in a position of trust abuses that trust, often after a period of grooming, many young care leavers are very vulnerable to damaging overtures. I have a few examples that I have had to deal with—and I am sure that the noble Baroness, Lady Howarth, has had not dissimilar examples. A foster father sexually

abused a teenage girl; a Catholic priest abused young people in an adoption agency; a care home manager was caught in a teenaged girl’s bed in his own care home, in the middle of the night; and care home staff practised so-called regression therapy by encouraging children to sit on their laps. These are just a few of the people who find themselves able to get near vulnerable young people. Incidentally, the care home manager caught in flagrante took me to an employment tribunal for wrongful dismissal. These are real-world examples of what corporate parents may have to deal with.

It was that experience that led to Virginia Bottomley, the then Health Secretary, appointing me to chair an inquiry in the early 1990s after a series of scandals into how we recruited, vetted and trained staff working in children’s homes. Our report, *Choosing with Care*, led to some strengthening of the safeguards against predatory adults. But with the passage of time, we are in danger of assuming that some of those problems have been dealt with. As the Jimmy Savile and other examples have shown, we have to be ever vigilant. If we introduce a new group of people with easy access to vulnerable young people, we need to do all we can to safeguard those young people. The predators will always be around, and we are failing young people if we do not do our utmost to put in place protective procedures.

That was brought home to me very graphically when, a couple of months ago, I saw a play by Phil Davies called “Firebird”, at the Trafalgar Studios—I am not doing a commercial because it is no longer running there. This shows how a predator, seemingly someone who works with young people, grooms a lonely, vulnerable, young person into prostitution. I am sure that the wording of my hastily produced amendment could be improved, but I hope that the Minister will accept in principle that, if we are going for a national system of personal advisers, we should put in the Bill some safeguards for young people against potentially predatory personal advisers.

6.45 pm

Baroness Howarth of Breckland: My Lords, I obviously support what the noble Lord, Lord Warner, has said, although I am not going to go through the long list of experiences that I have experienced as a director of social services, as an assistant director and a social worker, and even more so, working with the Lucy Faithfull Foundation, which dealt with predatory grooming adults and how they got in touch with children.

I am concerned about how we work through two parts of this. One is how we make absolutely sure that the vetting is solid and absolutely reliable for all the reasons the noble Lord, Lord Warner, has said—and how we set performance standards—but also, at the same time, as having some flexibility in who the young person might see as the person who is going to be their personal adviser. I think this is more complex than it looks on the surface. I think we could set standards of training—we have all done that in our time; we could have a vetting system and place it on a register, although I would say 130 days to get a vetting back from the Met police at the moment seems to me a scandal, and

is interfering with the recruitment of appropriate social workers right across the piece. But we have to look at how we have both of those things together, with the young person having some choice about who they want to be their mentor. There may be people in their lives, such as a teacher who stuck with them right through their school or a foster parent who struck right with them. Are they seen as different from personal advisers, who are a sort of profession apart? I have not yet conceptualised who those people are in relation to all the other people who are supporting the young person, and where the standard is set. The one thing that is absolutely clear is that whoever they are, they must be vetted. In my day, we had people called children's homes visitors, and we learned the hard way what happened if you did not vet appropriately those visitors, when young people disappeared on to the street. I would underline that—it is quite a complex question.

Lord Storey: My Lords, this is an important probing amendment. I now understand why it is in this grouping and not in the other groupings, and I apologise to whoever is responsible for that. As the British Association of Social Workers rightly said, it will be important to clarify what qualifications and capabilities will be required for the new personal advisers. Throughout our Committee discussions, we have shown how important personal advisers are and will be, in terms of speech and language and literacy, financial matters, and in putting the pathways plan together. It also is important that these are the right people for that and currently, there is no prescribed professional or occupational qualification determining which person should carry out the personal adviser's function for any individual care leaver. There are suggestions of what a PA should normally possess. They should,

"be working towards a professional qualification ... good practice ... for the young person to maintain the same PA from the age of 16",

et cetera. Presumably, the current personal advisers are DBS-compliant. If they are not, why not? I would have thought that was something that happened straightaway. They are working in a very intimate situation with young and vulnerable children, so if that is not the case, we need to know that straightaway. If it is the case, we need to look at the other suggestions that the noble Lord, Lord Warner, has made. We also need to ensure that the line management of personal advisers is not something that is just put on paper and does not happen but that somebody line-manages those personal advisers and sees them on a regular basis. There is another issue—that if we are not careful, sometimes young people who are emotionally vulnerable can make allegations against personal advisers, and that personal adviser is in a very difficult situation. If an allegation is made against a teacher, at least the teacher is in a setting where there are people around who can support and advise, whereas a personal adviser is acting entirely on their own. As well as any register and making sure that correct procedures have been gone through, there also has to be proper and effective line management of personal advisers.

The Lord Bishop of Durham: My Lords, I rise to express not dissimilar concerns to the noble Baroness, Lady Howarth. I firmly support the tenor of what is

proposed, but at the same time I go back to Second Reading when the noble Baroness, Lady Hughes, raised the question of foster carers. Some foster carers will rail against the professionalisation of advice. If we believe that there needs to be flexibility in the range of personal advisers, we need to beware of the Bill being so constraining that we lose that flexibility. They have to be securely and safely recruited and vetted, and we must ensure that there is ongoing support. The concern just expressed about the vulnerability of an individual personal adviser also needs to be heeded. I wanted to place on record a concern that this is something that must still be wrestled with. We have not got to the bottom of the right answer yet, either with what is in the Bill or in the guidance. This will be another example of where the guidance needs to be seen before Third Reading.

The Earl of Listowel (CB): My Lords, I very much appreciated the 1992 report of the noble Lord, Lord Warner, *Choosing with Care*. I have referred to it many times during my career in this House. I find it extremely helpful and illuminating, and in visiting children's homes, I know how helpful they have found it. There is even something called the Warner interview in which they are instructed to look back over the CV of the applicant to see if there are ever any gaps and probe the applicant on what they were doing in those gaps. It was very influential and important.

I also emphasise what noble Lords have said about the first line manager or supervisor. Recently at a conference, I heard from the chief executive of Frontline, which trains social workers. He produced evidence that where there was an excellent supervisor and manager, even in a poorly functioning local authority, newly qualified social workers could do well and be resilient. Dame Claire Tickell was commissioned to produce a White Paper for social work and she emphasised the need to train first line managers strongly. I welcome what the Minister has said so far about how he sees the Government helping to develop this personal adviser role. I hope that he will also look at their supervision and their first line managers and how those need to be developed.

Finally, on the issue of flexibility versus rigidity, there are strengths to both sides of the argument. I hope that we can find a marriage between the two. My concern is that there are huge burdens on local authorities' resources at the moment, and unless one is very specific in terms of the personal adviser profession, we may find huge disparity in quality and that our young people may not get delivery of what they need. At the same time, there needs to be flexibility where someone knows that young person and they have a relationship. We want continuity of relationships and we want foster carers, teachers or friends to be supported to be able to deliver that. We want to allow that role to be given to the foster carer or whoever. This issue is complex. This is a helpful debate and I look forward to the Minister's response.

Lord Wills: My Lords, as we have heard, this is a complex and difficult issue. I have huge sympathy with what the noble Baroness, Lady Howarth, the right

[LORD WILLS]

reverend Prelate, and the noble Earl, Lord Listowel, said about the need for flexibility. These young people are very vulnerable. They have a wide range of needs and they will respond differently to different people. It is not a question of having one professional group that will deal with every young person in the same way. We must be very careful about this because everything that I have learned about this complex subject suggests that one of the most crucial things is stability in the lives of these young people. The more difficult and restricting we make the area in which we can recruit these personal advisers, the more difficult it will be to provide stability, so there is clearly a huge problem here.

Having said that, we should not let all those difficulties dissuade or deflect us from the fundamental importance of what the noble Lord, Lord Warner, has said. There is always a temptation in government—I remember it very well from all my years as the Minister—that when things come complicated and difficult, particularly in such sensitive areas, to push it aside, kick it down the road a little bit and have a review which, in the circumstances, will not necessarily produce anything very valuable. We have heard the experience of all those people with a lot more experience than I have in these matters of how these problems come to light only after the damage has been done.

I urge the Minister to grapple with those difficulties, not lose sight of the importance of what the noble Lord, Lord Warner said, and to produce a substantive response today.

Lord Nash: I am very grateful to the noble Lord, Lord Warner, for his amendment and the points that he, the noble Baroness, Lady Howarth, the noble Lord, Lord Storey, the right reverend Prelate the Bishop of Durham, the noble Earl, Lord Listowel, the noble Lord, Lord Wills, made about the importance of safeguarding young people from predatory adults and the qualifications, training and management of personal advisers. These are of crucial and, in the case of safeguarding, paramount importance, and I will ensure that these points are covered in our review of personal advisers, to which I have already referred in some detail. This will inform what we say on Report, although I recognise the points made by the noble Earl, Lord Listowel, and the noble Lord, Lord Wills, about flexibility and stability and will look at the worrying delays to which the noble Baroness, Lady Howarth, referred in relation to vetting.

I hope that the noble Lord will accept that I do not want to prejudge the outcome of our review by accepting his amendment now, and I hope that he will therefore consent to withdraw it, but I assure him that I recognise the importance of the points he makes.

Lord Warner: My Lords, I am grateful to the Minister and everyone else who has spoken in this debate. I could really identify with the point made by the noble Lord, Lord Wills. I recognise how complex this issue is, certainly do not want to go into bat for the particular wording of the amendment and I accept that the Minister needs to carry out a review.

However, given what we have learned about predatory adults and vulnerable people over a long period, I ask the Minister and his department to reflect whether we should signal the issue of vetting in some brief way in the Bill. The noble Lord, Lord Storey, made the important point that there are two sides to this: the vulnerability of young person but also that of the personal adviser if they are isolated without adequate supervision. This is a difficult area and it is not easy to find solutions, but it behoves all public bodies and Governments, particularly with the Goddard inquiry going on, to recognise upfront that this is a real 21st-century issue which has to be wrestled with. Signalling in the Bill not the detail but a willingness to grapple with the issue is very important. In the meantime, I beg leave to withdraw the amendment.

Amendment 73 withdrawn.

Amendments 74 and 74A not moved.

Clause 3 agreed.

Amendment 75

Moved by Baroness Walmsley

75: After Clause 3, insert the following new Clause—

“Duty of the Secretary of State

- (1) The Secretary of State must promote the rights and well-being of children and young people in England mentioned in section 1(2).
- (2) In this section—

“rights” means—

 - (a) the Convention rights within the meaning given by section 1 of the Human Rights Act 1998;
 - (b) the United Nations Convention on the Rights of the Child; and
 - (c) other human rights;

“well-being” means—

 - (a) physical and mental health and emotional well-being;
 - (b) protection from harm and neglect;
 - (c) education, training and recreation;
 - (d) the contribution made by a person to society;
 - (e) social and economic well-being.”

Baroness Walmsley: My Lords, I beg to move Amendment 75 and shall speak to Amendment 135 in my name. Amendment 75 puts a general duty on the Secretary of State to promote the rights and well-being of looked-after children and care leavers. The state's care of children unable to live with their families carries enormous legal, moral and financial responsibilities. Although local authorities are of course directly responsible for individual children, central government supports the care system through policy development and sourcing, as well as public awareness-raising to ensure public support for this serious duty.

That is why I believe that it warrants a general duty on the Secretary of State akin to those which exist in relation to health and education. While those two elements of service provision to looked-after children are really important, factors affecting where they are

looked after and by whom, what therapies are provided, how they are involved with decisions relating to their care and how it is all paid for are also important enough to require a general duty on the Secretary of State in charge.

7 pm

Data collected for the NSPCC concluded that the rate of confirmed abuse in residential care in England was 3.3 in every 100 children in 2011-12. In institutional settings, there are alarmingly high numbers of abuse allegations which local authorities find to be unsubstantiated, suggesting that children still struggle to be believed. For example, one local authority said that it had received 82 abuse allegations in three years from children detained in its local young offender institution but every single one was found to be unsubstantiated. Central government policy directly affects these children, which is why they need a ministerial champion with a defined statutory role. The review led by the noble Lord, Lord Laming, of the overrepresentation of children in care in the criminal justice system calls for,

“strong and determined leadership at national and local levels”. This has been advocated time and time again in respect of looked-after children. Amendment 75 would make the rights and well-being of looked-after children and care leavers an unambiguous political priority by putting the duty on the Secretary of State.

Amendment 135 would place a duty on public authorities to have due regard, when safeguarding and promoting the welfare of children, to the United Nations Convention on the Rights of the Child and its optional protocols. It would require them to determine the impact of local service provision and decision-making on the rights of children and provide a framework for public service delivery. Rights become real for children at the local level: in their homes, schools and communities and through their contact with local services and practitioners. Yet research has shown that too many children continue to experience violations of their rights, such as lack of access to mental health services or living in overcrowded, damp accommodation. The far-reaching cuts to local authority budgets have resulted in a 40% real-terms reduction to their funding, which has inevitably impacted in particular on preventive services, including those for children.

The UN Committee on the Rights of the Child said in its recent examination of the UK’s child rights record that it was,

“seriously concerned at the effects that recent fiscal policies and allocation of resources have had”,

and that they are,

“disproportionately affecting children in disadvantaged situations”.

The UN committee urged the UK to introduce a statutory obligation to consider children’s needs,

“when developing laws and policies affecting children”.

The Bill gives us an opportunity to do just that. This duty for public authorities would require them routinely to consider the impact of policies and decision-making on children, thus ensuring that vulnerable children do not bear the brunt of any future spending cuts.

Political and administrative duties play an important part in putting children’s rights into practice as, for example, the duty on public authorities to act compatibly

with the European Convention on Human Rights clearly shows. That duty has ensured equal financial support for family members and non-family members who foster children, and has confirmed that children staying in hospital for a long period still receive disability living allowance. As the Committee can see, such a duty works.

The evidence shows that the most powerful driver for implementation of the CRC within a nation comes through giving direct force to the CRC in domestic law. Incorporation through a duty on public authorities should enable the provisions of the CRC to be invoked directly before the courts and ensure that it prevails where there is a conflict with domestic legislation or common practice, in the same way as the European Convention on Human Rights has been incorporated by means of the Human Rights Act—and it works, as I have just said. Although my amendment does not bring full incorporation of the UNCRC into UK law, to be within the scope of this Bill it provides a duty in relation to safeguarding and promoting the welfare of children.

England is lagging behind the rest of the UK in terms of legislative protections for children’s rights. The legal machinery for securing children’s rights in England is significantly weaker than in the devolved Administrations and, as a result, local implementation of the CRC is inconsistent. It relies on an ad hoc approach to child rights impact assessments and the efforts of some very committed individuals.

Few local authorities have an explicit child rights plan or strategy in place. Evidence from UNICEF UK’s work indicates that local authorities do not always understand the full extent of the rights and duties set out in the CRC and often limit children’s rights to participation and voice. Indeed, in response to the group led by Amendment 10 last week, the Minister said that “rights” were covered by Clause 1(1)(b) and (c) because they deal with children being able to express their wishes and feelings. The UNCRC goes much wider than that. There is no evidence of a systematic use of child rights impact assessments to determine which services to cut when budgets are tight, and that is why we need Amendment 135. I beg to move.

Baroness Bakewell of Hardington Mandeville: My Lords, I wish to speak to Amendment 76, which is a probing amendment. Given the hour and the closeness to our target time, I will be brief.

I believe that the Bill should introduce a social justice premium—a grant that would be payable to local authorities and services and to care leavers. The social justice premium would provide funding to raise the life chances of care leavers and close the gap with their peers who are not, or have never been, in the care system.

The premium would be based on the calculation of harm over a care leaver’s lifetime. It would qualify those affected for proportionately favourable funding in terms of both payments and services. One practical application would be a government top-up for savings accounts to ensure that looked-after young people accumulated assets at least at the median rate for their peers. I look forward to the Minister’s response.

The Earl of Listowel: My Lords, I shall speak briefly in favour of Amendments 75 and 135. It would be very helpful if there were a duty on the Secretary of State to address the United Nations Convention on the Rights of the Child in the way that the amendment describes. It would be helpful if there were child rights impact assessments for every piece of legislation—for instance, on the housing legislation that we have debated recently. Low-income families have suffered most in the recent years of austerity. We heard earlier about the closure of children's centres, which are a vital tool in transforming the lives of these young people. It would be very helpful if central government were more aware of the impact of every piece of legislation on children and families, particularly poorer families. There was hardly any mention in the housing Bill of the impact of homelessness. There was some mention of families in temporary accommodation but I suggest that not nearly enough attention was paid to their needs.

Moving to Amendment 135, I was very interested to hear from the Leeds deputy director of children's services four or five weeks ago. Leeds had been a struggling local authority in terms of children's services but that was turned around, and he described the process. First and foremost, the foundation of the change was to consider the UNCRC—it was the very basis upon which the change was made. Leeds recognised that to improve children's services it was necessary to look at all the children in the city and to think about how to improve their lives, listening to their needs and wishes to understand them better. I look forward to the Minister's response.

Lord Ramsbotham (CB): My Lords, I have added my name to Amendment 135, and the noble Baroness, Lady Walmsley, has already quoted from the 2016 report by the observers from the UN Human Rights Convention on the Rights of the Child, which was very damning. I want to draw attention to the fact that in 2008 there was an earlier damning report and the Government's response to that in 2010 was to say that they would give due consideration to the rights of the child in all new legislation and policy. I have to say that there has been precious little sign of that, which worries me.

The other thing that worries me about this is the comment made by the noble Baroness about the inequality that exists in the observance of the rights of the child in the various parts of the United Kingdom, with England consistently lagging behind. I really think that this Bill is an opportunity to do something about this, and we ought to seize it.

The Earl of Listowel: My Lords, I omitted to say that there seems to be a real issue in the United States, France and this country about a large section of the population feeling left out. The success of globalisation has in many ways simply left them behind. This would be one helpful measure to ensure that those at the bottom of the heap are better treated and feel better treated.

Baroness Wheeler: My Lords, Amendments 75 and 135 have been comprehensively argued and we have a great deal of sympathy with the intention to include in

the Bill reference to the UN Convention on the Rights of the Child to promote the rights and well-being of children in care and care leavers. As the noble Baroness, Lady Walmsley, pointed out, general duties on the Secretary of State exist in relation to health and education, so it is important to consider this issue in the Bill.

Specifically on the UNCRC's latest report, the Minister underlined at Second Reading that the Government fully recognised the importance of the committee's work and were looking closely at the report. The report has again warned, as we heard, of the growing and disproportionate impact of austerity and spending cuts on disadvantaged children. It would be helpful if the Minister explained further his thinking on the report and what are the Government's plans for responding to it.

We recognise the importance of upholding the rights of children in care and care leavers and on ensuring their well-being. Establishing at the end of Clause 3 a duty for the Secretary of State to promote the rights of children and young people covered by the Bill in accordance with the convention and other relevant legislation reinforces the commitment to provide the services that care leavers need. It also defines well-being, which we asked for, and to include physical, mental health and emotional well-being; the skills needed to contribute to society; and the importance of social and economic well-being, for which we have all recognised the need.

The provisions in Amendment 135 would be particularly important if Clauses 15 to 19 remain in the Bill. The Minister knows that there are deep concerns at the wide-ranging scope of these clauses, which we will debate on later amendments. This amendment would place a duty on public bodies and any person providing children's services of a public nature to have due regard to the UN convention, particularly in functions relating to safeguarding or promoting the welfare of children—it is vital for this protection to be included if the scope of Clause 15 is as wide-ranging as is currently feared—and for regular reports to be published on how the requirement is being met.

Importantly, the amendment refers to this report as needing to be in a format "accessible to children". In this context, I commend the valuable programme of work currently being undertaken by Coram Voice to find out from young people in care themselves what well-being being actually means to them. Its survey of children in care, *Your Life, Your Care*, began last year and aims at measuring the quality of their care experience and their own sense of well-being under what it calls the four Rs—relationships, recovery, resilience-building and rights, which very much resonate with the issues and approaches that have come up under the Bill. It can be used to help local authorities demonstrate how they are meeting Ofsted requirements, for example: what they are doing well and what they could improve.

Amendment 76, tabled by the noble Baroness, Lady Bakewell, and supporting the Joseph Rowntree Foundation call for the Secretary of State to have power to introduce a social justice premium grant to local authorities for services or grants for care leavers,

reflects the need to find responses to the huge funding pressures faced by local authorities and the impact of the scale of the cuts in recent years. The overall aim of improving care leavers' life chances and closing the gap between them and children who have not been in care is certainly one we all fully support. The Joseph Rowntree Foundation underlined that this policy is in the early stages of development ahead of the application of its anti-poverty strategy later this year and we look forward to seeing further work on this. The aim of basing the grant and calculations of harm over the care leaver's lifetime is also laudable but a very challenging proposition.

Overall, it is worth emphasising that further premiums or special funding at the Secretary of State's discretion, however welcome in the current context, are not the answer to medium or long-term funding problems. Local authorities must be adequately resourced to undertake the work and responsibilities placed on them, and Labour is strongly committed to achieving that. If we listen to care leavers themselves to help shape their services to them, as we all advocate, we know that worrying about money, fear of not being able to pay the bills and getting into debt that can never be paid off is at the heart of a lot of the problems they face.

7.15 pm

Lord Nash: I am grateful to the noble Baronesses, Lady Walmsley, Lady Bakewell and Lady Pinnock, the noble Lord, Lord Ramsbotham, and the noble Earl, Lord Listowel, for these amendments and their comments, and for the comments of the noble Baroness, Lady Wheeler. I am grateful for their brevity. In that regard and without wishing to be rude, I know we are debating important matters but if we are to get through this Bill in four days in Committee I would be grateful if noble Lords could come back on Wednesday in that vein.

First, I will respond to Amendment 135, on the UN Convention on the Rights of the Child. I offer my reassurance that the Government remain fully committed to this important convention. The recent report by the UN Committee on the Rights of the Child on the UK recognised the progress made by the Government in protecting and enhancing children's rights over recent years. The Government are unconvinced that putting a statutory duty to pay due regard to the convention on Secretaries of State or other bodies would have a real impact on children's lives. In 2010, the coalition Government made a Statement to Parliament stating that the Government would give due consideration to the UNCRC when making new policies and legislation. This Government maintain that commitment.

Legislation is already assessed to ensure compatibility with the UNCRC. A rigorous child rights impact assessment was conducted on this Bill, for example, and shared with the Children's Commissioner and the Joint Committee on Human Rights. Similarly, at a local level we believe that putting additional duties on public bodies is not the right approach to either raise awareness of the UNCRC or to change the way decisions are made. More targeted approaches through guidance and support to specific professionals or related to

specific aspects of children's rights are more effective. In 2013, for example, we issued statutory guidance to DCSs to have regard to the general principles of the UNCRC and to ensure that children are involved in development and delivery of local services. The Children's Commissioner's primary function is to promote and protect children's rights and ensure that they are properly understood, including by children themselves. She raises awareness and ensures that their views are brought to the attention of decision-makers at both local and national levels.

Turning to reporting mechanisms, under the UNCRC process we are required to provide a full UK report on a five-yearly cycle. The reports are publicly available on the UN website. Any additional requirement would risk duplicating our existing obligation. I recognise the value of impact assessments carried out on legislative proposals where they affect children, as referred to by the noble Baroness, Lady Bakewell, and the noble Earl, Lord Listowel. We carried out a very full analysis of the Bill's impacts on children's rights, interests and families. The Government are committed to giving due consideration to children's rights on matters such as this, as I said. Of course, there are aspects of children's rights where we can and should do more. I assure noble Lords that we are considering the recommendations of the UN Committee, published earlier this month. We will respond to the concluding observations this year.

Amendment 75 proposes that a similar duty is put on the Secretary of State to promote the rights and well-being of children and young people who are looked after or care leavers. We believe that introducing such a duty is unnecessary. This is due to the duties which the Secretary of State already owes and the commitments that the Government have already made. The Children Act 1989 sets out the legal principle that the child's welfare shall be the paramount consideration in decisions regarding children in the social care system. The guiding principle of any decision taken in relation to looked-after children will be to have their well-being as the primary consideration.

Section 7 of the Children and Young Persons Act 2008 obliges the Secretary of State to promote the well-being of all children in England and empowers her to take action to promote the well-being of care leavers. Clause 1 introduces the corporate parenting principles. The first principle sets out that a local authority must, in carrying out functions in relation to looked-after children and young people, act in their best interests and promote their health and well-being. We hope that this will reassure the noble Baronesses.

Turning to the social justice premium grant, the Government fully support the principle behind Amendment 76. As a Government, we are committed to improving the life chances of care leavers. Our forthcoming care leaver strategy will set out our ambition that care leavers should have the same opportunities, experiences and life chances as other young people. The best local authorities, such as Trafford, already provide additional support to care leavers to improve their life chances and to narrow the gap between them and their peers. Trafford ring-fences apprenticeship opportunities for care leavers and gives them free access to leisure centres.

[LORD NASH]

Our goal is to see more local authorities providing excellent services that improve the life chances of all care leavers. This Government are committed to an all-out assault on poverty and improving chances for all children, regardless of their background and past experiences. Our forthcoming life chances strategy will set out our plan for transforming the life chances of disadvantaged children and their families and for tackling deep-rooted social problems so that no one is held back or prevented from making the most of their lives. In view of the measures that we have already taken to promote and protect children's rights, particularly for children in care and care leavers, I hope that noble Lords will feel sufficiently reassured not to press their amendments.

The Earl of Listowel: My Lords, I thank the Minister for his reply and for what he said about child impact assessments on child-related Bills. But is it not even more important in Bills about housing and welfare that there are such child impact assessments? Those Bills have a huge impact on children and their families and one does not get the sense that the impact on children is really thought through. American academics who come to this country talk about how important housing is to children and bewail the fact that there does not seem to be awareness at senior levels of government of that necessary connection.

Baroness Walmsley: My Lords, I am grateful to all noble Lords who have spoken to this group. I will not say much because I need to be in the Chamber for the dinner break business. I thank the Minister for his reply. This is not the first time that I have tried to get some incorporation of the UNCRC into UK law and I am sure that it will not be the last. We made progress under the coalition Government when Sarah Teather announced that all government policies would be scrutinised to make sure that they were compliant with the UNCRC. That is why I wonder why, on the front of the Bill, we have a compliance statement about the UN Convention on Human Rights, but no statement about compliance with the UNCRC. That would be a step forward. After Sarah Teather made that statement, I went to talk to civil servants in the Department for Education to ask them what was the procedure to make sure that every policy was compliant. They did not have one. I would be interested to know what the procedure is now, because that was five or six years ago. Let us hope that we have moved forward in that respect because unless we have a proper procedure for doing this, it will not always happen and we things will fall through the gaps. However, I said that I would not say much, so I will sit down and I beg leave to withdraw the amendment.

Amendment 75 withdrawn.

Amendment 76 not moved.

Clause 4: Duty of local authority in relation to previously looked after children

Amendment 77

Moved by Lord Watson of Invergowrie

77: Clause 4, page 5, line 28, after "parents" insert "and any other person with parental responsibility"

Lord Watson of Invergowrie: My Lords, these amendments, in the name of myself and my noble friend Lord Hunt, are to the clause relating to educational achievement. It is surely self-evident that educational achievement is absolutely crucial to the hopes of young people in or leaving care in building a life that offers opportunities to raise their own family and pursue a career. So everything that can be done should be done to maximise those educational opportunities.

Amendment 77 would expand the provision that states that the advice and information should be available to the child's parents for the purpose of promoting the child's educational achievements. The term "parent" is unnecessarily narrow because, by definition, many of the young people we are talking about will not have parents. Perhaps the Minister will come back and say that it is a legal term and it is not necessary, but children could be with foster carers, they could be under special guardianship orders or they could be in care homes. The main point is to make sure that they are provided with the necessary advice that they need and to which they are entitled.

Could the Minister clarify whether the provision of information about education is to be provided to the child's parents alone? It is obvious, as I have said before, that it has to be broader than that. There is not a lot more to say on that amendment, and I hope that I can get a fairly straight response.

On Amendment 79, there is an issue here with simply saying that a local authority,

"must appoint at least one person for the purpose of discharging the duty imposed by subsection (1)".

I hope that it would be more than one person—but even if it is only one person it is important to ensure that that person, whoever he or she may be, allocates not just the resources but the time to do the job properly. There are many examples in schools, obviously at a more local level—for instance, the special educational needs co-ordinator. In my experience, that person is in some cases just the person who is willing to come forward and take it on; they may or may not have the training initially—they may be the only person willing to do it, on top of his or her other duties. On a bigger scale, within a local authority, it is important that the person who is appointed to look after the educational achievements of children in care is not just given another duty to add to his or her job description and is expected to do that within the time available to them. Can the Minister clarify that the people given the job will be able to do that?

It has already emerged as a recurring theme, even in the two Committee days that we have had on this Bill, that more and more duties are being given to local authorities. In some cases, that is quite appropriate, if they have been properly resourced. I shall not rehearse the arguments about the stresses and strains on the finances of local authorities, because everyone is only too well aware of that but if more and more duties are laid on them, local authorities must have commensurate resources transferred to them to enable them to carry out the duties properly. I accept that that is a small aspect, but it is an important part of the Bill. As I said earlier, the educational achievements of looked-after children and children leaving care is crucial to their

adult lives. I ask the Minister for those kinds of assurances and whether we can look with confidence at this part of the Bill, so that the person appointed to fill the post will have the ability, time and resources to do the job properly. I beg to move.

Baroness Massey of Darwen: My Lords, I speak to Amendment 86, which seeks to ensure that formerly looked-after children receive in their school,

“appropriate education in personal, social, health and economic skills, and citizenship”.

I find it really not that surprising that so many noble Lords have referred today to issues such as relationships, financial education, independent living, self-confidence and self-esteem. The amendment just backs up the need for us to consider those really very essential skills. All children should receive such personal development and economic education, as well as citizenship skills. Amendment 86 seeks to take account of the trauma and vulnerability that some children have experienced. Again, I include migrant children, although I am very aware that other children will have experienced varying degrees of loss, trauma and pain.

7.30 pm

These children, like all children, need skills for life to enable them to make progress at school, in society and in employment. Employers consistently say that they want not just academic education but things such as team-building and resilience. Other skills include language and communication—I thank the noble Lord, Lord Ramsbotham—and developing relationships, resilience and self-confidence. The skill of looking after one’s health should also be included—for example, avoiding early pregnancy and protecting against HIV and other sexually transmitted infections. We know that looked-after children tend to have more early pregnancies, for example.

The Minister knows that many, although not enough, schools have developed successful programmes around these themes—good schools often have a member of the staff who is charged with running these programmes—with links with other schools and services in the community. Some of us go into schools as part of the Lord Speaker’s Peers in Schools programme. The other week I was at a school that had a programme of personal and social education which also included citizenship and financial education.

The recent referendum indicated that, although some young people are informed and knowledgeable about what used to be called civics, some are not. It is important that all young people—particularly perhaps young migrants—become informed about our political and legal systems. With this amendment I am asking that all schools should pay particular attention to what are sometimes called soft skills, which enhance academic skills and behaviour. The Royal College of Nursing, voluntary sector organisations, parents’ organisations and young people have asked many times for this education to be provided.

I know that the Government are nervous about the word “statutory”. I shall not go into that but I do not think that “ensuring” that pupils receive social and skills education is controversial, and that word is used in other Bills. It is not about prescribed programmes;

it is about the ethos of a school—for example, having children’s paintings on the wall, and the relationship between staff and pupils and between pupils and pupils. It is about policies on bullying and school meals. It is about assemblies, which foster good citizenship, civic duties and having a pride in the school and in oneself. It is about pastoral care, which links to other agencies. This is of course about the curriculum—about handling money and issues such as drug education, sex education, diet, first aid and so on. Of course, sport, drama and art reinforce personal development and relationships. I have discussed these issues with the Minister before and I know that he is very supportive. I hope that the Government will return to this at some point and look at the need for social and personal development, as well as academic development, in all our schools.

Lord O’Shaughnessy (Con): My Lords, I shall speak to Amendment 78, which relates to Clause 4, which inserts, under the heading “Educational achievement of previously looked after children”, a new section into the Children Act 1989 in order to provide information and advice to previously looked-after young people and their parents.

In particular, my amendment affects subsection (3) of the new section, which provides local authorities with a power to do,

“anything else that they consider appropriate”,

to promote the educational achievement of these young people. This is potentially radical wording—whether that is intentional I am not sure—but, as I said at Second Reading, that ambition is very welcome. It is not quite on a par with the power to innovate described in Clauses 15 to 19 but I certainly think that it acts in that direction.

Without wanting to presage the debate that will take place around that part of the Bill, it is already clear that noble Lords will demand that any such powers to innovate will need to be very carefully designed to avoid negative and unintended consequences. It is that spirit which informs this amendment. I am concerned that the subsection does not include the necessary safeguards to avoid negative and unintended consequences for some young people.

Local authorities have a number of duties to several categories of vulnerable children—not simply looked-after children but, for example, children with special educational needs and disabilities. Even as we move towards an academy-led system, local authorities retain direct responsibility for placing children with special educational needs and disabilities who have educational health and care plans. I am sorry for the continued jargon. My worry is that as currently constituted, the subsection gives local authorities permission to provide extraordinary support to previously looked-after children, which is of course welcome on one level, but even if that is at the cost of pupils with SEND, for example, who are much more numerous and may have more challenging needs.

My amendment would add a simple caveat to make it clear that local authorities must take into account the impact of their actions on other children for whom they have a responsibility when considering how to

[LORD O'SHAUGHNESSY]

raise attainment for previously looked-after children. I am perfectly willing to accept that it may be unnecessary if I can get the reassurances that I seek from Ministers that it is not intended or that other safeguards exist, perhaps in other legislation.

I turn quickly to Amendment 86, in the name of the noble Baroness, Lady Massey. I strongly support the sentiment on the delivery of high-quality PSHE in schools. That is what we do through our character programme in the Floreat schools that I set up. I am also involved in the “Developing Healthy Minds in Teenagers” programme, which is trying to do something similar in secondary schools. I very much support the spirit of the amendment but I am concerned that it might tip us into a statutory PSHE curriculum which, as the noble Baroness knows, I am not ready to support because, as Ofsted has said, PSHE teaching in too many schools is not yet good enough. We need to fix that problem before considering whether it should become a statutory subject.

Lord Storey: I shall speak to Amendment 86. The noble Baroness, Lady Massey, has been a worthy champion of PSHE ever since I joined the House of Lords. I thought that the battle was over when in reply to her question the noble Baroness, Lady Evans, said that yes, she thought that it was important that all schools taught PSHE. I raised my hand in the air thinking, “Great, we’ve got that”.

I was interested in the comment of the noble Lord, Lord O’Shaughnessy. There is always this debate about whether we have to slim down the curriculum. It is said, “We don’t want to have statutory PSHE; we want schools—academies—to have freedoms”. Yes, I can subscribe to some of that but children are more important than them just having freedoms for curriculum development. There are really important things that need to be taught to all children and we have just heard a catalogue of them. It is hugely important that children have sex and relationship education and that they have financial education, and so on and so forth. I was fascinated by the noble Lord’s comments about the sort of work that he does in his schools. I pay tribute to that, but it should be for all schools.

I am not sure whether saying, “Let’s get the PSHE model right before we make it statutory” is the right approach. It should be the other way round. We should be saying that we will make it statutory for all schools—including free schools as well, incidentally, which I notice that the amendment does not mention—and then we make the resources, drive and determination to make that happen. That is probably one of the most important things that we can do for all children, but particularly for vulnerable and looked-after children.

Baroness Evans of Bowes Park: My Lords, Amendments 77 to 79 and 86 concern educational support for formerly looked-after children. The trauma and experiences of children who have suffered from abuse and neglect can have a long-term impact on outcomes and life chances, even once they have left care through a permanence order. The Bill seeks to ensure that everything possible is done to help these children and young people overcome the difficulties that they have faced and to realise their ambitions.

Our intention is to place a duty on local authorities to extend the duties of virtual school heads to support looked-after children who have left care under an adoption, special guardianship or child arrangement order. I assure the noble Lord, Lord Watson, that we will consider his Amendment 77. We will be talking to government lawyers about whether the current drafting fully captures special guardianship or child arrangement orders. We think that it does for adopted children but if it does not and the current drafting of the Bill does not achieve that aim, we will consider a government amendment to Clause 4. I thank him for raising that issue.

While I understand the point made by my noble friend Lord O’Shaughnessy in his Amendment 78, I am not convinced that it is necessary to place a duty on local authorities to consider the impact of what they will do on other groups of children. Local authorities will need to ensure that they do not spend disproportionate time supporting one child or group of children at the expense of others. Virtual school heads must do this now as some looked-after children will require more intensive support than others. I reassure my noble friend that the new duties in the Bill are deliberately light-touch—just providing information and advice—to allow virtual school heads to effectively prioritise their workload.

The role of the virtual school head for formerly looked-after children will be different from their current role. They will not have to monitor each child’s progress as they do for children in care for instance, as the child’s parents and carers will do this. We are confident that with the other specific duties on local authorities to support looked-after children, previously looked-after children will not be disproportionately supported at the expense of others.

On Amendment 79, again I do not think it appropriate to specify in primary legislation that local authorities must ensure virtual school heads have the resources to do the job. Clearly, we will expect all local authorities to do this and we will, via Ofsted inspections, check the quality of the service provided by virtual school heads. I assure the noble Lord, Lord Watson, that a virtual school head will not be an add-on to other duties. Their sole focus will be vulnerable children. Many virtual school heads already respond to requests for advice and information from parents and schools in respect of children who have left care through, for example, adoption. Clause 4 seeks to ensure that all authorities offer this service. However, I have asked officials to ensure that resources for virtual school heads are covered in the statutory guidance we will issue to clarify their role.

Finally, Amendment 86 covers personal, social, health and economic education for formerly looked-after children. We agree that all young people should leave school prepared for life in modern Britain. The Minister and I agree with the noble Baroness, Lady Massey, and the noble Lord, Lord Storey, that high-quality PSHE has a vital role to play in giving young people a better understanding of society and supporting them to make informed choices and to stay safe. The majority of schools and teachers already recognise the importance of good-quality PSHE education.

However, as I am afraid the noble Baroness has heard me say before, we believe it is not the availability but the quality of PSHE teaching that is the most pressing issue, as my noble friend Lord O'Shaughnessy highlighted. I say again: we will continue to keep the status of PSHE under review but in the short term we will prioritise working with experts to identify further action we can take to ensure that all pupils receive high-quality, age-appropriate PSHE and sex and relationships education. I am sure that the noble Baroness will continue to push us on this matter and that we will have many further discussions. I hope, on that basis, that the noble Lord will feel able to withdraw his amendment.

Lord O'Shaughnessy: I am sorry to prolong the sitting. I am very reassured by what my noble friend said about looked-after children not suffering as a consequence but my specific question was about children with special educational needs and disabilities. I wonder whether she could write to me to provide that reassurance that local authorities' duty of care to them is dealt with in other legislation so that there is that balance.

Baroness Evans of Bowes Park: I am very happy to write to my noble friend on that.

7.45 pm

Lord Watson of Invergowrie: My Lords, I thank everyone who has participated in the debate and the Minister for her largely positive response. I certainly

welcome that she is considering what we said in Amendment 77 and will come back on that. I welcome also the fact that virtual school heads will have a sole responsibility, so presumably other resources will have to be made available to make sure nothing is taken away from existing budgets. I want to make sure that the individual appointed—mentioned in Clause 4(4)—is not being taken away from doing anything else that he or she was doing, as has often been the case with other new appointments. This is not the time to discuss the PSHE argument and I would say only one other thing to the noble Lord, Lord O'Shaughnessy. I do not know him well enough to make this accusation to him personally, but there always will be some people who will say we are not yet ready for PSHE being a statutory requirement in schools. Some of the statistics on young people's exposure, particularly to sexual activity, be it in real life or virtually—online or whatever—suggest that they have to get as much information as early as possible, and we need to find ways of doing that. There is nothing more for me to say on that. Again, I welcome the Minister's response and I beg leave to withdraw the amendment.

Amendment 77 withdrawn.

Amendments 78 and 79 not moved.

Committee adjourned at 7.46 pm.

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